



Comparative Study
of the working methods and conclusions

of the Committee of Experts
of the European Charter for Regional or Minority
Languages

and

the Advisory Committee
of the Framework Convention for the Protection
of National Minorities

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This is a comparative study of the working methods and conclusions of the Committee of Experts of the European Charter for Regional or Minority Languages (the "Charter") and the Advisory Committee of the Framework Convention for the Protection of National Minorities (the "FCNM"). The study will examine the work of the two committees on those points where the Charter and the Framework Convention overlap, and will include an examination of the difference in treatment of language issues in each country considered by both committees and by the respective recommendations adopted by the Committee of Ministers of the Council of Europe. The working methods of the two committees shall be taken into consideration in this evaluation.

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1. Description of the Comparative Study

The Charter was concluded under the auspices of the Council of Europe and was opened for signature on 5 November, 1992. It entered into force on 1 March, 1998.¹ The Charter has been ratified by 17 States and has been signed by a further 13. The FCNM was also concluded under the auspices of the Council of Europe and was opened for signature on 1 February, 1995. It entered into force on 1 February, 1998.² The FCNM has been ratified by 35 States and has been signed by a further 7.

Both the Charter and the FCNM employ a monitoring mechanism to evaluate State compliance with the obligations created under the two treaties. Under the Charter, States parties are required to submit to the Secretary General of the Council of Europe an initial periodical report within one year of the entry into force of the Charter for the State, and are required to submit further reports every three years thereafter.³ The form of these periodical reports is prescribed by the Committee of Ministers of the Council of Europe, and must contain a report on the policies pursued by the States in accordance with Part II of the Charter and on the measures taken in application of those provisions of Part III of the Charter which they have accepted.⁴ Under the FCNM, States parties are also required to submit a first State report to the Secretary General of the Council of Europe within one year of the entry into force of the FCNM for the State,⁵ and are to make further State reports every five years thereafter.⁶ The form of the initial State reports is prescribed by the Committee of Ministers of the Council of Europe⁷, and must contain full information on the legislative and other measures taken by States to give effect to the principles set out in the FCNM.⁸ The form of the State reports to be submitted under the second monitoring cycle of the FCNM is also prescribed by the Committee of Ministers;⁹ they are to contain any further information of relevance to the implementation of the FCNM,¹⁰ and are meant to complement the information included in the first report.¹¹

The periodical reports presented under the Charter to the Secretary General of the Council of Europe are to be examined by the Committee of Experts.¹² The Committee of Experts is then required to prepare a report for the attention of the Committee of Ministers of the Council of Europe, with proposals for recommendations to the State being monitored, together with comments of the State on the experts' report.¹³ It is for the Committee of Ministers to decide on the adoption of the recommendations that are ultimately made to the State.

Under the FCNM, Committee of Ministers of the Council of Europe also monitors the implementation of the FCNM.¹⁴ The State reports are forwarded by the Secretary General of the Council of Europe to the Committee of Ministers¹⁵, and in evaluating the reports, the Committee of Ministers is assisted by the Advisory Committee.¹⁶ While the FCNM does not

¹ Under Article 19, paragraph 1, the Charter entered into force on the first day of the month three full months after the Charter had been ratified, accepted or approved by five member States of the Council of Europe.

² Under Article 28, paragraph 1, the FCNM entered into force on the first day of the month three full months after the FCNM had been ratified, accepted or approved by twelve member States of the Council of Europe.

³ Article 15, paragraph 1, the Charter.

⁴ Article 15, paragraph 1, the Charter.

⁵ Article 25, paragraph 1, FCNM.

⁶ Article 25, paragraph 2, FCNM, and paragraph 21, Committee of Ministers Resolution (97) 10, 17 Sept., 1997.

⁷ As adopted by the Committee of Ministers on 30 September, 1998, at the 642nd meeting of the Ministers' Deputies.

⁸ Article 25, paragraph 1, FCNM.

⁹ As adopted by the Committee of Ministers on 15 January, 2003, at the 824th meeting of the Ministers' Deputies.

¹⁰ Article 25, paragraph 2, FCNM.

¹¹ Explanatory Report, FCNM, paragraph 94.

¹² Article 16, paragraph 1, the Charter.

¹³ Article 16, paragraphs 3 and 4, the Charter.

¹⁴ Article 24, paragraph 1, FCNM.

¹⁵ Article 25, paragraph 3, FCNM.

¹⁶ Article 26, paragraph 1, FCNM.

specifically refer to the outcome of the scrutiny process, the Committee of Ministers will also make recommendations to the State party.

Thus, while the Committee of Ministers of the Council of Europe is ultimately responsible for overseeing the implementation of the two treaties by States which are party thereto, the monitoring upon which the Committee of Ministers bases its conclusions is carried out by the Committee of Experts and the Advisory Committee, respectively. These two bodies therefore have a fundamentally important role in the monitoring of State compliance. It is important to note, though, that the monitoring of the Committee of Experts is an autonomous process, the output of which stands in its own right, whereas the monitoring of the Advisory Committee specifically serves the purpose of assisting the Committee of Ministers in formulating its conclusions.

At present, sixteen States are parties to both the Charter and the FCNM.¹⁷ Of those, fifteen have submitted initial periodical and first State reports under the Charter and FCNM, respectively.¹⁸ Of those, twelve have completed the process of monitoring by both the Committee of Experts under the Charter and the Advisory Committee under the FCNM.¹⁹ The approach of the two committees to the monitoring of the reports of these twelve States will be the focus of this study. Given the very large amount of documentation which accompanies the monitoring of each report under each treaty, the decision was taken by the author of the study, in conjunction with the secretariats of the two treaties, to narrow further the focus of the study to three States, Hungary, Sweden and the United Kingdom.

2. Composition and Working Methods of the Two Committees

a) Composition

The rules for the appointment of members of the two committees differ somewhat.

Committee of Experts

Each State party to the Charter nominates a list of individuals, and the Committee of Ministers of the Council of Europe appoints from that list one member in respect of that party.²⁰ Thus, there are presently seventeen members, the same number of members as there are parties to the Charter. As the number of parties to the Charter expands, the membership of the Committee of Experts will also expand, and the manner in which a committee of thirty or more members will operate effectively is an issue which will, at some point, need to be resolved.

Members of the Committee of Experts are to be of the highest integrity and recognised competence in the matters dealt with in the Charter;²¹ they are appointed for a period of six years, and may be reappointed.²² While the Charter does not specify that the members act in a personal capacity and are independent of the State which nominated them, the explanatory report to the Charter makes clear that, by placing emphasis on the intrinsically personal trait of "highest integrity", the Charter makes clear that the experts appointed to the committee, in carrying out their task, should be free to act independently and not be subject to the instructions from the governments concerned.²³

¹⁷ Armenia, Austria, Croatia, Cyprus, Denmark, Finland, Germany, Hungary, Liechtenstein, Norway, Slovakia, Slovenia, Spain, Sweden, Switzerland, and the United Kingdom.

¹⁸ Armenia, Austria, Croatia, Denmark, Finland, Germany, Hungary, Liechtenstein, Norway, Slovakia, Slovenia, Sweden, Switzerland, and the United Kingdom. It should be noted that the second round of monitoring has begun for many of these States under both treaties.

¹⁹ Austria, Croatia, Denmark, Finland, Germany, Hungary, Liechtenstein, Norway, Slovenia, Sweden, Switzerland, and the United Kingdom.

²⁰ Article 17, paragraph 1, the Charter.

²¹ Article 17, paragraph 1, the Charter.

²² Article 17, paragraph 2, the Charter.

²³ Explanatory report, paragraph 131, the Charter.

Under the rules of procedure of the Committee of Experts²⁴, the committee is to elect from amongst its members a President²⁵ who chairs meetings of the Committee of Experts.²⁶ At all such meetings, each member has one vote, and decisions are to be taken by a two-thirds majority of votes cast, except for decisions with respect to procedure, which require only a simple majority.²⁷

Advisory Committee

The Advisory Committee has two classes of members: ordinary and additional members. The number of ordinary members cannot be less than twelve and cannot be more than eighteen, and there cannot be more than one ordinary member in respect of any State party.²⁸ Each State party may nominate two experts, and the Committee of Ministers of the Council of Europe elects one of these two nominees for entry onto a List from which ordinary members of the Advisory Committee are chosen;²⁹ thus, each State party to the FCNM will have a nominee on the List. However, as the number of States party to the FCNM now greatly exceeds eighteen, not all State parties have an ordinary member on the Advisory Committee at any one time, and in this respect, the Advisory Committee differs from the Committee of Experts under the Charter. The first eighteen persons on the List automatically become ordinary members of the Advisory Committee, and thereafter ordinary members are selected by the drawing of lots from amongst those experts on the List from State parties not already represented in the ordinary membership.³⁰

With respect to the monitoring of State reports, if the expert on the List from the State party whose report is being scrutinised is not an ordinary member of the Advisory Committee, that expert is invited to sit on the Advisory Committee as an additional member.³¹ That additional member shall only participate in the work of the Advisory Committee in respect of the report of the State party in respect of which he or she has been elected to the list, and sits in an advisory capacity only.³² All members of the Advisory Committee are required to have recognised expertise in the field of the protection of national minorities, and although they are nominated by States parties, they are to serve in their individual capacities, and are required to be independent and impartial.³³ Further comments on the present composition of both committees will be made below, in this section of this report.

Under the rules of procedure of the Advisory Committee³⁴, it is to elect from amongst its members a President³⁵ who chairs meetings of the Advisory Committee.³⁶ At all meetings of the Advisory Committee, each ordinary member has one vote,³⁷ and decisions are to be taken by a simple majority of the ordinary members present, unless the Rules of Procedure of the Advisory Committee provide otherwise³⁸; in this respect, the rules differ from those of the Committee of Experts, which, as already noted, generally require a two-thirds majority of members present. An ordinary member will only sit in an advisory capacity and will not be entitled to vote when the report of the State party in respect of which that ordinary member was elected is being considered.³⁹ Formerly, there was no prohibition on a member of the Committee of Experts nominated by the State party whose report is being scrutinised from voting in respect of that report, but the rules of procedure have been changed, and para. 3 of Rule 14 ("Voting") now provides that: "A member of the Committee of Experts shall not have

²⁴ As amended by the Committee of Experts on 1 December, 2000, Strasbourg, 11 January, 2001, Doc. MIN-LANG (2001) 2, hereinafter referred to as the "Rules of Procedure of the Committee of Experts".
²⁵ Article 2, paragraph 1 and 2, Rules of Procedure of the Committee of Experts.
²⁶ Article 3, paragraph 1, Rules of Procedure of the Committee of Experts.
²⁷ Article 14, paragraph 1, Rules of Procedure of the Committee of Experts.
²⁸ Rule 2 and 4, Resolution 97(10), adopted by the Committee of Ministers on 17 September, 1997.
²⁹ Rule 8 and 9, Resolution 97(10).
³⁰ Rule 14 and 15, Resolution 97(10).
³¹ Rule 19, Resolution 97(10).
³² Rule 33 and 34, Resolution 97(10).
³³ Rule 5 and 6, Resolution 97(10).
³⁴ Adopted by the Advisory Committee on 29 October, 1998.
³⁵ Rule 1 and 2, Rules of Procedure of the Advisory Committee.
³⁶ Rule 6, Rules of Procedure of the Advisory Committee; the President does not act as chair when the report of the State in respect of which the President was elected is being considered: Rule 8.
³⁷ Rule 22, Rules of Procedure of the Advisory Committee.
³⁸ Rule 21, Rules of Procedure of the Advisory Committee.
³⁹ Rule 23, Rules of Procedure of the Advisory Committee.

the right to take part in a vote when the report of the State Party in respect of which he or she was elected is being considered.”

Present Membership of Both Committees

There are no persons who are members of both committees, but the present membership of both committees is broadly similar in terms of the training, expertise and occupation.⁴⁰ In particular, lawyers, particularly public lawyers and public international lawyers, comprise a majority of the membership of both committees: ten of the seventeen current members of the Committee of Experts are lawyers, and five have a clearly identified present interest in public international or public law, and fourteen of the eighteen current Ordinary members of the Advisory Committee are lawyers, at least ten of whom have a clearly identified present interest in public international or public law. Of the other members of the Committee of Experts, however, three have expertise in the area of linguistics and one has expertise in the area of minority language journalism, all of which is appropriate to the subject matter of the Charter, while all of the remaining Ordinary members of the Advisory Committee have special expertise in the social sciences or history and in areas relevant to minorities issues. Furthermore, the majority of members of both committees are in academic positions: ten of the current members of the Committee of Experts are professors or lecturers or in other similar academic posts, and twelve of the current Ordinary members of the Advisory Committee are professors, lecturers or researchers in academic settings.

b) Working Methods

There are broad similarities in the operating procedures of the two committees. Of particular importance is that both committees, in addition to receiving information from official sources, are entitled to receive information from other sources, including from non-governmental organisations ("NGOs"). Additionally, both have incorporated the innovative approach, at least for treaty bodies in the broad area of human rights, of actually visiting States that are being monitored in order to meet with a wide range of actors, including, but certainly not limited to, officials, politicians and representatives of NGOs. Without a doubt, both the ability to receive information from a wide range of sources and to visit the State being monitored has significantly increased the amount of information available to the two committees, and has allowed both to broaden and deepen their understanding of State legislation, policy and practice, and to get an even more accurate picture of what is actually taking place within States.

The Committee of Experts

The Charter itself provides relatively little guidance as to the operating procedures of the Committee of Experts. The starting place in the monitoring process is the periodical report itself, submitted by the State to the Secretary General of the Council of Europe.⁴¹ The Charter also provides that bodies or associations legally established in a State party may draw the attention of the Committee of Experts to matters relating to undertakings entered into by that State under Part III of the Charter, and the Committee of Experts may, after consulting the State concerned, take account of such information in the preparation of its report.⁴² The report of the Committee of Experts to the Committee of Ministers is to be based on these two sources.⁴³

The Rules of Procedure of the Committee of Experts under the Charter provide further guidance on their operating procedures with respect to the monitoring of periodical reports. These rules require the Committee of Experts to appoint by a simple majority vote one or more rapporteurs for each State report.⁴⁴ In practice, the Committee of Experts will also appoint a working group comprised of three members of the Committee of Experts, and

⁴⁰ Comments here are based on the membership of both committees at the time this study was first written, in the autumn of 2003. There have been minor changes in membership since that time, but the general nature of the comments concerning the membership still appears to be valid.

