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The impact of the Framework Convention for the Protection of National Minorities in selected countries of Western Europe after two monitoring cycles

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The views expressed are those of the author only

1. Was the FCNM designed and adopted for Western states too?

The present analysis examines the impact of the Framework Convention for the Protection of National Minorities (FCNM) on Western states. This is done by an examination of a few specific issues in a few selected countries. One should perhaps start off such an endeavor by questioning the very idea of a coherent approach of so called 'Western states' knowing that a number of them have still not ratified the FCNM and that, as shall be shown below, there are differences in the approaches chosen also among countries relatively similar, such as we can observe between the Nordic countries.

However, it is here argued that it is important and useful, indeed necessary, to focus on Western states, first of all, because there is occasionally an understanding of the FCNM as being applicable to as well as relevant and useful for countries in Eastern Europe only. Thus in the first report by Portugal in 2004 it was argued in order to explain why Portugal considered itself as ratifying in 'an act of solidarity' rather than as concerned and affected directly by the FCNM:

'The Framework Convention for the Protection of National Minorities … was drawn up in pursuance of a decision taken at the first Summit of Heads of State and Government of the Council of Europe in Vienna in October 1993. At the time, in the light of the recent far-reaching political, economic and social changes in central and east European countries, the representatives of the Council of Europe member States had decided to introduce a convention-type legal instrument geared to protection national minorities settled in central and eastern Europe because of the 'historical upheavals' thus helping to secure peace and stability continent-wide'.[1]

Such an understanding opens up for accusations of 'double standards' towards different member states in the Council of Europe. The former president of the Advisory Committee, professor Asbjørn Eide, has rightly argued recently that the wide ratification of the FCNM among Western countries as well as their commitment evidenced in the monitoring mechanism of the Framework Convention indicate that the great majority of Western countries do recognize that the convention was intended for all European states having minorities in their midst.[2]

Such an understanding is also supported by a closer look into the legislative history of the Framework Convention. It is well known that the *travaux préparatoires* of the European Convention for the Protection of Human Rights and Fundamental Freedoms included several drafts concerning the rights of minorities.[3] These drafts enjoyed the support of the then called Consultative Assembly (which is now the Parliamentary Assembly) of the Council of Europe and in particular of its Committee on Legal and Administrative Questions consisting at that time of Western parliamentarians and experts. Debates continued all along the 1980s at the

[1] First report by Portugal ACFC/SR(2004)002.
[2] A. Eide, 'Towards a Pan-European Instrument?' in Verstichel et al. *The Framework Convention for the Protection of National Minorities: A Useful Pan-European Instrument?* (2008), pp. 5-17.
[3] Spiliopoulou Åkermark, 'Justifications of Minority Protection in International Law' (1997), pp. 197-246.

Standing Conference of Local and Regional Authorities and resulted later on not only in the Framework Convention but also in the adoption of the European Charter for Regional or Minority Languages. Therefore, while the disintegration of the Soviet Union and Former Yugoslavia and the fall of the Berlin Wall may have created fears that speeded up the adoption of the above mentioned documents, it is evident that such an adoption would not have been possible so quickly had not the ground work been done much earlier on the basis of situations and experiences in the entire European continent.[4]

2. The choice of countries and cases - Methodological concerns

In this analysis two substantive issues are chosen as case studies. They are examined in three different countries each:

1. The Sami in Finland, Norway and Sweden;
2. The Roma in Germany, Italy and Spain.

Such an approach was chosen first of all in order to be as concrete as possible in terms of substantive issues, rather than choosing to do an overall and abstract assessment of the impact of the Framework Convention in some countries.

Secondly, by choosing to look at specific groups and thereby on persons belonging to these groups I want to bring in the forefront the individuals for which the Framework Convention exists. One of the arguments made is that we are today far from actually being able to assess the impact of the Framework Convention at the level of individual life experiences. Some time ago I met a young Karait woman in Poland who told me:

'Some years ago we were never discriminated against, simply because no one knew we existed. But still we want it to be known that we exist!'

Recently I was able to see the glow and pride in the eyes of a Sami grandmother who was able to attend a course in writing in the South Sami language in Sweden, something that she had never done before even though she could speak the language. Such encounters, difficult to capture in bureaucratic accounts of experts and international organizations, make me convinced more than anything else of the impact of the FCNM at the human micro-level.

The Sami and the Roma are groups with very different preconditions and situations in many ways. But they live in several different countries and a study of their situation can offer us relevant comparability of State approaches.

Such personal encounters as the ones accounted for above remind us that the notion of 'impact' can never be and should not be understood as synonymous to data on quantitative indicators alone. While quantitative indicators can give guidance as to the spheres of societal and official activity where the Framework Convention is of relevance, they show us only a partial picture

[4] Spiliopoulou Åkermark, 'The Added Value of the Framework Convention for the Protection of National Minorities', in Verstichel et al. *The Framework Convention for the Protection of National Minorities: A Useful Pan-European Instrument?* (2008), pp. 69-90.

of attitudes, perceptions, understandings and emotions prevailing and shifting on our European societies. There is here a bias in favor of the States and the authorities, the international organizations, as well as in favor of the more resourceful – intellectually and economically – minorities, which can document and disseminate their practices, their views and their demands in a way which dominates our interpretations about what the impact of the Framework Convention on National Minorities, and other such legal documents is.