⁴¹ Article 16, paragraph 1, the Charter.

⁴² Article 16, paragraph 2, the Charter.

⁴³ Article 16, paragraph 3, the Charter.

⁴⁴ Article 17, paragraph 1, Rules of Procedure of the Committee of Experts.

will include the rapporteur, the member of the committee nominated by the State whose report is being monitored, and a third member. In appointing the working group, the Committee of Experts aims at ensuring a representative cross-section of the committee as a whole, in terms of geography and other considerations, although this can be constrained by the availability of particular members, owing to other commitments. The working group will conduct the detailed scrutiny of the State report.

The rules provide that the Committee of Experts may decide to ask in written form for additional information in relation to a State report⁴⁵, and in practice, after the initial consideration of the State report by the working group, a questionnaire will be drawn up and sent to the State party being scrutinised. The rules also provide that the Secretariat of the Committee of Experts shall bring to its attention communications received from NGOs received by virtue of Article 16, paragraph 2 of the Charter (the provision which allows bodies or associations legally established in a State party to draw attention of the Committee of Experts to matters relating to the undertakings entered into by the State party under Part III of the Charter), and also require that any communication received by an individual member of the Committee of Experts must also be forwarded to the Secretariat of the Charter so that the Secretary can bring such communications to the attention of the Committee of Experts.⁴⁶ Finally, the rules provide that the Committee of Experts may decide, by a simple majority, to send one or more of its members to a country in order to carry out an on-the-spot evaluation of any situation which might be relevant to the implementation of the Charter.⁴⁷ In practice, the Committee of Experts has, in respect of almost every State monitored thusfar,⁴⁸ sent a delegation of the committee to conduct such on-the-spot visits, and the members of the delegation will meet with officials of the State, politicians and policy-makers, as well as representatives and officials of local and regional governments, and representatives of bodies and associations legally established in the State.

Like Article 16, paragraph 3 of the Charter itself, the Rules of Procedure of the Committee of Experts also provide that the committee will base its monitoring of a State's periodical report on the report itself and on communications or information received from bodies and associations legally established in the State, pursuant to Article 16, paragraph 2 of the Charter. However, the Rules of Procedure go further in that they provide that the Committee of Experts will consider not only the State report itself, but all information delivered by the State being monitored; this would comprise the response to the questionnaire sent by the Committee of Experts, as well as any other representations and communications made by the State. The Rules of Procedure provide that the Committee of Experts may also consider information from other sources. No limitation on such sources is specified in the rules; examples are given in the rules, and include official documents from the State concerned, information received through on-the-spot missions, and facts generally known from public sources.⁴⁹ Significantly, the Rules of Procedure also authorise the Committee of Experts to draw upon the assistance of the Advisory Committee under the FCNM, and this clearly provides a basis for co-operation between the two committees (as does a similar provision in respect of the Advisory Committee, as shall be seen shortly).⁵⁰

The Advisory Committee

The FCNM provides even less guidance as to the operating procedures of the Advisory Committee than the Charter provides in respect of the Committee of Experts. As already noted, the FCNM provides that the Committee of Ministers of the Council of Europe is ultimately charged with the task of monitoring State reports under the FCNM, and merely says that the Committee of Ministers shall be assisted by an advisory committee whose members

⁴⁵ Article 17, paragraph 2, Rules of Procedure of the Committee of Experts.

⁴⁶ Article 17, paragraph 3, Rules of Procedure of the Committee of Experts; the Secretary to the Committee of Experts must send an acknowledgement of receipt to the authors of such communications.

⁴⁷ Article 17, paragraph 4, Rules of Procedure of the Committee of Experts.

⁴⁸ No delegation was sent to Liechtenstein.

⁴⁹ See, generally, Article 17, paragraph 5, Rules of Procedure of the Committee of Experts.

⁵⁰ Article 13, Rules of Procedure of the Committee of Experts: the Committee of Experts may, where appropriate, co-operate and exchange information with the Advisory Committee on the FCNM and with other bodies of the Council of Europe with relevant expertise

shall have recognised expertise in the field of the protection of national minorities⁵¹; both the composition and procedures of this advisory committee is left to be determined by the Committee of Ministers.⁵²

The rules with regard to the monitoring arrangements under the FCNM are contained in Resolution 97 (10), adopted by the Committee of Ministers 17 September, 1997, and these set out the general framework for the operating procedures of the Advisory Committee. Under this resolution, the State reports are to be transmitted by the Secretary General to the Committee of Ministers, who is then to transmit them to the Advisory Committee.⁵³ The Advisory Committee is to consider the State reports, then transmit its opinions to the Committee of Ministers, who shall consider the opinions of the Advisory Committee in adopting its conclusions concerning the State reports and any recommendations that it chooses to make.⁵⁴ In practice, the Advisory Committee will provide draft conclusions and recommendations to the Committee of Ministers.

The broad outlines of the Advisory Committee's working procedures for the monitoring of State reports under the FCNM are set out in Part II, article 5 of the Committee of Ministers' Resolution 97 (10), and more particular rules are set out in the Advisory Committee's own rules of procedure.⁵⁵ Those rules of procedure provide that working parties and other subsidiary bodies may be established and that rapporteurs by the Advisory Committee.⁵⁶ As a matter of practice, the Advisory Committee will appoint a working group to conduct the detailed monitoring of the report of the State party.⁵⁷ Resolution 97 (10) provides that the Advisory Committee may request additional information from the State party whose report is being considered and, as with the Committee of Experts under the Charter, once the Advisory Committee (in practice, the working group appointed by the Advisory Committee) has had the opportunity to consider the State report itself, a questionnaire will be prepared and sent to the State party.⁵⁸ Resolution 97 (10) also provides that the Advisory Committee may receive information from sources other than State reports and that, unless otherwise directed by the Committee of Ministers, the Advisory Committee may, after it has so notified the Committee of Ministers, actively invite information from other sources.⁵⁹ The Advisory Committee has, in fact, provided the Committee of Ministers with a notification of its intention to invite information from international organisations, ombudsmen and national institutions for the promotion and protection of human rights as well as from representatives of civil society and NGOs, as a matter of course and on an on-going basis, and the Committee of Ministers has taken note of this.⁶⁰ As a result, the Advisory Committee will actively solicit such information in respect of every State report. This ability to seek and obtain a wide range of information from sources other than the State is similar to that of the Committee of Experts under the Charter, and how this ability has been used by both committees will be considered more closely, below, in respect of the monitoring of the three States which forms the basis of this study.

Interestingly, the Advisory Committee Rules of Procedure specifically authorise the Advisory Committee to seek the assistance of outside experts or consultants, should they so desire⁶¹, and this would seem to apply in respect of the scrutiny of State reports as well as other work of the Advisory Committee. It is not clear to the author whether the Committee of

⁵¹ Article 26, paragraph 1, the FCNM.

⁵² Article 26, paragraph 2, the FCNM.

⁵³ Part II, article 1, paragraph 20, and Part II, article 2, paragraph 22, Resolution 97 (10).

⁵⁴ Part II, article 2, paragraph 23, and Part II, article 3, paragraph 24, Resolution 97 (10).

⁵⁵ Part II, article 8, paragraph 37, Resolution 97 (10). These are drawn up by the Advisory Committee and must be approved by the Committee of Ministers. The Rules of Procedure of the Advisory Committee were adopted by the Advisory Committee on 29 October, 1998 (hereinafter, the "Advisory Committee Rules of Procedure").

⁵⁶ Rule 35, the Advisory Committee Rules of Procedure.

⁵⁷ See Rainer Hofmann, "Protecting the Rights of National Minorities in Europe. First Experiences with the Council of Europe Framework Convention for the Protection of National Minorities", (2001) 44 *German Yearbook of International Law* 237, at 247.

⁵⁸ Rule 38, Advisory Committee Rules of Procedure.

⁵⁹ Paragraph 30 and 31, Resolution 97 (10).

⁶⁰ Adopted by the Committee of Ministers on 19-20 May, 1999, at the 671st meeting of the Ministers' Deputies.

⁶¹ Rule 36, Advisory Committee Rules of Procedure.

Experts has a similar power, although it may be implicit in their ability to consider information from other sources, set out in Article 17, paragraph 5 of their rules of procedure.

As with the monitoring process under the Charter, the practice has developed under the FCNM for the Advisory Committee (or, again more accurately, the working group of the committee) to visit the State being monitored to meet with officials and politicians, as well as with representatives of NGOs, amongst others. The basis for this is found in Resolution 97 (10), which provides that the Advisory Committee may hold meetings with representatives of the government whose report is being considered, and shall hold such a meeting if the government concerned so requests.⁶² The Advisory Committee is invited frequently (though not invariably) by the State being monitored to come to the capital of the State for the purposes of holding such meetings.⁶³ The Resolution anticipates that meetings may also be held to solicit additional information from other sources, but provides that a specific mandate must be obtained from the Committee of Ministers in order for the Advisory Committee to do so.⁶⁴ The Committee of Ministers has, however, authorised the Advisory Committee to hold meetings with non-governmental bodies and independent institutions in the context of visits conducted by the Advisory Committee upon invitation by the States parties concerned.⁶⁵

In all of the foregoing, the working procedures of the two committees are broadly similar. Significantly, the Advisory Committee is entitled to draw upon the expertise of the Committee of Experts established under the Charter, and this power, which mirrors the power given to the Committee of Experts, described above, is a basis for co-operation between the two committees.⁶⁶

Unlike the Charter, neither the FCNM, Resolution 97 (10) nor the Advisory Committee Rules of Procedure specifically direct the Advisory Committee as to the information on which it shall base its opinions, but it is clearly implied that the working groups established by the Advisory Committee to monitor the State reports will consider all the sources of information just described. In practice, the working group will draft the opinion, consulting with the Ordinary or Additional member from the State which is being monitored (who will not, however, be a member of the working group), and the draft will then be provided to the Advisory Committee as a whole, and they will provide comments.⁶⁷ The final opinion shall be adopted by a majority of the ordinary members of the Advisory Committee.⁶⁸

Finally, it should be noted that the Advisory Committee has been given a role in monitoring the follow-up by States to the conclusions and recommendations of the Committee of Ministers.⁶⁹ No similar monitoring role has been expressly created for the Committee of Experts, but this is due to the fact that the interval between monitoring rounds under the Charter (monitoring takes place every three years) is shorter than that under the FCNM (monitoring takes place every five years). It is also possible that States may, on their own initiative, organise a follow-up conference with a view to preparing the next report to the Committee of Experts.⁷⁰ The Advisory Committee is, however, only involved in monitoring on an *ad hoc* basis, on the request of the Committee of Ministers. This has, however, presented a unique opportunity for continuing dialogue between the State and the Advisory Committee, and a number of States have responded by convening local conferences to discuss the

⁶² Rule 32, paragraph 1, Resolution 97 (10).

⁶³ Rainer Hofmann, "Protecting the Rights of National Minorities in Europe. First Experiences with the Council of Europe Framework Convention for the Protection of National Minorities", (2001) 44 *German Yearbook of International Law* 237, at 248. They were not invited to Spain, for example.

⁶⁴ Rule 32, paragraph 2, Resolution 97 (10).

⁶⁵ Decision 1 in respect of the request by the Advisory Committee for a mandate to hold meetings under Rule 32, paragraph 2, of Resolution 97 (10), adopted by the Committee of Ministers on 3 May, 2000 at the 708th meeting of the Ministers' Deputies.

⁶⁶ Specifically, the Rules of Procedure of the Advisory Committee provide that the Advisory Committee may, where appropriate, co-operate and exchange information with the Committee of Experts established under the Charter and with other bodies of the Council of Europe with relevant expertise: Rule 39, Advisory Committee Rules of Procedure.

⁶⁷ See Alan Phillips, "The Framework Convention for the Protection of National Minorities: A Policy Analysis", (Minority Rights Group International, 2002), at p. 6.

⁶⁸ Rule 34, Advisory Committee Rules of Procedure.

⁶⁹ Rule 32 of Resolution 97 (10).

⁷⁰ For example, Germany organised such a conference in anticipation of the preparation of its second report.

Advisory Committee's opinion, comment and resolutions with government ministries and civil society.⁷¹

3. Analysis of the Provisions of the Charter and FCNM which Potentially Overlap

The Charter and the FCNM will have relevance for members of many of the same groups in States which are party to both treaties, and there is a clear overlap in their subject matter. However, it is important to recognise the many differences also exist, in terms of overall objectives and core principles, overall structure, and more detailed legal norms.

a) Overall Objectives and Core Principles

There is a certain degree of similarity between the overall objectives and the core principles of the Charter and the FCNM, but there are important differences in emphasis. The overarching aim of the FCNM, as expressed in its preamble, is simply "the effective protection of national minorities and of the rights and freedoms belonging to those minorities", and it goes on to make clear that this is a human rights issue. However, the preamble also identifies the protection of national minorities as an important peace and stability issue: it recognises that "the upheavals of European history have shown that the protection of national minorities is essential to stability, democratic security and peace" in the continent of Europe. The preamble does acknowledge pluralism as a value (together with genuine democracy), and does make reference to cultural diversity as a source and a factor of enrichment for each society, but does not recognise in a clear and unambiguous way that pluralism and cultural diversity are important goals in and of themselves.

In the Charter, by contrast, the emphasis is placed very strongly on cultural diversity and the maintenance and development of cultural wealth and traditions as being the core objectives. The overriding concern is not with the protection of collectives such as national minorities, *per se*, nor of members of such minorities, *per se*, but with the historical regional or minority languages of Europe, which may be spoken by at least some of those national minorities and their members. This point is made even clearer in the Explanatory Report, which provides that the Charter's overriding purpose is cultural, and that it is designed to protect and promote regional or minority languages as a threatened aspect of Europe's cultural heritage.⁷²

The core principles and objectives of the FCNM are of relatively less importance under the Charter; specifically, the promotion of human rights, minority rights and peace and stability are considered to be desirable benefits of the Charter, but do not constitute its overriding purpose. For example, the preamble to the Charter recognises that the protection of such minority languages is certainly consistent with the protection of human rights⁷³, but neither the preamble nor objectives of the Charter, as set out in the Explanatory Report, make explicit reference to the promotion of human rights as being an objective in and of itself. Indeed, the Explanatory Report is careful to stress that the Charter does not establish any individual or collective rights for the speakers of regional or minority languages.⁷⁴ The preamble also recognises the work carried out within the CSCE (now the "Organisation for Security and Co-operation in Europe", or the "OSCE") and, in particular, makes reference to the Helsinki Final Act of 1975 and the document of the Copenhagen Meeting of 1990, thereby acknowledging that the protection of regional or minority languages is a matter of relevance to national minorities. But once again, the Charter is not driven primarily by concerns about the protection of national minorities. This is also made clear in the Explanatory Report, which provides that the Charter sets out to protect and promote regional or minority languages, *not*

⁷¹ See Alan Phillips, "The Framework Convention for the Protection of National Minorities: A Policy Analysis", (Minority Rights Group International, 2002), at p. 8.

⁷² The Charter, Explanatory Report, para. 10.

⁷³ The preamble to the Charter claims that the right to use a regional or minority language in private and public life is an "inalienable right" conforming to the principles embodied in the United Nations International Covenant on Civil and Political Rights (the "ICCPR"), and according to the spirit of the Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms (the "European Convention on Human Rights", or the "ECHR").

⁷⁴ The Charter, Explanatory Report, para. 11.

linguistic minorities, and which notes that this is the reason emphasis is placed on the cultural dimension. The Explanatory Report does recognise, though, that the obligations that States assume under the Charter, together with the domestic legislation which will have to be introduced in order to comply with the Charter, "will have an obvious effect on the situation of the communities concerned and their individual members".⁷⁵ Thus, the promotion of human rights and the protection of national minorities may be a happy by-product, but not a primary goal, of the Charter.

Finally, aside from recognising the aim of the Council of Europe of achieving greater unity between its members, the Preamble to the Charter has little to say about peace and stability or about how the protection and promotion of regional or minority languages may contribute to both. The Explanatory Report notes that while the Charter is not concerned with the problems of nationalities who aspire after independence or alterations to frontiers, "it may be expected to help, in a measured and realistic fashion, to assuage the problem of minorities whose language is their distinguishing feature, by enabling them to feel at ease in the state in which history has placed them". Thus, the enhancement of the possibility to use a regional or minority language in various spheres of life "can only encourage the groups who speak them to put behind them the resentments of the past which prevented them from accepting their place in the country in which they live",⁷⁶ thus presumably contributing to peace and stability in Europe. Again, peace and stability are not explicit goals, but happy by-products.

b) Historical Context

Another difference between the Charter and the FCNM relates to the historical context in which they were prepared. The FCNM was a product of the early 1990s, and was inspired and influenced by events in the former eastern bloc and by the activities of other international organisations, such as the OSCE, which were actively involved in human rights and peace and stability issues in that region. In May, 1992, the Committee of Ministers of the Council of Europe instructed the Steering Committee for Human Rights (the "CDDH") to examine the possibility of formulating specific legal standards relating to the protection of national minorities, and to this end, the CDDH established a committee of experts (the "DH-MIN") to propose specific legal standards, bearing in mind the principle of complementarity of work between the Council of Europe and the CSCE. The Heads of Government of the Council of Europe's member States met in Vienna at the summit of 8 and 9 October, 1993 and, agreeing that the national minorities which the upheavals of history had established in Europe had to be protected and respected as a contribution to peace and stability, instructed the Committee of Ministers to begin drafting what would become the FCNM.⁷⁷

The origins of the Charter were very different, and go back to much earlier efforts within the Council of Europe that were inspired largely by a concern about the precariousness of many of Europe's historical regional or minority languages. The Standing Conference of Local and Regional Authorities of Europe ("CLRAE") decided to undertake the preparation of a European charter for regional or minority languages in the early 1980s, and in its Resolution 192 (1988), CLRAE proposed the text of their charter. The Committee of Ministers of the Council of Europe then established an *ad hoc* committee of experts on regional or minority languages in Europe ("CAHLR"), with responsibility for drafting a charter, bearing CLRAE's work in mind. This work began at the end of 1989 and the final text of the draft charter was submitted to the Committee of Ministers in 1992.⁷⁸ The Explanatory Report to the Charter acknowledges that the CLRAE conceived and presented its draft charter before the dramatic changes in central and eastern Europe and in the light of the needs of the countries which at that time were already members of the Council of Europe--largely western European States.⁷⁹ The Explanatory Report notes, though, that the Charter is of relevance to the situation of States in central and eastern Europe.⁸⁰ The fundamental importance of the experience of western European linguistic minorities in helping to define the objectives and principles of the

⁷⁵ The Charter, Explanatory Report, para. 11.

⁷⁶ The Charter, Explanatory Report, para. 12.

⁷⁷ See the FCNM, Explanatory Report, paras. 3-5.

⁷⁸ The Charter, Explanatory Report, paras. 5-8.

⁷⁹ Of the 45 current members of the Council of Europe, only 23 were members prior to 1990, and, with the exception of Turkey, Greece, Cyprus and Malta, were from western Europe.

⁸⁰ The Charter, Explanatory Report, para. 12.

Charter is, however, clear from this statement made in the introductory section of the Explanatory Report: "whatever may have been the case in the past, nowadays the threats facing these regional or minority languages are often due at least as much to the inevitably standardising influence of modern civilisation and especially of the mass media as to an unfriendly environment or a government policy of assimilation".⁸¹ Such a statement may have been made much more reluctantly if the frame of reference had been central and eastern Europe in the early 1990s.

c) Overall Structure

There are certain similarities in the overall structure of the two treaties. Both are composed of five parts or sections. Both have a part or section dedicated to general and interpretative matters,⁸² both have a part or section relating to monitoring of their implementation (and as we have seen above, there are considerable similarities in the State reporting mechanism used under both treaties),⁸³ and both have final clauses which are based on model clauses for conventions and agreements concluded within the Council of Europe⁸⁴ and which deal with matters such as entry into force of the treaty, the method of ratification and denunciation of the treaty, and so forth. Finally, in both the Charter and the FCNM, the substantive provisions are set out in two separate parts or sections, one of which sets out fundamental or overriding objectives and principles,⁸⁵ and the other sets out more detailed legal principles.⁸⁶

There are, however, important differences between the Charter and the FCNM not only in the content of the substantive provisions (which differences shall be considered in the next subsection of this report, subsection (d), in which the detailed legal norms of the two treaties are compared), but also in the nature of these provisions. With regard to the fundamental or overriding principles, set out in Part II of the Charter and Section I of the FCNM, those of the FCNM are set at a somewhat higher level of generality,⁸⁷ while those of the Charter tend to focus somewhat more narrowly on the specific subject matter of the Charter, by establishing general principles with respect to government policy for regional or minority languages.

With regard to the part or section of the Charter and FCNM that contains the more detailed legal norms—Part III of the Charter and Section II of the FCNM—there are also important differences in approach (as noted, the actual content of these norms will be compared in the next subsection of this report, section (d)). The FCNM contains mostly programme-type provisions setting out objectives which States undertake to pursue; States are generally left with a considerable measure of discretion as to how these provisions are implemented.⁸⁸ In the Charter, by contrast, the provisions in Part III generally go into considerably more detail, although they, too, still leave some room to States with respect to how these provisions will be implemented. However, the generally higher levels of particularity in the Part III provisions of the Charter, as compared with the Section II provisions of the FCNM, may invite a greater level of particularity in State reporting in respect of such measures, and this in turn may allow for a closer and more detailed evaluation of State practices. This is an important difference between the two treaties. On the other hand, the Charter, as noted, does not create rights, and the provisions of Part III are generally phrased in terms of State obligations. The provisions of Section II of the FCNM, by contrast, are generally phrased in the language of individual rights, and this difference may also be of significance when interpreting the provisions themselves and when monitoring State compliance.

⁸¹ The Charter, Explanatory Report, para. 2.

⁸² Part I of the Charter (Articles 1-6), and Section III of the FCNM (Articles 20-23).

⁸³ Part IV of the Charter (Articles 15-17), and Section IV of the FCNM (Article 24-26).

⁸⁴ The Charter, Explanatory Report, para. 133, and the FCNM, Explanatory Report, para. 19.

⁸⁵ Part II of the Charter (Article 7), and Section I of the FCNM (Articles 1-3).

⁸⁶ Part III of the Charter (Articles 8-14), and Section II of the FCNM (Articles 4-19).

⁸⁷ There is, for example, no equivalent in the Charter to Article 1 of the FCNM, which reasserts that the protection of national minorities and the rights and freedoms of their members is an integral part of the international protection of human rights.

⁸⁸ FCNM, Explanatory Report, para. 11.

A further significant distinction between the general approach to the legal norms in the two treaties is with respect to their scope of application. First, the FCNM provisions generally apply in respect of persons belonging to a national minority. The FCNM does not define the term "national minority", and therefore it is up to States parties themselves to determine how the term is to be applied.⁸⁹ The potential application of the FCNM is, however, wide, and certainly may include both "historical" minorities of long standing on a State's territory and so-called "new" minorities, groups which have come to be on the State's territory as a result of more recent phenomena, such as large-scale immigration from other parts of Europe and from further afield.⁹⁰

The Charter, by contrast, does not make reference to concepts such as "minorities" or "national minorities", and, as noted, does not define its obligations by reference to individuals or groups but by reference to languages themselves.⁹¹ As the Charter itself recognises, however, the obligations it creates in respect of languages will have an obvious effect on the situation of the communities and individuals who speak those languages.⁹² It is clear that, unlike the FCNM, the individuals and groups which will benefit in this indirect way from the Charter's protection are "traditional" or "historical" minorities, and not, generally speaking, "new" minorities. This is because the "regional or minority languages"⁹³ to which protection is primarily given specifically do not include either dialects of the official language(s) of the State or the languages of migrants.⁹⁴ The Explanatory Report emphasises that the Charter covers only "historical languages, that is to say languages which have been spoken over a long period in the state in question"⁹⁵, and makes clear that it "does not deal with the situation of new, often non-European languages which may have appeared in the signatory states as a result of recent migration flows often arising from economic motives." Populations speaking such languages face specific problems of integration, and the CAHLR took the view that such problems should be addressed separately.⁹⁶

Not only does the FCNM have a potentially wider application than the Charter in terms of the individuals and groups which ultimately benefit from its protection, but there is one further significant difference between the two treaties which can result in differences in their application in respect of the same States and which, indeed, make a comparison of both their more specific provisions and of their implementation (and the output of the monitoring process) extremely complex. This difference is that, under the FCNM, both the general principles in Section I and the more specific legal norms in Section II should, in principle, apply equally to all members of all national minorities in a particular State. By contrast, under the Charter, only the general principles in Part II apply equally to all regional or minority

⁸⁹ The Advisory Committee under the FCNM has consistently noted, however, that although States parties have a margin of appreciation in this respect, it must be exercised in accordance with the general principles of international law and the fundamental principles set out in Art. 3 of the FCNM: see, for example, Rainer Hofmann, "Protecting the Rights of National Minorities in Europe. First Experiences with the Council of Europe Framework Convention for the Protection of National Minorities", (2001) 44 *German Yearbook of International Law* 237, at 257.

⁹⁰ Indeed, the Advisory Committee has taken the view that certain articles, such as Art. 6, which applies to "all persons living on the territory of a given State Party", may certainly apply to "new" minorities as well as to "historical" or "old" minorities, regardless of the interpretation given by a State to the term "national minorities", and that it is possible to argue that other provisions, such as Articles 3, 5, 7 and 8 could also be applied to "new" minorities in certain circumstances: see, Hofmann, *supra*, at 256.

⁹¹ See, for example, para. 17, Explanatory Report, the Charter: "the charter is able to refrain from defining the concept of linguistic minorities, since its aim is not to stipulate the rights of ethnic and/or cultural minority groups, but to protect and promote regional or minority languages as such".

⁹² The Charter, Explanatory Report, para. 11.

⁹³ Defined in Article 1 a of the Charter as those languages that are traditionally used within a given territory of the State by nationals of that State who form a group numerically smaller than the rest of the State's population and that are different from the official language of the State. It should be noted that while an official language cannot be a "regional or minority language", a State may choose to apply the more specific provisions contained in Part III of the Charter in respect of an official language which is less widely used on the whole or part of its territory, as well as in respect of "regional or minority languages": Article 3, paragraph 1, the Charter. The Charter also offers more limited protection to "non-territorial languages", but these are still languages used by nationals of the State and which have been "traditionally used within the territory of the State", although unlike the regional or minority languages, are not identified with a particular area (Article 1, paragraph c, the Charter), and examples given include Yiddish and Romany (The Charter, Explanatory Report, para. 36).

⁹⁴ Article 1, paragraph a, the Charter.

⁹⁵ The Charter, Explanatory Report, para. 31.