Another of the methodological difficulties in studies about impact of international instruments is the teleological and linear optimism of human thinking – perhaps especially Western thinking – that unavoidably risks making us assume that things are indeed improving, human beings are indeed protected to a greater extent, that our bureaucracies are becoming more and more efficient.[5] It may be therefore be useful to remind that the FCNM itself warns us against such an assumption when it provides in Articles 22:

'Nothing in the present framework Convention shall be construed as limiting or derogating from any of the human rights and fundamental freedoms which may be ensured under the laws of any Contracting Party or under other agreement to which it is a Party'.

This is why I also find refreshing and important that the study on 'Indicators for Assessing the Impact of the FCNM in its States Parties' includes a reference to potential 'disruptive use' of the Framework Convention among the indicators of the judicial sphere. Of course such disruptive use can occur in any field of human activity and in any country in Europe.

The reference in the above mentioned provision to the human rights obligations of States parties under other human rights legislation and agreements is accompanied by similar references in other provisions of the FCNM, in particular Articles 1, which refers to the FCNM as an integral part of the international protection of human rights, and Article 23, which establishes the close relation between the FCNM and the European Convention on Human Rights.

How can we then distinguish the impact of the FCNM from the impact of other international obligations, the impact of the work of other international bodies and from domestic legislation concerning the rights of persons belong to minorities? With the exception of clear cases of explicit references to the FCNM and its Advisory Committee in public debates and government action, including in legislative products and judicial decisions, as analysed in the study on indicators, it is in many cases not possible to distinguish the specific impact of one particular international instrument. Such direct references are found in the documents of the monitoring of the FCNM. In the Second Report of Finland it is reported that the Deputy Parliamentary Ombudsman had referred to the interpretations of the Advisory Committee when examining the issue of Sami broadcasts.[6] However, such reports remain still unusual in the empirical material examined. This difficulty to distinguish between the various international and domestic impacts is indeed accepted and appreciated by the ACFC which makes regular

[5] For a critical analysis of such deterministic developmental thinking see G. Rist, 'The History of Development. From Western Origins to Global Faith' (1997). Originally in French as 'Le développement: Histoire d'une croyance occidentale' (1996).
[6] Second Report of Finland, ACFC/SR/II(2004)012E.

reference to the work of other international bodies. For instance, in the First Cycle Opinion on Spain, the Advisory Committee referred to the Second Report on Spain of the European Commission against Racism and Intolerance (ECRI).[7]

As regards the choices of States covered in the present analysis two remarks need to be made. States that have not ratified the convention have been excluded from the present study. This is so since the 10th anniversary of the FCNM coincides with the completion of the second cycle of monitoring and prompts us to compare the achievements, issues and problems of the first cycle with those of the second. In any case this choice should not be take to mean that the FCNM does not have an impact on countries that have not ratified or even signed the FCNM. Other studies have shown that this is indeed the case.[8]

Many countries have been excluded from this study simply for the simple reason of lack of time and resources. This does not mean that everything is fine in such countries with regard to persons belonging to national minorities and, by contrast, everything is wrong in those discussed in the present study. The effort has been to include countries from the North and from the South of Europe, and to include countries having a longstanding tradition of minorities' protection, at least with regard to some groups or regions, as well as countries where legally enshrined minority protection is something new.

The present study does not purport to give a full account of the minority protection situation in any of the examined countries concerned. *What is examined is mainly how States addressed specific issues in their first cycle reports and then identifying shifts in the subsequent steps of the monitoring process, in particular identifying differences between the first and the second cycle of reporting and monitoring.* Can we see any change between first and second cycle in understandings and practices of Western States as reflected in the monitoring of the Framework Convention?

The Sami in Finland, Norway and Sweden

The Sami in Finland

The First Report of Finland was fairly brief but covers the Sami as a group as well as the different Sami groups and languages in Finland. The report included self-critical comments for instance when asserting:

'It has been considered that the Act on the Use of the sami Language before Authorities does not sufficiently ensure the preservation of the Sami language as a living language, because in practice the use of the Sami Language is often based on interpretation and translation'.[9]

[7] First Opinion on Spain, ACFC/INF/OP/I(2004)004.
[8] See for instance B. Zepa & A. Kucs, 'The Case of Latvia', in Spiliopoulou Åkermark et al., *International Obligations and National Debates: Minorities around the Baltic Sea*, (2006), pp. 301-346; F. Palermo, 'Domestic Enforcement and Direct Effect of the Framework Convention for the Protection of National Minorities. On the Judicial Implementation of the (Soft?) Law of Integration', in Verstichel et al. *The Framework Convention for the Protection of National Minorities: A Useful Pan-European Instrument?* (2008), pp. 187-213.
[9] First Report by Finland, ACFC/SR(1999)003.

The response of Finland to this challenge was the setting up of a working group to draft amendments to the law.