⁹⁶ The Charter, Explanatory Report, para. 15.

languages (and all non-territorial languages) in the State. Which of the more detailed Part III provisions apply to a particular regional or minority language and, indeed, whether any of those provisions apply to a particular regional or minority language is a matter that is within the sole discretion of the State party.⁹⁷ Non-territorial languages only benefit from the protection of the general principles of Part II, and not from Part III at all.⁹⁸

Thus, speakers of certain regional or minority languages may benefit, by virtue of being members of a national minority, from the full protection of the FCNM, but may be entitled to no or only limited protection under Part III of the Charter. Although the Charter's Part III provisions are often more detailed than the comparable provisions of the FCNM, a State may choose not to apply those more detailed standards in Part III of the Charter to a particular language, with the result that the speakers of that language may still enjoy a higher level of protection under the FCNM. Similarly, speakers of non-territorial languages may, by virtue of being members of a national minority, benefit from the full protection of the FCNM, but will be entitled to no protection under Part III of the Charter at all. As noted, speakers of the languages of "new" minorities will only benefit from the FCNM. And finally, to complicate the matter even further, it may be possible that speakers of a regional or minority language may not be considered by a State to be members of a national minority at all—perhaps because under the criteria chosen by the State for the determination of its national minorities, language, by itself, may not be a decisive marker of the existence of a national minority. This last point will be explored further, below, in the context of the analysis of the British State report under the FCNM.

d) The Detailed Legal Norms

While there is certainly some overlap in the overall subject matter of the two treaties, there is considerable variation in terms of the precise content of the legal norms.

i. Norms Relating to General Principles and Objectives

Some of the general objectives and principles set out in Part II, Article 7, paragraph 1 of the Charter are echoed in the FCNM. One such principle is the facilitation and/or encouragement of the use of regional or minority languages, in speech and writing, in public and private life.⁹⁹ The comparable provision in the FCNM is in one sense stronger, in that it is phrased as a right,¹⁰⁰ but is in another sense weaker, in that it refers only to the use of the minority language in private or public, but not in private or public *life*. The Explanatory Report to the FCNM makes clear that the reference to "public" only means, for instance, use in a public place, outside, or in the presence of other persons, and that the provision is not concerned with the use of the language in dealing with public authorities.¹⁰¹ By contrast, the concept of "public *life*", as used in the Charter, has a potentially wider meaning, and would include the use of the regional or minority language in community life, which is to say within

⁹⁷ Under Article 2, paragraph 1 of the Charter, States must apply the general provisions of Part II to all regional or minority languages spoken within its territory, but under Article 3, paragraph 1, States are free to choose which of those languages they will specify in their instrument of ratification for the more detailed coverage of Part III, and under Article 2, paragraph 2, the States are free to choose which of the provisions of Part III they wish to apply in respect of each of the languages designated under Article 3, paragraph 1, subject to certain basic requirements about the overall number of paragraphs and subparagraphs designated (at least 35 must be designated) and minimum numbers in particular important areas (at least three paragraphs or subparagraphs in respect of Education and Cultural Activities and Facilities, covered in Articles 8 and 12, and at least one from each of the other Articles in Part III, except Article 14. Thus, as a result of State decisions at the time of ratification, some regional or minority languages may and almost always do enjoy more detailed coverage under Part III than others, and some regional or minority languages may, and in some cases have been, left out of Part III protection altogether.

⁹⁸ Article 7, paragraph 5 of the Charter requires States to apply paragraphs 1 to 4 of Article 7 to non-territorial languages, but the provisions of the Charter which cover the designation by States of the languages to be covered by Part III only make reference to regional or minority languages or less widely used official languages: Article 3, paragraph 1 and Article 2, the Charter.

⁹⁹ Article 7, paragraph 1 d, the Charter.

¹⁰⁰ Article 10, paragraph 1, the FCNM, which provides that States must recognise that members of national minorities have the right to use freely and without interference the minority language in private and in public, orally and in writing.

¹⁰¹ The FCNM, Explanatory Report, para. 63; relations with public authorities is dealt with in Article 10, paragraph 2 of the FCNM, and will be discussed below, in the context of the discussion of administrative authorities and public services.

the framework of institutions, social activities and economic life.¹⁰² Indeed, in its report on Hungary, discussed below, the Committee of Experts said that public life could include all of the matters discussed in Part III of the Charter, such as education, the legal system, public administration, and so forth.

Another general objective or principle recognised in Part II of the Charter is the need for resolute action to promote regional or minority languages (and non-territorial languages) to safeguard them¹⁰³; this provision is meant simply to express the idea that mere prohibition of discrimination is not sufficient, and that States must take positive measures of support.¹⁰⁴ This bears some similarity to Article 5, paragraph 1 of the FCNM, which provides that the States party to the FCNM undertake to promote the conditions necessary for persons belonging to national minorities to maintain and develop their culture, and to preserve essential elements of their identity, namely their religion, language, traditions and cultural heritage.

Part II, Article 7 of the Charter contains what could be described as an “anti-gerrymandering” provision. It requires States to respect the geographical area of each regional or minority language in order to ensure that existing or new administrative divisions do not constitute an obstacle to the promotion of regional or minority languages.¹⁰⁵ Article 16 of the FCNM has a very similar provision, which enjoins States to refrain from measures that alter the proportions of the population in areas inhabited by persons belonging to national minorities and which are aimed at restricting the rights and freedoms flowing from the principles of the FCNM. In both the Charter and the FCNM, there are, as we shall see, a number of obligations and/or rights which are made active by reference to either local demand for minority language services or to numerical concentrations of speakers of minority or regional languages or members of national minorities. Both of the “anti-gerrymandering” provisions are designed to attempt to ensure that States do not change boundaries of administrative areas to effectively make these tests more difficult to meet.

The general objectives and principles set out in the Charter make reference to the maintenance and development of links between groups of users of the same regional or minority languages within the State¹⁰⁶ and to the promotion of appropriate types of trans-national exchanges where a regional or minority language (or a non-territorial language) is used in another State.¹⁰⁷ With regard to links between members of the same national minority within the State, the FCNM contains a somewhat narrower and more limited commitment—States parties must merely undertake to not interfere with the right of members of national minorities to participate in the activities of NGOs, both at the national and international level.¹⁰⁸ However, Section I of the FCNM sets out a very broad general principle, that persons belonging to national minorities may exercise the rights and enjoy the freedoms enshrined in the FCNM individually as well as in community with others.¹⁰⁹ This commitment is probably wider in scope than that in the Charter. With regard to *cross-border* links between members of the same groups, the FCNM contains provisions of two types: one which enjoins States from interfering with cross-border contacts,¹¹⁰ and the other which requires States to actively promote such contacts.¹¹¹ Both are therefore similar to the general

¹⁰² The Charter, Explanatory Report, para. 62.

¹⁰³ Article 7, paragraph 1 c, the Charter.

¹⁰⁴ The Charter, Explanatory Report, para. 61.

¹⁰⁵ Article 7, paragraph 1 b, the Charter.

¹⁰⁶ Article 7, paragraph 1 e, the Charter; this provision also refers to the establishment of cultural relations with groups within the State using different languages.

¹⁰⁷ Article 7, paragraph 1 i, the Charter. Article 14, in Part III of the Charter, has somewhat more detailed provisions with respect to transfrontier matters.

¹⁰⁸ Article 17, paragraph 2, the FCNM.

¹⁰⁹ Article 3, paragraph 2, the FCNM.

¹¹⁰ Article 17, paragraph 1, the FCNM: The FCNM requires States to undertake not to interfere with the right of persons belonging to national minorities to establish free and peaceful contacts across frontiers, in particular with those with whom they share an ethnic, cultural, linguistic or religious identity or a common cultural heritage. As already noted, the prohibition in Article 17, paragraph 2 on interference with the right of members of national minorities to participate in NGOs also applies at the international level.

¹¹¹ States must endeavour to conclude bilateral and multilateral agreements with other States, especially neighbouring States, to ensure the protection of persons belonging to the national minorities concerned (Article 18, paragraph 1, the FCNM), and where relevant, shall take measures to encourage trans-frontier co-operation (Article 18, paragraph 2, the FCNM).

provision in the Charter, referred to above. Both types of provisions of the FCNM also bear a considerable resemblance to the more specific provisions of Part III of the Charter concerning trans-frontier exchanges.¹¹²

In some cases, however, the provisions of the FCNM are far more rigorous than provisions of the Charter, and are therefore not really comparable at all. For example, both the FCNM and the Charter express the general principle that special measures of support taken in respect of national minorities and regional or minority languages, respectively, are aimed at promoting full and effective equality and should therefore not be considered acts of discrimination,¹¹³ the non-discrimination provision in the FCNM is far broader and more thoroughgoing. It requires that States party to the FCNM guarantee to persons belonging to national minorities the right to equality before the law and equal protection of the law and that any discrimination based on membership of a national minority be prohibited.¹¹⁴ The Charter merely requires States to eliminate any unjustified distinction, exclusion, restriction or preference relating to the use of a minority language and intended to discourage or endanger the maintenance or development of it,¹¹⁵ a much more limited, but also more specific requirement. Given the overriding purpose of the Charter, which is cultural, this is not surprising. And while the FCNM requires States to create conditions necessary for the effective participation of members of national minorities in cultural, social and economic life and in public affairs, in particular those affecting them,¹¹⁶ the Charter has a much more limited requirement that is essentially a requirement to consult groups which speak regional or minority languages concerning regional or minority language policy, and to encourage States to establish bodies for the purpose of advising them on regional or minority language matters.¹¹⁷

ii. Core Substantive Norms

The core substantive legal principles which overlap generally relate to the use of languages in particular areas of public life, and to the requirement that States take positive measures to ensure the ability to use such languages in such settings. In comparing and contrasting these provisions, a sectoral approach is the most effective.

Education

Education is the subject of three articles in the FCNM, and is dealt with in both the general objectives and principles in Article 7 of the Charter and in a very detailed article in Part III. Both treaties contain provisions meant to foster knowledge amongst the wider population of linguistic minorities: the FCNM requires States to foster knowledge through the education system of the culture, history, language and religion of their national minorities,¹¹⁸ and the Charter requires States to make arrangements to ensure the teaching of the history and the culture which is reflected in the regional or minority language.¹¹⁹ However, as the Charter provision is contained in Part III, a State may choose not to apply it, and even where it does choose to apply it, the State must only take such measures in that part of the State in which such languages are used. This is, as we shall see, one of many examples of how the obligations of the same State may differ dramatically under the two treaties, depending on the approach the State has taken to the Part III obligations in its instrument of ratification. The only broadly comparable general principle in the Charter that would apply to all regional or

¹¹² Article 14, paragraph a, the Charter provides that States parties are to apply existing bilateral and multilateral agreements, or if necessary conclude such agreements, so as to foster contacts between users of the same languages in the States concerned in the fields of culture, education, information, vocational training and permanent education, and Article 14, paragraph b, the Charter provides that States must generally facilitate or promote cross-border co-operation, for the benefit of regional or minority languages, particularly between regional or local authorities in whose territories the same languages are spoken.

¹¹³ Article 4, paragraphs 2 and 3, the FCNM, and Article 7, paragraph 2, the Charter.

¹¹⁴ Article 4, paragraph 1, the FCNM.

¹¹⁵ Article 7, paragraph 2, the Charter.

¹¹⁶ Article 15, the FCNM.

¹¹⁷ Article 7, paragraph 4, the Charter.

¹¹⁸ Article 12, paragraph 1, the FCNM; in the context of the paragraph 1 obligation, Article 12, paragraph 2 requires States to provide adequate opportunities for teacher training and access to textbooks, and to facilitate contacts among students and teachers of different communities.

¹¹⁹ Article 8, paragraph 1 g, the Charter.

minority languages without reservation is the requirement in Part III to provide facilities enabling non-speakers of a regional or minority language living in the area where it is used to learn it¹²⁰; this is a more specific, but also more limited provision than that embodied in the FCNM, which is meant to establish broader inter-cultural understanding.

With regard to the teaching of or through the medium of minority languages to members of the linguistic minorities in question, the FCNM provisions are more detailed and precise than the general obligations and principles set out in Part II of the Charter, but less so than the rules contained in the relevant article in Part III of the Charter. Again, however, States that are parties to the Charter are only required to provide protection under Part III of the Charter to those regional or minority languages they themselves choose, and must only apply three of the eleven paragraphs or subparagraphs contained in the article on education in Part III,¹²¹ with the result that the substantive rules in respect of the same State under the two treaties may differ considerably. First, the FCNM requires States Parties to recognise that persons belonging to a national minority have the right to set up and to manage their own private educational and training establishments,¹²² although the exercise of this right is not to entail any financial obligations for the State.¹²³ Interestingly, there is no equivalent provision in the Charter, although this is likely explained by the fact that the Charter contemplates that the State should actively support the teaching of regional or minority languages. Article 14 of the FCNM then contains a general recognition of the principle that every member of a national minority has the right to learn his or her minority language,¹²⁴ and goes on to provide that members of national minorities shall have adequate opportunities for either being taught their minority language or for receiving instruction in this language.¹²⁵ This right is subject to significant limitations, though: first, it only applies in areas inhabited by members of national minorities traditionally or in substantial numbers; second, it requires that there be "sufficient demand" in such areas; and third, even if both these conditions are satisfied, States are only required to "endeavour to ensure" such education.

The general obligations of Part II of the Charter, which apply in respect of all regional or minority languages (and in respect of non-territorial languages), are much more general than the FCNM commitments. They involve the provision of appropriate forms and means for the teaching and study of regional or minority languages at all appropriate stages,¹²⁶ and the promotion of study and research on such languages at the university level.¹²⁷ Interestingly, no reference is made in Part II to the use of regional or minority languages as the medium of instruction. The more precise legal obligations with respect to education are, as noted above, set out in Article 8 of Part III of the Charter. They provide for a range of options with respect to the teaching of or through the medium of the regional or minority language at the pre-school, primary, secondary, post-secondary and vocational levels, as well as the use of such languages in adult or continuing education. The obligations also address teacher training and monitoring mechanisms for minority language education. Thus, Article 8 provides a much more detailed set of rules with respect to teaching in or of regional or minority languages than the FCNM.

Again, though, the precise nature of these obligations will depend on which provisions in Article 8 the State has decided to accept. Also, like the FCNM provisions, the Article 8 obligations under the Charter generally only apply within the territory in which such languages are used, a somewhat different formulation than that used in the FCNM, which, as noted, refers to "areas inhabited by members of national minorities traditionally or in substantial numbers", but one which expresses a similar concept. More will be said near the end of this section about the possible inconsistencies which might occur if these concepts of territoriality were to be interpreted or applied in a different way with respect to the same linguistic community in the same State. Unlike the FCNM provision, though, the requirement of

¹²⁰ Article 7, paragraph 1 g, the Charter.

¹²¹ Article 2, paragraph 2, the Charter.

¹²² Article 13, paragraph 1, the FCNM.

¹²³ Article 13, paragraph 2, the FCNM.

¹²⁴ Article 14, paragraph 1, the FCNM.

¹²⁵ Article 14, paragraph 2, the FCNM; the latter would appear to mean bilingual teaching or teaching of subjects through the medium of the minority language: The FCNM, Explanatory Report, para. 77.

¹²⁶ Article 7, paragraph 1 f, the Charter.

¹²⁷ Article 7, paragraph 1 h, the Charter.

sufficiency of demand is only specified in the weakest options of the Article 8 Charter obligations with regard to minority language education at the various levels in the educational system, and where, therefore, States opt for the stronger options, demand contingency is not an issue.¹²⁸

Media

Media is provided for in one article in the FCNM and in one article in Part III of the Charter; there is no explicit provision for media in Part II of the Charter, which contains the general obligations and principles, although provisions such as the facilitation and/or encouragement of the use of regional or minority languages in public and private life¹²⁹ may be broad enough to cover media, and the Committee of Experts has discussed media issues in this context.¹³⁰ The obligations in the FCNM echo the ECHR provisions on freedom of expression, and provide that States shall ensure that members of national minorities are not discriminated against in their access to the media.¹³¹ They on to provide that States shall not hinder the creation and use of printed media by members of national minorities, and that with respect to sound radio and television broadcasting, members of national minorities are granted the possibility of creating and using their own media.¹³² Finally, States are also required to adopt adequate measures to facilitate access to the media for members of national minorities and in order to promote tolerance and permit cultural pluralism.¹³³ In practice, the Advisory Committee has, for example, on many occasions used these provisions to encourage States to increase the radio and television broadcasting time made available to linguistic minorities.

As just noted, the Committee of Experts has made reference to the media in their comments on Article 7, subparagraphs 1 d and i, and paragraph 3, and so Part II of the Charter could be said to implicitly cover the media. Nonetheless, there is no provision which makes explicit reference to the media in Part II of the Charter, and so the FCNM provisions are therefore arguably more rigorous. However, those FCNM provisions are also *less* detailed than the norms set out in the relevant article in Part III of the Charter. As with education, the Charter Part III article containing the more precise legal obligations with respect to media provides for a range of options covering public service radio and television (from the creation of separate minority language stations to the provision of at least some programming in the minority language), private sector radio and television (the encouragement and/or facilitation of a separate station or simply the broadcasting of programmes), production and distribution of audio and audiovisual works and newspapers (the encouragement and/or facilitation of the creation or maintenance of a minority language paper or papers, or at least of the publication of articles in minority languages).¹³⁴ These obligations only apply within the territories in which the regional or minority languages are used, however. The article also contains a provision with respect to freedom of direct cross border transmissions—something not covered in the FCNM—and restates the ECHR freedom of expression provisions—which the FCNM provision also does—and also provides for the representation of the interests of users of regional or minority languages within bodies established with the responsibility for guaranteeing the freedom and pluralism of the press.¹³⁵

Thus, as with the article on education, the article in Part III of the Charter on media provides a much more detailed set of rules with respect to minority language media than the FCNM provisions. Again, though, the precise nature of these obligations will depend on

¹²⁸ With respect to primary school education, for example, Article 8, paragraph 1 b provides four options: 1, to make available primary education in the language (with no reference to sufficiency of demand); ii, to make available a substantial part of primary education in the language (with no reference to sufficiency of demand); iii, to provide, within primary education, for the teaching of the language, subject to sufficiency of demand by parents, who must actively request such education; and iv to apply one of the measures provided under i to iii, where the parents request and, again, where demand is sufficient.

¹²⁹ Article 7, paragraph 1 d, the Charter.

¹³⁰ See, for example, the report on Slovenia; the Committee of Experts has also made comments with respect to media under Article 7, paragraph 1 i, and Article 7, paragraph 3.

¹³¹ Article 9, paragraph 1, the FCNM.

¹³² Article 9, paragraph 3, the FCNM.

¹³³ Article 9, paragraph 4, the FCNM.

¹³⁴ Article 11, paragraph 1 a through e, the Charter.

¹³⁵ Article 11, paragraphs 2 and 3, respectively.

whether a State designates a regional or minority language for Part III, and on the provisions in the Part III article the State has decided to accept; in this regard, the State is required to select only one from the nine paragraphs or subparagraphs in the article on media,¹³⁶ with the result that a comparison between the FCNM and Charter provisions can be very complex.

Administrative Authorities

The other sector in which significant obligations are imposed under both the FCNM and the Charter is public administration. These matters are explicitly provided for in one paragraph of one article in the FCNM and explicitly provided for in one article in Part III of the Charter. Again, there is no explicit provision for relations with administrative authorities in the general principles and obligations of Part II of the Charter, although provisions such as the facilitation and/or encouragement of the use of regional or minority languages in public life¹³⁷ may once again be broad enough to cover such matters, and the Committee of Experts has made comments with respect to public services in the context of such provisions.

The FCNM provision requires States to endeavour to ensure, as far as possible, the conditions that would make it possible for members of national minorities to use their minority language in relations between them and the administrative authorities.¹³⁸ It is important to remember, though, that this obligation does not cover all relations with all public authorities; the Explanatory Report considers that “administrative authorities” has a narrower ambit than “public authorities”, though it does not specify precisely what the term covers, and notes that it must still be interpreted broadly to include, as an example, ombudsmen.¹³⁹ It is also significant that, unlike many other provisions of the FCNM such as the right to minority language education, discussed above,¹⁴⁰ this provision does not create a right, but merely an obligation for the State parties. Finally, like the FCNM provision relating to minority language education,¹⁴¹ the obligation to create conditions which facilitate the use of minority languages in dealing with administrative authorities is subject to other significant limitations. First, it only applies in areas inhabited by members of national minorities traditionally or in substantial numbers. Second, it sets a requirement that is potentially even more restrictive than the sufficiency of demand requirement, described above, in that it requires that members of the national minority to request such minority language services and that such requests correspond to a “real need”. Although such need is to be determined based on objective criteria,¹⁴² it is possible to argue that where speakers of the minority language in question are fluent in the language normally used by administrative authorities, there is no real need for minority language services. Such an interpretation would present a significant limitation, and would be at odds with the approach which informs all of the Charter’s provisions, which assumes that the provision of minority language services is based on preference, rather than need, as many if not most speakers of minority languages also speak the State language. Finally, even if these conditions are satisfied, States are only required under the FCNM provision to “endeavour to ensure” that the appropriate conditions exist. As the Explanatory Report recognises, this provision has been worded very flexibly, leaving States parties a wide measure of discretion.¹⁴³

Once again, as there is no provision which makes explicit reference to relations with administrative authorities in Part II of the Charter (again, though, Article 7 1 d has been held by the Committee of Experts to implicitly cover such matters), the FCNM provisions are arguably more rigorous than the Charter’s Part II obligations, but are also less precise than the more detailed legal norms set out in the relevant article in Part III of the Charter. As with education and media, the Charter Part III article concerning administrative authorities and public services provides for a wide range of options. These are broken down into options

¹³⁶ Article 2, paragraph 2, the Charter.

¹³⁷ Article 7, paragraph 1 d, the Charter.

¹³⁸ Article 10, paragraph 2, the FCNM.

¹³⁹ The FCNM, Explanatory Report, para. 64.

¹⁴⁰ Article 14, paragraph 2, the FCNM.

¹⁴¹ Article 14, paragraph 2, the FCNM.

¹⁴² The FCNM, Explanatory Report, para. 65.

¹⁴³ The FCNM, Explanatory Report, para. 64. The Explanatory Report also notes at para. 65 that the financial resources of the State concerned may be taken into consideration; this is implied by the words “as far as possible”.

relating to use of regional or minority languages in the context of administrative authorities,¹⁴⁴ in the context of local and regional authorities,¹⁴⁵ and in the context of public services more generally.¹⁴⁶ The article also contains options with respect to putting the foregoing measures into effect, and these options cover translation services, and recruitment, training and personnel management policies.¹⁴⁷

As in the Part III articles on education and media, the Part III obligations with respect to administrative authorities and public services generally only apply within the territories in which the regional or minority languages are used, and are therefore subject to a territorial limitation which is, once again, broadly similar to that imposed under the comparable FCNM provision. Unlike the FCNM provision, though, there is no requirement that provision of minority language services is contingent upon requests from the public which correspond to "real need", and there is also no provision with respect to demand sufficiency. Thus, as with the articles on education and media, the article in the Charter on administrative authorities and public services generally provides a much more detailed set of rules with respect to minority language public services than the comparable provision in the FCNM. Yet again, though, the precise nature of these obligations will depend on which regional or minority languages are designated for the purposes of Part III and on which provisions in the article the State has decided to accept, and in this regard, the State is required to select only one from the seventeen paragraphs or subparagraphs in this article.¹⁴⁸ Therefore, a comparison between the FCNM and Charter provisions can once again be very complex.

Personal and Family Names, Place Names and Signage

The other two topics within the broad subject matter of administrative services in which there is some similarity between the Charter and the FCNM relate to personal and family names, and to place names and public signage. The FCNM provides that every member of a national minority has the right to use his or her surname and given names in their minority language, and the right to have such versions officially recognised.¹⁴⁹ There is a very similar provision in Part III of the Charter.¹⁵⁰ Once again, it must be recalled that, as with all Part III obligations, it is up to the State to choose whether or not to adopt this obligation, and if a State does not do so, the FCNM would impose a higher obligation. While these matters are not explicitly referred to in Part II of the Charter, it may be possible that the Part II requirement to eliminate any unjustified distinction, exclusion, restriction or preference relating to the use of a regional or minority language which is intended to discourage or endanger its maintenance and development may provide some support here.¹⁵¹

With regard to place names and public signage, the FCNM requires States to endeavour to display traditional local names, street names and other topographical indications in a minority language.¹⁵² This obligation is, however, subject to the territorial restriction—it only applies in areas "traditionally inhabited by substantial numbers of persons belonging to a national minority" (which is a more restrictive formulation of the territorial requirement than that which appears in other provisions of the FCNM, which treat areas traditionally inhabited and areas having substantial numbers as alternatives)—and is also subject to the requirement that there be sufficient demand for such policies. The FCNM does, however, recognise an unlimited right for members of national minorities to display in their minority language signs, inscriptions and other information of a private nature visible to the public;¹⁵³ the reference to "private" is broad, and means all but that which is official (i.e. governmental), and would apply to things such as commercial signage, advertising, and so forth.¹⁵⁴

¹⁴⁴ Article 10, paragraph 1 a, the Charter.
¹⁴⁵ Article 10, paragraph 2, the Charter.
¹⁴⁶ Article 10, paragraph 3, the Charter.
¹⁴⁷ Article 10, paragraph 4, the Charter.
¹⁴⁸ Article 2, paragraph 2, the Charter.
¹⁴⁹ Article 11, paragraph 1, the FCNM.
¹⁵⁰ Article 10, paragraph 5, the Charter.
¹⁵¹ Article 7, paragraph 2, the Charter.
¹⁵² Article 11, paragraph 3, the FCNM.
¹⁵³ Article 11, paragraph 2, the FCNM.
¹⁵⁴ The FCNM, Explanatory Report, para. 69.

Part III of the Charter also contains a provision on place names and public signage which is very similar to that in the FCNM, and which requires the use or adoption, if necessary in conjunction with the name in the official language(s), of traditional and correct forms of place-names in regional or minority languages.¹⁵⁵ As with the FCNM provision, the Charter provision is subject to a territorial limitation, although one which differs somewhat to that in the comparable FCNM provision. Like all Part III obligations, though, a State may not choose to accept the particular Charter obligation, in which case the FCNM provision could provide stronger protection than the Charter.

The Charter does not contain any specific provision on the right to display private signage in a regional or minority language, although once again, the Part II provision which requires States to eliminate any unjustified distinction, exclusion, restriction or preference relating to the use of a regional or minority language and designed to discourage or endanger its maintenance or development¹⁵⁶ may cover such matters.

The Legal System

The final area in which there is some commonality of subject matter between the Charter and the FCNM is in respect of the use of regional or minority languages and the languages of national minorities in the legal system. Here, however, the FCNM provision is very limited, and is essentially simply a reaffirmation of the ECHR provisions relating to criminal processes which guarantee the right of every member of a national minority to be informed promptly, in a language which he or she understands, of the reason for his or her arrest and to defend himself or herself in this language, if necessary with the free assistance of an interpreter.¹⁵⁷ As with the ECHR provision, if the person can communicate in the language of the court, use of the minority language is not guaranteed. There is no provision in Part II of the Charter of direct relevance to the legal system, but there is a very detailed article in Part III which provides a range of options for the use of the regional or minority language, not only in criminal but also in civil processes and before administrative tribunals. Crucially, the obligations imposed under this article are not contingent on the litigant or witness or other participant wishing to use the regional or minority language being unable to communicate in the language of the court. Although States do not necessarily have to apply any of the provisions of this article to a regional or minority language (because it is in Part III), or may choose to apply as few as one out of the eight paragraphs or subparagraphs, the application of this article will generally result in a much higher standard of minority language provision than is guaranteed under the FCNM, and therefore these provisions of the two treaties are really not particularly comparable.