The issue of the definition of a Sami in Finnish legislation is discussed in the State Report under somewhat surprisingly under the heading of 'integration policy' and not under Article 3 of the FCNM. According to the State report 'the extended definition of a Sami has proved to be problematic and has created tension among population groups in northern Finland'. The position of different actors is discussed in the State report as well as the failure of a Government Bill that was to address the issues in 1998. The State report gives further a very brief account of the dispute between the Sami and the State with regard to titles of the State to land in the Sami Homeland.

In its first opinion the ACFC regretted the fact that the First report of Finland, as that indeed of many other countries, focused largely on relevant legislation rather than practice and implementation of such legislation. The opinion addressed the issues of the definition of Sami, the land rights in the Sami Homeland and the fact that there was no Sami-language newspaper published in Finland.

The Second report of Finland, submitted at the end of 2004, was much more comprehensive and detailed, especially with regard to the practice and implementation of legislation. [10] Again the report includes evaluating comments, both positive as well as negative. For instance, with regard to education the second state report asserts that for the smaller Sami groups, the Inari Sami and the Skolt Sami 'there are problems in the entire field of education'. While at the same time, on the positive side '… although few in number, all the present North Sami class teachers are qualified class teachers'. The issue of the definition of a Sami is dedicated more than one and a half page of the report and an account is given of relevant decisions of the Supreme Adminstrative Court solving the disputes over interpretations of the definition as well as the effects of this on the elections of the Sami Parliament in 2003. More than two pages are dedicated to the issue of land rights where an extensive account is giver of the numerous studies initiated and of the efforts made for instance by the President of Finland.

The level of detail of the State Report prompts obviously a higher level of concreteness and detail also in the Second Opinion of the Advisory Committee.[11] While the issue of land rights and decision-making with regard to natural resources remains at the center of the examination, a new theme enters, that of negotiation and consultation with the Sami. The Advisory Committee welcomes the fact that the obligation to negotiate with the Sami Parliament under the Act of the Sami Parliament has been complemented with similar provisions in sectoral legislation, including in the law on the Public Broadcasting Company. However, the Advisory Committee notes that while the Finnish authorities consider that this regime of consultation and negotiation has been observed 'rather well', the representatives of the Sami Parliament argue that the current practices rarely reflect the term 'negotiation' and that the Sami Parliament has often had only limited if any, influence on the final outcome. This gave the Advisory Committee the opportunity to establish the position that negotiation goes beyond mere consultation and requires that 'the views of the Sami Parliament are fully taken into account in

[10] Second Report of Finland, ACFC/SR/II(2004)012E.
[11] Second Opinion on Finland, ACFC/OP/II(2006)003.

decision-making affecting the protection of the Sami'. The Advisory Committee had also the opportunity to encourage the prospect of adoption of the Nordic Sami Convention a draft of which had been completed at the end of year 2005.

It could be noted that the Committee of Ministers in its Second Resolution on Finland invited the authorities, among other, to 'take rapid measures to address disputes over the ownership and use of land in the Sami Homeland, through negotiation with the Sami Parliament and others concerned'.[12]

The Sami in Norway

Norway has the largest Sami population among the Nordic countries. However, in its first report, the government of Norway did not cover the Sami in the report and explained:

'The Sami people in Norway are also a national minority in the terms of international law. However, the Sámediggi (the Sami Assembly) has declared that it does not consider the Framework Convention to be applicable to the Sami people, since as an indigenous people the Sami have legal and political rights that exceed those covered by the provisions of the convention. In keeping with the wish of the Sámediggi, therefore, the Sami people will not be discussed in this report. Instead, Norway's reports on the implementation of ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries are appended hereto'.[13]

Norway was thus able to explain the reason of such a position, to distance itself from the position taken by the Sami Assembly, but also indirectly to ensure a flow of information on Sami issues through the ILO-reports. This is then, still another example of the mutually reinforcing impact of various international legal instruments.

In spite of the fact that the state report did not cover directly Sami issues, the ACFC took the position that it could deal with the protection of the Sami without using the term 'national minority'.[14] This approach was chosen in order to reflect the applicability of the FCNM to indigenous peoples. The Advisory Committee asserted that 'the recognition of group of persons as constituting an indigenous people does not exclude persons belonging to that group from benefiting from the protection afforded by the Framework Convention.' On the basis of this assertion the Advisory Committee included several substantive comments in Sami issues in Norway, including welcoming the increased financial support for the support of Sami culture as well as the difficulties and local disagreements concerning minority language place names in some municipalities.

In its second report Norway gives a detailed account of the recent 'Act relating to legal relations and management of land and natural resources in the county of Finnmark' ('The Finnmark Act') and of the consultation process leading to its adoption in 2005. There were several rounds of consultations with the Sami parliament and the Finnmark County Council.

[12] Resolution CM/ResCMN(2007)1.
[13] First report by Norway, ACFC/SR(2001)001.
[14] First Opinion on Norway, ACFC/INF/OP/I(2003)003.