Other

There are many other sectoral areas which are addressed in Part III of the Charter and are not clearly dealt with under the FCNM, and therefore no comparison is made. These include the following: cultural activities and facilities, covered by Article 12 of the Charter,¹⁵⁸ and economic and social life, covered by Article 13 of the Charter.¹⁵⁹ Article 15 of the FCNM should, however, be noted in this regard. It provides that the Parties to the FCNM shall create conditions necessary for the effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs, in particular those affecting them. In their opinions, however, the Advisory Committee has added considerable detail to the meaning of this provision, and it would certainly seem to cover many of the same matters dealt with in Articles 12 and 13 of the Charter. Where the application of Article 15 of the FCNM has raised a linguistic component, this will be noted in subsequent sections of this study.

¹⁵⁵ Article 10, paragraph 2 g, the Charter.

¹⁵⁶ Article 7, paragraph 2, the Charter.

¹⁵⁷ Article 10, paragraph 3, the FCNM.

¹⁵⁸ A wide range of options are set out in Article 12, in Part III of the Charter, and at least three paragraphs or subparagraphs must be applied by a State in respect of any language it designates under Part III.

¹⁵⁹ A wide range of options are set out in Article 13, in Part III of the Charter, and at least one paragraph or subparagraph must be applied by a State in respect of any language it designates under Part III.

Concepts Relevant to Determining when Rights and/or Obligations Exist

Before concluding this comparison of the legal norms under the Charter and the FCNM, it should be recalled that, as noted above, many of the FCNM and Charter provisions limit obligations with respect to minority language public services territorially, and in some cases also impose the requirement that there is sufficient demand to support such services before a right arises or a state obligation is triggered. The treaties give little guidance as to how demand contingency is to be determined, but the application of differing standards under the two treaties may, in some cases, result in inconsistencies of application. The territorial limitations are formulated somewhat differently—the FCNM tends to refer to areas inhabited by members of national minorities traditionally or in substantial numbers, whereas the Charter tends to use the somewhat more ambiguous “territory in which [regional or minority languages] are used”, though this is defined in Article 1 of the Charter by reference to the geographical area in which the said language is the mode of expression of a sufficient number of people to justify the adoption of protective and promotional measures. Despite the differences in formulation, however, both treaties express a similar concept, and differing interpretations of where in a particular State such areas or territories exist may also result in inconsistencies of application.

iii. Conclusions

From the foregoing, it is easy to see that the outputs of the Advisory Committee and the Committee of Experts can be influenced in a profound way by the differing legal norms created under the Charter and the FCNM. Not only can the legal norms with respect to comparable issues differ—in some cases considerably—but the coverage and application of these norms can also differ, based on State policies with respect, for example, to the definition of “national minority” under the FCNM, the decisions of the State with respect to the designation of regional or minority languages for the protection of Part III of the Charter, and so forth. This can result in a significantly different legal framework under the two treaties for the same States and the same populations within those States. Thus, in spite of the general similarity of the subject matter of the Charter and the FCNM, and of the likelihood that many of the same communities will be covered by both, there are, in addition to the significant differences in overall objectives and core principles and in overall structure, all of which were considered in the early portion of this section, significant differences in the more detailed legal norms. This is a fundamentally important consideration in the consideration of the outputs of the Advisory Committee and the Committee of Experts, and is also a very significant limitation on the degree to which the work of the two bodies could or should be more closely coordinated. This issue will be reconsidered in the final portion of this report.

4. Analysis of the Output of the Committees

The primary output of the Committee of Experts under the Charter is their reports on the application of the Charter in the States which have submitted State reports. The primary output of the Advisory Committee under the FCNM is their opinions on the implementation of the FCNM in the States which have submitted State reports.

The reports of the Committee of Experts under the Charter follow a common format, and are broken into three main chapters, as follows:

I. Background Information: The first chapter contains background information of relevance to the assessment of the State's implementation of its obligations under the Charter (the State's instrument of ratification is set out in an appendix to the report). This chapter outlines the history of the Charter's ratification by the State, the timing of the submission by the State of its report, the timing and general details of the “on-the spot visit” to the State Party by the working group of the Committee of Experts, and the date on which the Committee of Experts adopted its report. This chapter also contains a significant amount of information on the various regional or minority languages and non-territorial languages within the State, and highlights general issues which have arisen from the evaluation of the State's report to the Council of Europe.

II. Evaluation of Implementation: The second Chapter contains an evaluation of the State's implementation of Part II and Part III of the Charter, and simply follows the structure of the Charter, with an analysis of the implementation of every paragraph and subparagraph of Article 7 of the Charter, and an analysis of every paragraph and subparagraph of Articles 8 to 14 of the Charter (the Part III obligations) which have been accepted by the State in its instrument of ratification. Where different paragraphs and subparagraphs have been undertaken by the State in respect of different regional or minority languages, the analysis just described is broken down into a separate section for each of the languages.

III. Findings: The third chapter contains a summary of the Committee of Experts' findings.

The opinions of the Advisory Committee under the FCNM also follow a common format, and all contain a short executive summary, followed by five sections, as follows:

I. Preparation of the Opinion: The first section describes the preparation of the opinion, and outlines matters such as the date on which the State's report to the Council of Europe was received, the date at which the Advisory Committee began its consideration of the report, the timing of the submission to the State of a questionnaire and of the State's response thereto, general details concerning the visit by the delegation of the Advisory Committee to the State, and the date on which the Advisory Committee adopted its opinion.

II. General Remarks: The second section of the opinion contains general remarks on the State's report, and is generally rather short.

III. Specific Comments on Articles 1-19: The third section contains more specific comments of the Advisory Committee on the implementation by the State of its obligations in respect of Articles 1 to 19 of the FCNM; there is a separate commentary on each Article, and the comments on each article are not broken down into comments on each paragraph within the article.

IV. Main Findings: The fourth section summarises the main findings of the Advisory Committee with respect to the implementation by the State of its obligations under the FCNM.

V. Concluding Remarks: The final section contains concluding remarks.¹⁶⁰

The most important part of both the reports of the Committee of Experts and the opinions of the Advisory Committee is the rather detailed evaluation of State implementation based on the sequential analysis of the Articles of the two treaties. However, there are significant differences between the two outputs, beyond the differences in the overall structure of the two sets of outputs, just described.

First, there is a general difference in the size of the outputs. The reports of the Committee of Experts under the Charter tend to be significantly longer and more detailed than the opinions of the Advisory Committee under the FCNM. The Committee of Experts reports reviewed for this study had an average length of 60 pages,¹⁶¹ whereas the Advisory Committee opinions had an average length of 21 pages.¹⁶² This is in keeping with the general pattern of Committee of Expert reports and Advisory Committee opinions. The difference in length of the outputs is partly explained by the fact that the Charter, as noted in the previous section of this study, tends to have more detailed provisions, particularly in Part III, and by the structure of Part III, in which specific languages are designated and under which differing obligations can be assumed in respect of each such language. The more detailed obligations under Part III of the Charter require a more detailed analysis of state

¹⁶⁰ The Advisory Committee decided at its 12th meeting on 30 November, 2001 to introduce changes to the structure of its opinions. Prior to this date, the concluding remarks were made in section four, not section five of the opinion, and section five had contained a proposal for conclusions and recommendations by the Committee of Ministers of the Council of Europe, and this section has been replaced by what is now section four, the main findings and comments of the Advisory Committee.

¹⁶¹ Hungary, 48 pages, Sweden, 67 pages and the United Kingdom, 65 pages

¹⁶² Hungary, 17 pages, Sweden, 21 pages, and the UK, 26 pages.

implementation. A consideration of the provisions of the two treaties on education, for example (considered in the preceding section of this study), provides an illustration of this: Article 8 in Part III of the Charter contains significantly more detailed provisions with respect to every stage in the education system, from pre-school to post-secondary, than Articles 12, 13 and 14 of the FCNM. This pattern is repeated with respect to other matters. Thus, the commentary in the Committee of Experts reports in respect of Part III tends to be very specific, detailed and extensive. Indeed, the complexity of the Part III obligations undertaken by a State in its instrument of ratification can result in a very lengthy Committee of Expert report; the report on Germany, whose instrument of ratification was particularly detailed and complex, was 132 pages in length.

A second difference in the outputs, which also helps to explain the difference in average lengths of the two sets of outputs, is that the reports of the Committee of Experts under the Charter tend to contain a considerable amount of information in the first chapter on the demographic and social situation of the various regional or minority languages and the non-territorial languages of the State being monitored. Given the purpose and specific subject matter of the Charter—the preservation and promotion of languages—such detailed information is appropriate and, indeed, essential for the proper monitoring of the implementation of States' obligations. Such detail may also be a reflection of the slightly different composition of the Committee of Experts as compared with the Advisory Committee, which, as noted earlier in this study, has some members who have specific interest and expertise in socio-linguistic issues. By contrast, the opinions of the Advisory Committee tend to be somewhat more detailed in respect of obligations such as the non-discrimination provisions in Article 4 of the FCNM and the provisions on effective participation in Article 15, in respect of which lawyers, particularly international and human rights lawyers, have particular interest and competence; again, such standards also tend to be more comprehensive and detailed in the FCNM than in the Charter.

In this section of the study, the output of the two committees in respect of each of the three States chosen for comparison—Hungary, Sweden and the United Kingdom—will be considered and compared, in order to determine how language issues implicated by those provisions of the two treaties which overlap have been dealt with by each.

a) Hungary

Hungary, which ratified the Charter on 26 April, 1995, presented its initial periodical report on 7 September, 1999 (it was due on 1 June, 1999). A Committee of Experts working group conducted an “on-the-spot visit” of Hungary from 30 March to 6 April, 2000, and the Committee of Experts adopted its report on 6 February, 2001, approximately 17 months after the first periodical report had been submitted. Hungary ratified the FCNM on 25 September, 1995, and presented its first periodical report on 21 May, 1999 (it was due on 1 February, 1999). The Advisory Committee began its examination of the first State report at its meeting of 25 to 28 May, 1999, and members of the Advisory Committee conducted a visit of Hungary between 29 November and 1 December, 1999. The Advisory Committee adopted its opinion on 22 September, 2000, approximately 16 months after the first State report had been submitted. Thus, both committees took approximately the same amount of time to monitor the reports, and the period during which the monitoring took place largely coincided, with the visit to Hungary and the opinion of the Advisory Committee preceding that of the Committee of Experts by about 5 months in each case.

As discussed in the consideration of the provisions of the two treaties in the preceding section of this study, divergences in the output of the two committees may simply result from the scope of application, or “personal scope”, within the terminology of the FCNM, of the treaties. Thirteen national minorities were identified in the opinion of the Advisory Committee as being subject to the FCNM; this determination was based on unspecified provisions of Hungarian law as to which groups constitute national and ethnic minorities.¹⁶³ Hungary specified the languages of six of those minorities for the purposes of Part III of the Charter, and while Hungary made no reference to any other languages as benefiting from the

¹⁶³ Advisory Committee Opinion on Hungary, adopted 22 September, 2000, ACFC/INF/OP/I(2001)004, (hereafter in this subsection, “Opinion of the Advisory Committee”), para. 7, and note 1 thereto.

protection of Part II, the Committee of Experts determined, based on a consideration of the Hungarian Law, Act LXXVII of 1993 on the Rights of National and Ethnic Minorities (possibly the same law upon which the Advisory Committee based its determination of Hungary's national minorities) that eight other languages spoken by the other seven minorities identified for the purposes of the FCNM (two languages, Romany and Beas, were identified in relation to the Roma/Gypsy national minority) were regional or minority languages or non-territorial languages for the purposes of Part II, two of which, Polish and Ruthenian, were considered to have a territorial base.¹⁶⁴ As noted in the previous section of this study, to the extent that the provisions of the FCNM are in some respects more detailed than the general obligations owed by States under Part II of the Charter, the languages not designated by Hungary for Part III of the Charter may enjoy greater protection under the FCNM. As shall be demonstrated, this manifested itself in respect of the Roma.

The report of the Committee of Experts contained a considerable amount of detail on the demographic and social situation of the various regional and minority languages, and reflected a considerable understanding of the sociolinguistic challenges which the various languages face.¹⁶⁵ The opinion of the Advisory Committee, by contrast, did not contain such detail. The opinion did, however, express concerns about the reliability of statistical information provided by the State and the general lack of detailed data;¹⁶⁶ the Committee of Experts, while recognising such problems, was willing to cite data based on the 1990 Hungarian census.¹⁶⁷ While these slightly contrasting approaches to statistical information did not appear to result in any inconsistencies in the two outputs, it is possible that they could do so, and this alerts us to the pitfalls which can potentially be posed with respect to the differing use of statistical information (or, indeed, the use of different statistical information) by the two committees.

With regard to the treatment by the two committees of the various substantive provisions of the two treaties which potentially overlap, while there are no outright contradictions, there were clear differences in approach. Such differences were largely the result of the norms themselves, which, as discussed in the preceding section of this study, differ in important respects, even where they touch on similar subject matter. In some cases, however, it appears that the two Committees may have been relying on somewhat different information, which may also explain differences in treatment.

With regard to the right to use a minority language in private and public life, for example,¹⁶⁸ the Advisory Committee considered that the implementation of this provision did not give rise to any specific observations,¹⁶⁹ while the Committee of Experts noted that more could be done by Hungary to facilitate the use in public life of Part II languages, particularly Polish and Ruthenian, which have a territorial base.¹⁷⁰ This discrepancy appears, however, to be due in part to the fact that "public life" may be interpreted in a somewhat broader fashion under the relevant provision in the Charter (as was noted in the preceding section of this study); indeed, the Committee of Experts noted in their report on Hungary that "public life" could include the use of the language in education, justice, administration, economic and social life and cultural life as well as trans-frontier exchanges.¹⁷¹

With regard to trans-frontier (or cross-border) exchanges,¹⁷² the Committee of Experts generally commended Hungary with respect to the implementation of its obligations under the Charter,¹⁷³ and considered that Hungary had fulfilled its obligations, noting in

¹⁶⁴ Report of the Committee of Experts, Application of the Charter in Hungary, 4 October, 2001, ECRML (2001) 4, para. 19.

¹⁶⁵ Paras. 8 to 13, Report of the Committee of Experts; para. 12, in particular, contained detailed observations on the problems posed both by diglossia and ethnically mixed marriages for the minority languages.

¹⁶⁶ Opinion of the Advisory Committee, para. 17.

¹⁶⁷ Report of the Committee of Experts, paras. 9 to 11.

¹⁶⁸ Article 7, paragraph 1 (d) of the Charter; Article 10, paragraph 1 of the FCNM.

¹⁶⁹ Para. 34, Opinion of the Advisory Committee.

¹⁷⁰ Para. 24, Report of the Committee of Experts.

¹⁷¹ *Ibid.*

¹⁷² The relevant provisions are Article 7, paragraph 1 (i), and Article 14 of the Charter, and Article 17, paragraph 1 and Article 18 of the FCNM.

¹⁷³ See, for example, para. 29, Report of the Committee of Experts, in respect of Article 7, paragraph 1 (g) of the Charter.

particular that it had concluded bilateral treaties on amicable co-operation and partnership with five of the six countries in which a Part III language is an official language.¹⁷⁴ The Advisory Committee also noted, albeit in a more general way, the existence of numerous bilateral treaties and cultural agreements, but it specifically welcomed attempts to improve the functioning of the joint commissions envisaged in the 1995 Treaty on Good Neighbourliness and Friendly Co-operation between the Slovak Republic and Hungary, an instrument which the Committee of Experts had not mentioned.¹⁷⁵ The Advisory Committee also made reference to the existence of visa requirements for some neighbouring countries, and expressed the wish that these would not be implemented in a manner that causes undue restrictions on the right of persons belonging to national minorities to establish and maintain contacts across frontiers,¹⁷⁶ a potential problem to which the Committee of Experts did not make reference.¹⁷⁷ Thus, while the output of the two committees was not inconsistent, there were some differences, which seem to be largely factual, in their treatment of quite similar subject matter.

With regard to the principle of non-discrimination,¹⁷⁸ the Advisory Committee monitoring is considerably more detailed—again, perhaps because of the difference in the norms in the two treaties,¹⁷⁹ discussed above—and there is particularly close attention paid to the situation of the Roma. While the Committee of Experts recognised the social and economic discrimination which the Roma still suffer, they generally commended Hungary's implementation of the non-discrimination norm.¹⁸⁰ The Advisory Committee was generally more guarded, noting problems in implementation and in the area of remedies.¹⁸¹ Interestingly, the one domestic norm which was specifically mentioned by the Committee of Experts, a penal provision in Hungary's Criminal Code, was not mentioned amongst the domestic norms discussed by the Advisory Committee, again perhaps suggesting a difference in the facts before the two committees.¹⁸²

Indeed, the rather different treatment of the Roma in the output of the two committees highlights the significant normative differences between the two treaties. As noted, the Advisory Committee devoted considerable space to the discrimination and social exclusion suffered by the Roma. The Committee of Experts dealt with linguistic issues relating to the Roma under Article 7, paragraph 5, which provides that the Parties to the Charter shall apply the principles set out in Article 7 (the general principles of Part II) to non-territorial languages; as the languages spoken by the Roma in Hungary, Romany and Beas, were considered to be non-territorial languages, they could only benefit from Article 7, and not from the more detailed provisions of Part III. The Committee of Experts noted the serious problems caused to the Roma by deeply rooted social discrimination, and made specific reference to the Advisory Committee's need to deal with such issues. However, the Committee of Experts noted that, as the aim of the Charter was to protect languages, rather than those who spoke them, such issues were simply not an issue under Article 7.¹⁸³ In this context, it is worth repeating that the non-discrimination provision in Article 7, paragraph 2 of the Charter is of very limited scope, and merely requires States to eliminate any unjustified distinction, exclusion, restriction or preference, but only to the extent that it relates to the use of a regional or minority, or non-territorial language, and even then only to the extent that such distinction, exclusion, restriction or preference is intended to discourage or endanger the maintenance of that language.

¹⁷⁴ Paras. 77 and 79, Report of the Committee of Experts, in respect of Article 14 of the Charter.

¹⁷⁵ Para. 57, Opinion of the Advisory Committee, in respect of Article 18 of the FCNM.

¹⁷⁶ Para. 56, Opinion of the Advisory Committee, in respect of Article 17, FCNM. The committee repeated this concern in their proposed recommendations for the Council of Ministers.

¹⁷⁷ To the extent that visa requirements can limit cross-border mobility of speakers of the same languages (whether such effect is intentional or not), such visa requirements may be relevant to both Article 7, paragraph 1 (i) and Article 14 of the Charter.

¹⁷⁸ The relevant provisions are Article 4, paragraph 1 of the FCNM, and Article 7, paragraph 2 of the Charter.

¹⁷⁹ Article 7, paragraph 2 of the Charter only refers to unjustified distinctions, exclusions, restrictions or preferences relating to the use of a regional or minority language, which is a fairly limited non-discrimination norm.

¹⁸⁰ Para. 30, Report of the Committee of Experts.

¹⁸¹ See, in particular, para. 15, Opinion of the Advisory Committee.

¹⁸² Para. 30, Report of the Committee of Experts.

¹⁸³ Para. 34, Report of the Committee of Experts.

The Committee of Experts also noted that the Roma community was only a subject for analysis under Article 7 to the extent that its members spoke a language protected by Part II of the Charter, and this was the case for only perhaps 30% of the Roma community. They did note that practically no efforts had been made to upgrade the standing of the two Roma languages in public life, and that few educational programmes had been created to foster the linguistic capabilities of Roma children in the language of their families. They also noted that this neglect was “undoubtedly due” to the traditional conception of anti-discrimination policy as entailing assimilation, in order to free the Roma from their marginal status. Significantly, the Committee of Experts then noted that such a strategy seems to have been “only partly successful”, and that as a result, discrimination persists, and the majority of Roma had lost their traditional language and culture without becoming fully integrated. Not surprisingly, given the primacy given in the Charter to cultural diversity, the Committee of Experts recommended that Hungary should take measures to preserve the languages of the Roma, without endangering the important goal of ending the social marginalisation of the Roma, and that Hungarian authorities should intensify their efforts in planning for the Romany and Beas languages and their attempts to develop a viable model of bilingual education for children with such languages as their native tongue.¹⁸⁴ Thus, there is once again a significant difference in approach taken by the two committees, but this seems largely due to the significant normative differences between the two treaties.

With regard to the various sectors in which obligations under the Charter and the FCNM potentially overlap, the report of the Committee of Experts contains a considerably greater degree of detail in relation to minority language education, but once again, this is primarily due to the much greater specificity of the commitments undertaken under Article 8 of the Charter than of those contained in Articles 12 to 14 of the FCNM. Yet, the two committees are generally quite consistent in terms of the themes they cover. Indeed, the Advisory Committee summarise quite effectively the various problems which impinge on minority language education generally and which are explored in more detail by the Committee of Experts, such as: shortages of textbooks and of teachers¹⁸⁵, which make it difficult to offer an education in bilingual schools and native language schools that is of the same quality as that offered in Hungarian-medium schools; and, the diversion by local self-governments of extra central government funding for minority language education to other purposes.¹⁸⁶ Again, though, the Advisory Committee devoted a considerable amount of attention to particular problems faced by the Roma in education; the Committee of Experts made no specific comments on this, partly because the commitments with respect to education, contained in Article 8 of the Charter, only apply in respect of those regional or minority languages specified by the State in its instrument of ratification, and cannot apply to a non-territorial language such as the languages spoken by the Roma. Furthermore, the commitments in Article 8 of the Charter relate primarily to the narrow issue of minority language education, and not to wider issues such as poor performance and exclusion of minority children, which was a particular concern of the Advisory Committee.

With regard to judicial authorities, as noted in the preceding section of this study, the most significant FCNM provision, Article 10(3), under which States undertake to guarantee persons arrested the right to defend themselves in a language which they understand,¹⁸⁷ is much more limited in scope to the provisions of Article 9 of the Charter, including those which Hungary undertook in respect of the Part III languages, which essentially guaranteed the right of litigants to use their minority language before the criminal and civil courts and administrative tribunals, regardless of whether they also spoke Hungarian. The Committee of Experts reported considerable practical problems in the implementation of these obligations, partly due to restrictive interpretations of the right contained in Hungarian law, and partly due to low uptake of the right by members of linguistic minorities, due to social reasons which the Committee of Experts explored in some detail, such as a concern that they not be seen as

¹⁸⁴ *Ibid.*

¹⁸⁵ Referred to, for example, at para. 44 of the Report of the Committee of Experts.

¹⁸⁶ Para. 39, Opinion of the Advisory Committee. This problem was referred to by the Committee of Experts at, for example, para. 38 of their report.

¹⁸⁷ The right to use one's minority language would therefore only apply where the individual did not speak or understand the language of the court; the Charter provisions are all predicated on the assumption that the individual will be entitled to use his or her minority language regardless of his or her ability to speak and understand the language of the court.

“troublemakers”.¹⁸⁸ Given the limited nature of the FCNM provision, the Advisory Committee did not have to consider such matters; nonetheless, they did so, pointing out that the actual use made of the right to use one’s minority language in the courts was rather limited. Interestingly, though, the Advisory Committee simply stated that authorities should review this situation in order to ascertain whether there are impediments to such use,¹⁸⁹ whereas the Committee of Experts was, as just noted, quite specific about the actual impediments which they had found. This may suggest that the Committee of Experts had, in fact, received more detailed information which allowed them to pronounce more authoritatively on this point. Similarly, both the Charter and the FCNM provide that States should permit the use of names in minority languages, and both committees note that a right to registration of names in minority languages exists in Hungarian law but that the actual use made of this right is rather limited. Again, though, the Advisory Committee simply said that the Hungarian authorities should review this situation in order to determine whether there were impediments,¹⁹⁰ whereas the Committee of Experts were in no doubt that such impediments exist, and made specific reference to “a rather rigid system of an official closed list of names”, fixed in legislation to which reference is specifically made.¹⁹¹

With regard to administrative and public services, as with education, the report of the Committee of Experts contains a considerably greater degree of detail, but once again, this is primarily due to normative differences—in particular, the much greater specificity of the commitments undertaken by Hungary under Article 10 of the Charter, as compared to the rather general commitment contained in Article 10, paragraph 2 of the FCNM. Again, the two committees are generally consistent in terms of the themes they cover: both make reference to the domestic legislative framework, which generally complies with the treaty obligations by allowing for the use of minority languages in public bodies and in administrative settings at the local level, and also make reference to the rather limited use that has been made of minority languages in such settings.¹⁹² However, the Advisory Committee once again does not comment on the causes of this situation, and merely recommends that the Hungarian authorities should “ascertain that persons belonging to national minorities are really able to enjoy and exercise their rights”,¹⁹³ whereas the Committee of Experts made specific reference to a number of practical problems which may have had an effect, including: a lacuna in the Hungarian legislation which may have either limited the right to use minority languages in these settings or at least created some confusion about the right; shortages of staff having a command of the relevant minority languages; and, so forth.¹⁹⁴

Finally, the commitments undertaken by Hungary under Article 11 of the Charter in respect of the media are, again, much more extensive than the rather limited norms set out in Article 9 of the FCNM, and therefore the level of detail in the Report of the Committee of Experts is much greater than that in the Opinion of the Advisory Committee.¹⁹⁵ In spite of this, the Advisory Committee commented on three matters which were not specifically dealt with by the Committee of Experts. While the Report of the Committee of Experts contained much more details about broadcast hours and so forth, it expressed general satisfaction with Hungary’s performance in this area. By contrast, the Advisory Committee criticised the “uneven allocation of resources to different minorities, notably sound broadcasting time”, noting that the largest minority, the Roma, has about one quarter of the broadcasting time of some other minorities, which is “disproportionate”.¹⁹⁶ The Advisory Committee was also critical of the hours of the day at which minority language broadcasting occurred, and expressed the concern that complaints that local radio stations may not have been respecting their licence obligations in respect of minority languages were not being investigated.¹⁹⁷ Both of these matters were not referred to by the Committee of Experts, although they did make

¹⁸⁸ See, for example, para. 45, Report of the Committee of Experts.

¹⁸⁹ Paras. 38 and 37, Opinion of the Advisory Committee.

¹⁹⁰ Para. 37, Opinion of the Advisory Committee.

¹⁹¹ Para. 62, Report of the Committee of Experts.

¹⁹² See para. 35, Opinion of the Advisory Committee, and paras. 54 to 60, in general, Report of the Committee of Experts.

¹⁹³ Para. 35, Opinion of the Advisory Committee.

¹⁹⁴ Paras. 54 and 61, Report of the Committee of Experts.

¹⁹⁵ See paras. 63 to 68, Report of the Committee of Experts, and paras. 29 to 32, Opinion of the Advisory Committee.

¹⁹⁶ Para. 29, Opinion of the Advisory Committee.

¹⁹⁷ Paras. 31 and 32, respectively, Opinion of the Advisory Committee.

reference to the difficulties faced by minority language radio broadcasters in competing for licences,¹⁹⁸ something not referred to by the Advisory Committee. Again, these divergences may be due to differences in the information received by the two committees.

In conclusion, a comparison of the Report of the Committee of Experts and the Opinion of the Advisory Committee does not reveal any obvious contradictions or serious inconsistencies between the two committees in respect of similar obligations; indeed, there seems to be a fairly consistent general approach. However, the Committee of Experts is, in many cases, much more detailed, as befits the generally rather more particular obligations contained in Part III of the Charter. Where there are divergences between the two committees, these appear largely to be due to differences in the legal norms themselves. In a number of cases, though, there appear to be differences between the two committees in the sort of evidence, in terms of either legal acts or factual information, cited in respect of particular matters; such differences may be due in part to consideration of different material in the preparation of the outputs, and this possibility will be explored in the next part of this study.

b) Sweden

Sweden, which ratified the Charter on 9 February, 2000, presented its initial periodical report on 18 June, 2001. A Committee of Experts working group conducted an “on-the-spot visit” to Sweden from 22 to 26 April, 2002, and the Committee of Experts adopted its report on 6 December, 2002, approximately 18 months after the first periodical report had been submitted. Sweden also ratified the FCNM on 9 February, 2000, and presented its first State report on 8 June, 2001 (it was due on 1 June, 2001). The Advisory Committee began its examination of the first State report at its meeting of 10 to 14 September, 2001, and members of the Advisory Committee conducted a visit of Sweden between 25 and 29 November, 2002. The Advisory Committee adopted its opinion on 20 February, 2003, almost 20 months after the first periodical report had been submitted. Thus, the two committees took roughly the same time, and while the period during which the monitoring took place largely coincided, the “on-the-spot visit” of the Committee of Experts occurred about seven months earlier than the visit of the Advisory Committee.