The Act established a regime of local ownership of an area of about 45,000 km2. It is run by the Finnmark Estate which is a landowner headed by a board consisting of six persons: three appointed by the Sami Parliament and three by the Finnmark County Council. However, the report admits that the exact land rights in Finnmark need still to be mapped down something that shall be the task of a commission, while related disputes shall be dealt with by a special tribunal established for that purpose. The second report of Norway presents also the procedures for consultation between the Sami Parliament and the Government signed by both sides in May 2005. All enclosures of the Norwegian report are websites from various official sources, including the state budget for 2005 which included specific budget lines concerning minorities. There is thus a conscious effort to increase the knowledge and transparency of minority issues in the second report of Norway.

In its second Opinion the ACFC does not include any comprehensive remarks on Sami issues most likely because the Finnmark Act had entered into force only four months before the adoption of the Opinion thus making any evaluation of its impact and implementation meaningless.[15] In this report emphasis has shifted clearly to Roma and Romani/Tatars something confirmed in the Committee of Ministers' Resolution.[16]

The Sami in Sweden

The first report of Sweden was submitted in 2001 and included, as was the case with the report of Finland, mainly an account of the legislative framework of minority protection in Sweden.[17] In contrast to the Finnish report, however, very little detail is given with regard to the specific measures addressing the needs of the five groups recognized by Sweden as being covered by the FCNM. However, there is a description of the groups themselves (the Sami, the Swedish Finns, the Tornedalers, the Roma and the Jews) as an attachment to the report. Here we find a fairly detailed account of the three Sami language varieties (North Sami, Lul Sami and South Sami). There are two paragraphs dealing with the Sami school system where the six cities where such schools exist are enumerated, while no information is provided as to the number of pupils participating in such education, the level of demand for such education, the extent of the coverage of the three Sami languages by the regime of Sami schools, nor on the sufficiency or lack of qualified teachers for such Sami schools.

In its First Opinion on Sweden the ACFC emphasized the problem of a high degree of legal uncertainty that prevails with regard to land rights and right to use of territory in the traditional areas of the Sami and their reindeer pastures. This issue was not discussed in the State report and at this point we have an example of the crucial importance of state visits in order to give a correct assessment of the situation of minorities and states parties to the convention. While the legal situation should be clarified, the Advisory Committee also urged the authorities to consider ways to support the solving of pending legal disputes and ensuring that Sami villages and others concerned are in a position to access the relevant judicial and other processes in an

[15] Second Opinion on Norway, ACFC/OP/II(2006)006.
[16] Resoltuion CM/ResCMN(2007)11.
[17] ACFC/SR(2001)003.

equitable manner.[18] With regard to consultations with the Sami parliament the Advisory Committee found that it would be important that proposals to expand the legal obligation to consult would be followed up, in particular in matters concerning the use of land. The acute character of the problems in the North of Sweden was emphasized also in the Committee of Ministers Resolution which asserted that:

'There is a pressing need to find a balanced solution to, and improve legal certainty on, the issue of land rights in the areas inhabited traditionally by the Sami, with a view to ensuring inter-ethnic harmony in the region and the protection of the culture and identity of persons belonging to this indigenous people'.[19]

The Second Report by Sweden was more comprehensive and practical in its approach, identifying certain measures taken to implement legislation and programs, for instance with regard to a scheme to support financially the opportunity for adult Sami to study their language and a survey of Swedish people's awareness of and attitudes to the Sami. Several enquiries and reports had been initiated in order to find ways to address many of the problems identified in the first monitoring cycle and the Sami Parliament had been given the task by the Swedish Government of establishing a Sami information center.[20] There is little reflection in the report of any continuous interaction and consultation between the authorities and the Sami and it is very difficult to understand whether measures follow a top-down approach, or include exchanges of opinions and a wish to find solutions adopted by both the authorities and the Sami.

In its second Opinion on Sweden, the Advisory Committee again insisted on the 'regrettable legal uncertainty concerning land rights', a problem which continued to complicate traditional activities of the Sami, including reindeer herding.[21] On the other hand, the Advisory Committee commends Sweden for the extensive radio broadcasts in the Sami and Finnish languages and welcomes the fact that there is a growing number of children attending Sami pre-school education and strong demand in Sami language education also at the high school level. However, the Advisory Committee was able to identify several obstacles to Sami education, including 'clear gaps of information given to families … concerning possibilities to request [Sami] education'.

A summary of results with regard to Sami in the Nordic countries

The above analysis shows that there is first of all an increased awareness in the countries concerned of the issues and problems involved and a clear willingness to pursue a constructive dialogue with the Advisory Committee and to offer more concrete and practical information on the measures taken to protect minorities. Still there is limited effort on the side of State Parties to assess the 'situation on the ground'. The most burning issue of land rights and rights to use

[18] ACFC/INF/OPI(2003)006.
[19] Resolution CMN(2003)12.
[20] ACFC/SR/II(2006)005.
[21] ACFC(OP/II(2007)006. In its resolution the Committee of Ministers invited the Swedish authorities to 'tackle, as a priority, the continuous legal uncertainty around land rights in northern Sweden, in a manner that fully protects the rights of the Sami. In the meantime, ensure that the related legal disputes do not threaten the viability of Sami villages and their reindeer herding activities'. See Resolution CM/ResCMN(2008)4 adopted in June 2008.

of land and natural resources in traditional Sami areas may possibly be tackled in Norway through the Finnmark Act, but the situation in Finland and Sweden remains critical and frustrating.[22] One of the results of this seems to be the stagnation of the project of a Nordic Sami Convention. In terms of the three types of indicators identified in the study on indicators, it could be possible to argue that the Finland seems to emphasize judicial and quasi-judicial developments, the Swedish position puts priority on legislative steps, while Norway emphasizes processes of public and political debate, transparency and consultation.

The Roma in Germany, Italy and Spain

The Roma in Germany

The First report of Germany received by the Council of Europe in February 2000 is undoubtedly one of the more comprehensive state reports partly due to the federal system of the country.[23] The report starts off with a reference to the 'members of the groups of German citizenship protected under the Framework Convention'. The Sinti and Roma are consistently referred to as 'the German Sinti and Roma' and it is similarly described that out of the 40,000 officially registered German and Austrian Sinti and Roma, more then 25,000 were murdered by May 1945. While the number of 'German Sinti and Roma' is estimated to up to 70,000 persons it is also described that some of the Sinti organizations put the numbers much higher. The State report concedes the continued use of the offender type 'Sinti/Roma' in reporting forms of the police in Bavaria something which the Central Council of German Sinti and Roma regards as discriminatory. The state report also describes problems with regard to ethnicity references to Sinti and Roma in criminal reports in the media. Romani as a language is largely not taught in schools in Germany and this is partly explained by the fact that some Sinti and Roma organizations take the position that Romani should not be taught by non-Sinti/non-Roma. According to the German government the lack of adequate means of participation for Sinti/Roma is the fact that they live dispersed all over the country.

In its Opinion of March 2002 the Advisory Committee criticized the ethnic profiling of suspects by the Bavarian police as well as the stereotyping of the Roma/Sinti in the media.[24] It surprising perhaps that the issue of Roma education attracts relatively low attention in the Opinion in view of the fact that the Government had clearly conceded the absence of Roma/Sinti and of bilingual education. It is, however, said in the Opinion that Roma/Sinti children (as well as migrant children) are over-represented in lower secondary schools and in special schools for under-achievers and correspondently under-represented at intermediate and grammar schools.

The Committee of Ministers Resolution on Germany concluded the following:

[22] For an account of a concrete situation exemplifying grave problems in consultation processes, see the report published by the Swedish section of the International Commission of Jurists, Sia Spiliopoulou Åkermark & Miriam Talah, 'Samernas rätt till deltagande och samråd. Fysisk planering och infrastruktur', April 2007. http://www.icj-sweden.org/upload/Publikationer/Samernasr%E4tttilldeltagandeochsamr%E5d1%281%29.pdf
[23] First Report of Germany, ACFC/SR(2000)001.
[24] First Opinion on Germany, ACFC/INF/OP/I(2002)008.

'Despite valuable efforts, the implementation of the Framework Convention has not been fully successful for the Roma/Sinti. It is important that the *Länder's* various methods of collecting criminal data of an ethnic nature are pursued in full compliance wit the principles laid down in Article 3 of the Framework Convention. Problems persists with regard to attitudes of rejection or hostility towards persons belonging to the Roma/Sinti minority and substantial efforts are needed to ensure the effective participation of the minority particularly in cultural, social and economic life. There is also reason for concern about the over-representation of, amongst other groups, Roma/Sint children at lower secondary schools and special schools for under-achievers, a state of affairs which merits close attention and the implementation of effective remedial measures'.

The second report of Germany was submitted in 2005 and had an impressive length of 287 pages.[25] In important innovation (originally introduced in fact by Poland) was the inclusion of the comments of minority organizations as an attachment to the state report. Thus, we find in the second German report comments by several Sinti and Roma organizations in Germany. Another shift in emphasis is the level of detail with regard to the situation in the different *Länder*, thus moving the center of attention from the capital to the different parts of the country. The Second Opinion of the Advisory Committee looked at the situation of Roma/Sinti as an issue of 'deep concern' due to incidents of discrimination and stigmatization in the media.[26] Roma and Sinti become occasionally the targets of racist acts and insults and have limited access to consultation and participation in public and political life. The Opinion raised also the issue of the precarious situation of Roma residing in Germany without German citizenship as they do not qualify for any of the measures designed for Roma and Sinti with such citizenship. Among the recommendations of the Advisory Committee was the need to urgently address the problem of over-representation of Roma/Sinti and immigrant children in special schools for under-achievers (*Sonderschulen*) as well as their low level of participation in secondary and university education.

The Comments of the German Government this time were almost as long as the entire first German Report.[27] One could perhaps describe the German approach as the 'method of overwhelming information'. In terms of public debate and consultation between the authorities and the minority organizations one can perhaps ask about the effect of the choice of such a method upon the opportunity of discussion and exchange of views. This is indeed a concern also among experts in Germany. There may be a latent danger, argue some experts, that models are becoming top heavy with manifold structures but relatively sparse grass roots.[28] The question is therefore raised as to whether a small minority can cope with structures necessitating participation on diverse committees, reading and commenting upon huge amounts of information. Such demands may be driving minorities towards a professionalisation and bureaucratization of minority organizations and activities.

[25] Second report by Germany, ACFC/SR/II(2005)002.
[26] Second Opinion on Germany, ACFC/OP/II(2006)001.
[27] Comments of the German Government on the Second Opinion of the ACFC, GVT/COM/II(2006)003.
[28] A. Walker & S. Oeter, 'The Case of the Federal Republic of Germany', in Spiliopoulou Åkermark et al., *International Obligations and National Debates: Minorities around the Baltic Sea*, (2006), pp. 227-299.

The Roma in Italy

The first report of Italy was quite comprehensive and was submitted to the Council of Europe in May 1999. Emphasis is put entirely on the historical, linguistic and territorially based minorities of Italy as provided for in pertinent Italian legislation.[29] In fact, the Roma are not mentioned in the First Italian report. In its Opinion the Advisory Committee, as was the case with Sweden, lamented the fact that the information contained in the report referred mainly to existing legislation and said little about the way in which Italy implements the FCNM in practice.[30] In terms of judicial indicators the ACFC welcomed the fact that the FCNM in the opinion of the Italian Government could be invoked by the Italian courts when delivering rulings, but presents many critical remarks on the absence of attention to Roma issues in spite of a big number of Roma living in Italy. The Advisory Committee was able to document the fact that the initial draft of Law no. 482 (1999) on the protection of historical linguistic minorities had included the Roma minority, but that reference had disappeared during parliamentary debates. This was so on the ground of this group having no link to a given territory. The fact of the exclusion of the Roma from the first Italian report gave the ACFC the opportunity to assert that the Roma, while not coming under Law No. 482 of 1999, 'are nonetheless protected by the Framework Convention'.

The Advisory Committee identified severe problems with regard to the placement of Roma in Italy in camps lacking running water, sanitary facilities and electricity. This resulted of course in negative consequences with regard to access to education, unemployment and marginalisation. This became later on a priority point in the Second Resolution of the Committee of Ministers.[31]

As regards the views of the Roma themselves, the Advisory Committee found that 'many Roma have seen no improvement in their situation where their effective participation is concerned' in contrast to the situation prevailing for historical minorities in Italy. This is an important point since it highlights the fact that states can make progress and be proactive with regard to some groups while neglecting others, something which of course opens up for criticism. Linked to lack of participation and consultation is the fact that Italy was at the time dealing with the 'problem of Roma' exclusively as a social problem while there was limited awareness of the need to affirm the culture, language and traditions of the group. The Advisory Committee was even 'perturbed' by the negative image associated with the Roma in Italian society, as reflected also in the terms used to describe the group in public debates.

In its Comments to the Opinion, the Italian government recalled that the possible extension of the safeguards provided by the FCNM to include other minorities 'can only be examined in the event that the Italian Parliament decides, under appropriate draft legislation, to recognize the existence of any additional minority language groups'.[32] This explanation is interesting first of

[29] First report by Italy, ACFC/SR(1999)007.
[30] First Opinion on Italy, ACFC/INF/OP/I(2002)007. The Opinion on Italy was adopted more than two years after the submission of the State report.
[31] Committee of Ministers, Resolution CMN(2006)5.
[32] Comments of the Government of Italy, GVT/COM/INF/OP/I(2002)007.

all because it limits the Italian understanding of a 'minority' to linguistic groups. In addition, it is problematic in so far as it seems to exclude specific sectorial measures in support of vulnerable groups irrespective of their formal status as a 'national minority' or not. Drawing upon the reasoning discussed above on the Norwegian Sami, which were originally excluded from the protection of the FCNM, on the ground that they were an indigenous people, one can argue that the protection of the FCNM can and should be afforded to groups qualifying as minorities irrespective of their formal legal status and categorization in the domestic legal system. This is a standing theme for the comments of the Advisory Committee under Article 3 of the FCNM.[33] In its Comments the Italian government accepted that the terms 'Roma, Sinti and Travellers' were preferable to the pejorative connotations of the terms 'Zingari' (Gypsies) or 'nomadi' (nomads).

In view of the above attitude of the Italian government it is surprising that the Second Report of Italy repeatedly refers to the Roma, Sinti and Travellers in Italy as 'nomads' and 'Gypsies', or even to the 'problem of the nomads', even when the persons concerned have chosen a sedentary way of life.[34] While still focusing mainly on legislative acts, the Second report of Italy does make an excellent inventory of the main issues resulting in the extreme vulnerability of the Roma in Italy, namely:

- housing and access to employment;
- image given by media;
- access of Roma and Sinti children to education;
- relations with police authorities;
- discrimination;
- lack of integration.

While the diagnosis and description of the problem is thus comprehensive, there is little evidence of any coherent and comprehensive measures to address these areas of concern. More than half of the Second Report of Italy is devoted to tables identifying the territorial areas of historical linguistic minorities of Italy. It can thus be argued than in the Italian understanding there is a strong principle of territoriality in all measures designed to promote the rights and protections of minorities. However, both the second state report as well as the subsequent second opinion of the Advisory Committee identified isolated positive, often locally initiated, initiatives to support remote education of children of the Travellers.

In its second opinion on Italy the ACFC found the following:

'In contrast to the recognized historical minorities, no tangible progress has been recorded in the situation of the Roma, Sinti and Travellers in terms of participation… The lack of a comprehensive national strategy to improve their socio-economic situation further complicates efforts to improve the situation in this field. Indeed sporadic involvement of Roma, Sinti and Travellers in local projects supported by certain municipalities is not sufficient to guarantee the

[33] For an overview of relevant discussions see H.-J. Heintze, 'Article 3' in M. Weller (ed.), *The Rights of Minorities* (2005), pp. 107-137.
[34] Second Report of Italy, ACFC/SR/II(2004)006.

effective participation of this minority in public affairs for the purposes of article 15 of the Framework Convention.'[35]

The result of this assertion was the conclusion of an increasingly urgent need to set up consultations structures for the Roma, something that the Italian government had indeed started contemplating by that time. After having visited the unauthorized Roma camp of Casilino 900 outside Rome, the Advisory Committee was able to draw the conclusion that the designation of a camp as 'authorised' or 'unauthorised' by the authorities does not seem to make any real differences as in both cases the local authorities, which are in charge of social and housing issues and are not supported by the state authorities, offer limited intervention to equip camps with minimal shared facilities like toilets or showers.

The response of the Italian Government made an effort to give examples of concrete action taken by Italy in the fields of education and participation for Roma, Sinti and Travellers.[36] While awaiting the third report of Italy to be submitted in the coming year, one is concerned by the recent anti-Roma tendencies in Italy, including that of the recent plan of collection of fingerprints of all Roma, including children.[37] In this particular case and situation the impact of the Framework Convention may be deemed as being negligible.

The Roma in Spain

The first report of Spain was submitted in December 2000, i.e. with a delay of almost two years.[38] The report starts by asserting that Spain offers an example of coexistence because it has, throughout its history, been influenced by the cultures and life-styles of many different peoples and population groups. In the next section it is stated:

'The Roma, who have preserved their cultural identity since they first came to Spain in the 15th century, are present in all nineteen Autonomous Communities (regions) and in the Autonomous Cities of Ceuta and Melilla, each of which has its own territory, language, customs and other specific characteristics'.

By contrast to the Italian report discussed above, the Spanish report is entirely devoted to Roma issues. It includes data on the numbers and geographical distribution of the Roma in Spain and a description of the Roma Development Plan which became operational in 1989, i.e. prior to the fall of the Berlin Wall and prior to the adoption of the Framework Convention. The State report he Plan includes various components allowing for Roma participation in decision-making affecting them. The Spanish report is one of the few state reports including a subheading concerning the 'assessment of results' of the Development Plan. However, the

[35] Second Opinion on Italy, ACFC/INF/OP/II(2005)003.
[36] Comments of the Government of Italy, GVT/COM/INF/OP/II(2005)003.
[37] Council of Europe, Press release- 484(2008) with the relevant statement of the Secretary General Terry Davis: "The Italian Minister of Interior is reported to have proposed that all Roma, including children, living in camps in Italy should be fingerprinted. This proposal invites historical analogies which are so obvious that they do not even have to be spelled out. While I believe that Italian democracy and its institutions are mature enough to prevent any such ideas becoming laws, I am nevertheless concerned that a senior member of the government of one of Council of Europe member states is reported to have made such a proposal." (Strasbourg, 27.06.2008)
[38] First Report of Spain, ACFC/SR(2000)005.

examples and arguments are left at an abstract level. Thus it is stated that 'the many studies carried out, feedback from professionals working with Roman and experience gained in the field often show that the measures taken do have some positive effects'. The most significant were:

- the impact of schooling support schemes for Roma children. However, it was at the same time acknowledged by the Spanish government, that this was also the area where programmes to aid Roma families 'face their biggest challenge';
- the impact of social support for Roma women in the fields of education, health training and community involvement; and
- a confirmation that rehousing schemes cause less conflict when allocation of housing to Roma families is accompanied by social support measures.

The first opinion of the ACFC on Spain entailed a deviation from the normal working methods of the Advisory Committee as it was not able to visit the country in the absence of an invitation by the Spanish government.[39] The Spanish government did consider the possibility of accepting a visit to Spain, but only in 2004 at the time when the second monitoring cycle of the Framework Convention was commencing and when the second report of Spain was already to be submitted. The ACFC decided therefore exceptionally to proceed to an examination of the state report without having visited the country. In view of the high number of Roma living in Spain and focus of the State report on Roma issues this was undoubtedly a problematic situation as it hampered discussions and assessments on the spot. In its opinion the Advisory Committee raised the issue of the actual designation or description of the Roma and other groups in Spain in relation to the Framework Convention in view of the fact that the Roma are not referred to as a national minority, and are not officially recognized as such, and they are not mentioned either in the instrument of ratification by Spain of the European Charter for Regional or Minority Languages. In addition to extensive comments on issues of education and the absence of sufficient measures to affirm the cultural identity of Roma, one of the main points of the First Opinion was that of the repeated expressions by the Roma in favour of an institution of a democratic representative body with consultative powers vis à vis the administrative authorities.

In its extensive and detailed comments on the Opinion, the Government of Spain offered valuable information on judicial decisions concerning discrimination and xenophobic actions. [40] None of the court cases discussed in the comments concern the Roma. There is however other important information concerning agreements between the authorities and Roma non-governmental organisations on the implementation of programmes for instance to improve the health and quality of life of the Roma. Again, there is scarce information on the actual situation on the ground even though the original State report had indirectly indicated very high levels of unemployment among the Roma. It was therefore not surprising that the Committee of Ministers in its resolution found that 'considerable socio-economic differences persist between a large number of Roma and the rest of the population, as well as cases of marginalisation and social exclusion'.[41] The Committee of Ministers invited Spain to give special attention to

[39] First Opinion on Spain, ACFC/INF/OP/I(2004)004.
[40] GVT/COM/INF/OP/I(2004)004.
[41] Committee of Ministers Resolution ResCMN(2004)11.

promoting Roma culture, language and traditions in addition to addressing the above mentioned socio-economic issues in employment, health, housing, access to education and public services.

The second report of Spain was submitted in April 2006 and follows what I would describe as the 'project activity model', or possibly the quantitative model of assessment.[42] The report includes extensive accounts of projects concerning for instance employment (where we can read between the lines that out of a total number of users of 43,227 persons under the age of 16 in the employment activities discussed, 813 persons accessed work and 36 new jobs were created. It is somewhat surprising that the State report does not make an effort to comment upon and problematise such alarming data. There are several tables of topics and activities covered in the programmes and of the financial subsidies offered by the responsible ministries. The report mentions also that socio-demographic studies have been initiated in 2005 and 2006 in order to monitor the actual socio-economic conditions of the Roma. This clearly shows an awareness of the lack of basic comprehensive and evaluating data on the situation and needs of the Roma in the different regions of the country. At the same time the report reflects more clearly than previously the responsibility of and the actions undertake by several of the Autonomous regions in Spain.

In its second Opinion on Spain the Advisory Committee noted again the more than two years delay in the submission of the State report and reported that the Spanish authorities have assured the Committee that the third state report will be submitted in a timely fashion.[43] This time the Advisory Committee was invited by Spain the conduct a visit something which made the Opinion much more pertinent and concrete. The Opinion reported on a 'Non-binding proposal on the recognition of the rights of Roma' adopted by the Spanish Parliament. This is the first time the legislator in Spain adopted a comprehensive strategy to deal with Roma rights not simply as a social problem but also as in issue of affirmation and recognition of the distinct cultural identity of that group. The Advisory Committee also noted that there has been considerable progress towards achieving the full education of Roma children at primary level, even though the problem of concentration of Roma and immigrant children in certain public schools that are academically poor remained a concern and was even increasing in certain neighborhoods. The minimal presence of Roma children in pre-school education was a particular concern for the Advisory Committee. A new Law on Education was adopted in May 2006 aimed at improving the access to education for vulnerable groups including several important steps, however, its implementation is in the view of the ACFC largely in the hands of Autonomous Communities and school boards. The Spanish Government offered additional information and used the opportunity to make extensive comments on the Opinion it its Comments submitted in December 2007.[44] In the subsequent Resolution of the Committee of Ministers several positive steps are highlighted (regarding the strengthening of discrimination legislation, the improvement of access to social services and education and the recognition by the Spanish government of the need to protect and promote the distinct culture and identity of the Roma).[45] Among the issues of concern the Committee of Ministers found, however, that:

[42] Second Report of Spain, ACFC/SR/II(2006)002.
[43] Second Opinion on Spain, ACFC/OP/II(2007)001.
[44] Comments of Spain, GVT/COM/II(2007)006 (made public in April 2008).
[45] Resolution CM/ResCMN(2008)1.

‘Although efforts have been made to improve the situation of persons belonging to minorities, the impact of these efforts remains in many respects limited’.

Among the issues raised in the resolution is the absence of references to Roma culture, history and traditions in school curricula and teaching materials and the absence of the Roma in the media sphere. The increasing concentration of Roma (and immigrant) pupils in schools is also for the Committee of Ministers a reason for concern.

A summary of results with regard to Roma in Germany, Italy and Spain

As shown in the three cases dealt with above and as well known through many other studies the Roma, Sinti and Travellers face grave problems in all three countries of Western Europe. Some of the problems are similar to those encountered in Eastern Europe, such as the disproportionate, and in some cases still increasing, concentration of Roma children in special schools. In all the three countries issues of Roma are seen almost exclusively as a social problem. This is however changing as is clearly evident in the shifts observed in the Spanish case. A grave problem for the Roma communities is the pressure exercised by the systems of reporting, project management, consultation and lobbying embedded in the modern present day international minority protection. Such pressures leave limited space for time consuming internal deliberation within the groups and sub-groups concerned.

An overall conclusion would be that we are now able to say that we have an increased and fairly good understanding of the main problems concerning the groups examined in all of the countries analysed in this paper. However, the actual impact of the implementation of the FCNM on individuals members of minorities is much more difficult to evaluate on the basis of available information.

Comments and suggestions should be sent to: sia@peace.ax