Unlike Hungary, the application of the “personal scope” of the Charter and FCNM in respect of Sweden posed no particular problems. In particular, the Advisory Committee noted that Sweden made a declaration at the time of ratification that the national minorities in Sweden covered by the FCNM were the Sami, Swedish Finns, Tornedalers, Roma and Jews. They noted that organisations in Scania and Gotland had made efforts to obtain recognition and support for their linguistic and other concerns and that the Swedish authorities had said that these groups only spoke a dialect of Swedish, and therefore the Advisory Committee recommended that both sides engage in a dialogue on this issue.¹⁹⁹ Finally, the Advisory Committee noted the existence in Sweden of a large number of ethnic and linguistic groups that the government of Sweden did not consider to be covered by the FCNM—these would presumably include so-called “new” minorities created by relatively recent immigration.²⁰⁰ In its instrument of ratification of the Charter, Sweden specified Sami, Finnish and Meänkieli (the language spoken by approximately 45,000 of the 70,000 Tornedalers) as both the regional or minority languages, and those which benefit from Part III of the Charter, and recognised Romani Chib and Yiddish as non-territorial languages within the meaning of Part II of the Charter. Thus, essentially the same minority populations and languages were the subject of the monitoring of both the Committee of Experts and the Advisory Committee.

As in its report on Hungary, the report of the Committee of Experts on Sweden contained somewhat more detailed information on the demographic and social situation of the various regional and minority languages than was contained in the opinion of the Advisory Committee.²⁰¹ The Advisory Committee had only estimates given by the Swedish authorities

¹⁹⁸ Para. 64, Report of the Committee of Experts.

¹⁹⁹ Paras. 16 and 19, Advisory Committee Opinion on Sweden, adopted 25 August, 2002, ACFC/INF/OP/I(2003)006, (hereafter in this subsection, “Opinion of the Advisory Committee”).

²⁰⁰ Para. 20, Opinion of the Advisory Committee.

²⁰¹ Paras. 12 to 15, Report of the Committee of Experts.

as to the number of persons belonging to the various minorities which Sweden had identified, and noted that the monitoring of the implementation of the FCNM had been complicated by the fact that Sweden does not collect official statistical information on the ethnic breakdown of the populations, and that the Swedish authorities can themselves at best offer imprecise data.²⁰² Although the Committee of Experts seemed to rely on the same data from the same official sources, they made no reference to such problems. In cases in which official statistical information is imprecise, out of date, or is otherwise subject to uncertainty, this should be noted, and it may be advisable for the committee which has made this determination to bring this to the attention of the other committee. Similarly, if alternative sources of statistical information are referred to and relied upon, because of their reliability, it would seem advisable that the committee which has come to this conclusion should bring such information to the attention of the other committee.

With regard to the treatment by the two committees of the various substantive provisions of the two treaties which potentially overlap, there were again differences of approach and emphasis. As was the case with Hungary, though, such differences were largely the result of the norms themselves. There were, however, also cases of facts being referred to by one committee and omitted by the other, and in one or two cases, information was used in a way that could be seen as potentially contradictory. Thus, with respect to the provisions of the two treaties which relate to fostering knowledge of minorities or their languages, cultures and traditions,²⁰³ both committees made reference to legislation which required that schools must ensure that all pupils have a knowledge about the cultures, languages, religions and history of the country's national minorities, although the Committee of Experts made specific reference to the statutory provisions themselves.²⁰⁴ Interestingly, though, the Advisory Committee then referred to representations that it had received that the goal of the legislation was often not reflected in practice and that the current history and other relevant textbooks did not contain adequate information on the national minorities.²⁰⁵ By contrast, the Committee of Experts made no reference to such information. This would appear to be a clear case of a difference resulting from differences in the evidence received by the two committees.

Another example is with respect to cross border matters.²⁰⁶ The Advisory Committee merely welcomed the on-going regional and bilateral co-operation on issues pertaining to national minorities, generally without referring to specifics.²⁰⁷ By contrast, the Committee of Experts set out such measures in some detail.²⁰⁸ Yet, the Advisory Committee did make reference to two developments it considered noteworthy, including the appointment in 2002 of a working group to draw up a draft regional treaty on the protection of the Sami; the Committee of Experts made no reference to this development, and although the Committee of Experts visited Sweden earlier in 2002 than the Advisory Committee, it did not complete its report until December, 2002, and could be expected to have gained information about this development. The reason for this omission appears to be that it is the policy of the Committee of Experts to stop the collection and receipt of information relevant to the monitoring within one month of the "on-the-spot visit"; without such a policy, the completion of the committee reports would be made more difficult. This policy, while understandable, should be clearly highlighted for readers. There was, however, a similar omission by the Advisory Committee. In particular, the Committee of Experts made reference to co-operation between Swedish broadcasters and those in Norway and Finland in 2001 and 2002 to facilitate cross-border transmission of Sami news broadcasts, and to plans to establish a joint Nordic Sami TV channel in the future.²⁰⁹ These are significant new issues, and ones that the Advisory Committee may well have chosen to highlight.

With regard to the provisions on non-discrimination, the Advisory Committee was generally much more detailed in its coverage, which is understandable, given the much more

²⁰² Para. 9, Opinion of the Advisory Committee.

²⁰³ Article 7, paragraphs 1 (g) and 3, the Charter, and Article 12, paragraph 1, the FCNM.

²⁰⁴ Paras. 59 and 60, Report of the Committee of Experts.

²⁰⁵ Para. 52, Opinion of the Advisory Committee.

²⁰⁶ Article 7, paragraph 1 (i) and Article 14 of the Charter, Article 17 and Article 18, paragraph 1, the FCNM.

²⁰⁷ Para. 68, Opinion of the Advisory Committee.

²⁰⁸ Paras. 171, 173, 285, 289 and 290, Report of the Committee of Experts.

²⁰⁹ Para. 174, Report of the Committee of Experts.

detailed and extensive commitments under the FCNM, but there were no apparent inconsistencies in the approaches taken by the two committees to these fairly distinct sets of norms. While the relationship between the work of the two committees and the European Commission against Racism and Intolerance (“ECRI”) is not within the scope of this study, many of the same considerations highlighted here are relevant with respect to those matters which form part of the work of ECRI overlap with provisions in the FCNM and the Charter.

With regard to the various sectors in which obligations under the Charter and the FCNM potentially overlap, the report of the Committee of Experts contains a much greater degree of detail in relation to minority language education, but once again, this is primarily due to the much greater specificity of the commitments undertaken under Article 8 of the Charter by Sweden in respect of Sami, Finnish and Meänkieli than are contained in Articles 12 to 14 of the FCNM. As was the case with Hungary, the two committees were generally quite consistent in terms of the themes they covered; indeed, as with Hungary, the Advisory Committee summarised quite effectively the various problems which impinge on minority language education generally and which are explored in more detail by the Committee of Experts, such as the fact that the statutory right under Swedish law to minority language education is compromised by a general shortage of qualified teachers, and the low volume of such education, which is generally very limited (one or two hours per week) and is often organised outside of regular school hours.²¹⁰ Interestingly, though, in spite of the much greater detail offered by the Committee of Experts about most aspects of minority language education, the Advisory Committee raised some matters which the Committee of Experts did not, such as the fact that students wishing mother tongue education would often have to travel after hours to another school to gain access to it, that according to the National Agency for Education parents were not always given adequate information about their rights in this sphere,²¹¹ and that there is a clear demand in Sweden amongst people belonging to national minorities for bilingual education, a right to which only the Sami enjoy.²¹² Finally, the Advisory Committee devoted a paragraph to the particular problems faced by Roma in the education system; the committee showed particular concerns with respect to social and educational issues surrounding Roma education. The Committee of Experts made no reference to these difficulties, but this is to be expected, as Romani Chib was not a Part III language. This again illustrates an important difference between the norms contained in the two treaties.

With regard to judicial authorities, as noted in the preceding section of this study, the most significant FCNM provision, Article 10(3), under which States undertake to guarantee persons arrested the right to defend themselves in a language which they understand,²¹³ is much more limited in scope than the provisions of Article 9 of the Charter, including those which Sweden undertook in respect of the Part III languages, which essentially guaranteed the right of litigants to use their minority language before the criminal and civil courts and administrative tribunals, regardless of whether they also spoke Swedish. Both the Committee of Experts and the Advisory Committee made reference to 1999 Swedish legislation on the right to use Sami, Finnish and Meänkieli in contacts with administrative authorities and in the courts of law, albeit in rather limited territories in the north of the country. While both committees made reference to significant problems in the implementation of these rights, the Advisory Committee made no specific reference to the courts, focussing largely on administrative bodies, while the Committee of Experts provided a considerable amount of detail with respect to the problems in both areas; again, this is not surprising, given the significant normative differences between the two instruments in respect of judicial matters, discussed in the previous section of this study.

Significantly, the requirement in both the Charter and the FCNM that States should permit the use of names in minority languages actually led to comments by the two committees that could be considered to be contradictory, and this is one of the very few examples of such an outright inconsistency that the author of this study has found. In

²¹⁰ Paras. 58 and 59, Opinion of the Advisory Committee.

²¹¹ Para. 59, Opinion of the Advisory Committee.

²¹² Para. 60, Opinion of the Advisory Committee.

²¹³ The right to use one's minority language would therefore only apply where the individual did not speak or understand the language of the court; the Charter provisions are all predicated on the assumption that the individual will be entitled to use his or her minority language regardless of his or her ability to speak and understand the language of the court.

particular, both committees referred to Swedish legislation that stipulated that Swedish, Sami and Finnish place names should be used together as far as possible on maps, signposts and other markings in multilingual areas.²¹⁴ The first contradiction is in respect of Meänkieli. The Committee of Experts suggested that this obligation with regard to place names also applied to this language.²¹⁵ The Advisory Committee, in recommending that the obligation in the law *be extended to Meänkieli*.²¹⁶ This seems to imply that the obligation does not, in the view of the Advisory Committee, apply to Meänkieli, because if it did, there would presumably be no need “to extend” the obligation to that language. The second inconsistency is that the Advisory Committee reported that it was, however, generally satisfied that the Swedish authorities are committed to increasing their efforts in this area,²¹⁷ whereas the Committee of Experts had been informed that the presence of Sami and Finnish signs was still not satisfactory.²¹⁸ These inconsistencies in output suggest that the two committees were drawing on different information.

With regard to administrative and public services, the report of the Committee of Experts once again contains a considerably greater degree of detail, particularly with respect to the actual content of the relevant legislation, the 1999 Act on the right to use Sami, Finnish and Meänkieli in contacts with administrative authorities and in the courts of law, just referred to. And once again, this seems primarily due to the much greater specificity of the commitments undertaken by Sweden under Article 10 of the Charter, as compared to the rather general commitment contained in Article 10, paragraph 2 of the FCNM. The general approach of the two committees was, however, consistent: both welcomed the legislation itself (although noting that because of its limited territorial application, a large majority of Finnish speakers would not benefit from it), but noted that its immediate practical impact had been limited.²¹⁹ As Sweden had treated each of the three Part III languages separately in its instrument of ratification, the application of Article 10 of the Charter to each was discussed separately, and this, perhaps, permitted the Committee of Experts to make a slightly more nuanced assessment of the implementation of the laws; whereas real problems of implementation existed with respect to Sami, Finnish and Meänkieli were in a slightly better position, as although the production of written documents was poor, the Committee of Experts noted that in practice, the administration usually had sufficient staff with an adequate command of Finnish and Meänkieli to allow for reasonable implementation.²²⁰ The Advisory Committee made the same point with respect to the use of the three languages in oral communication—indeed, they even cited research by both the Norrbotten County Administration Board and the Luleå Technical University in support of this assessment—but they did not make any comments on written communications. With respect to Sami, the Advisory Committee suggested that the low use of the language in oral communications may have been due to significant delays and other inconveniences, but simply encouraged the Swedish authorities to examine the causes of these difficulties and to seek ways to overcome them.²²¹ The Committee of Experts was somewhat more detailed in their assessment of why levels of Sami language administrative services were so low, making reference to the Norrbotten County Administration Board research (but not, interestingly, to the Luleå Technical University research); among the causes offered by the Committee of Experts were that the legislation was new, that municipalities were sometimes not informed of their obligations, that there was lack of administrative staff with the necessary language skills and a lack of advertising for persons with such skills, and that there was in some instances a lack of political will in local authorities.²²²

²¹⁴ Para. 51, Opinion of the Advisory Committee, and paras. 118 and 119, 228 and 229, and 343, Report of the Committee of Experts. Interestingly, the Advisory Committee actually named the legislation, and the Committee of Experts did not; often, given the generally greater specificity of the commitments in Part III of the Charter, the Committee of Experts will provide greater details such as this.

²¹⁵ Para. 343, Report of the Committee of Experts.

²¹⁶ Para. 51, Opinion of the Advisory Committee.

²¹⁷ *Ibid.*

²¹⁸ Paras. 119 and 228 and 229, Report of the Committee of Experts.

²¹⁹ Paras. 47 to 50, Opinion of the Advisory Committee, and paras 111 to 115, 221 to 225, and 337 to 340, Report of the Committee of Experts.

²²⁰ Para. 221, Report of the Committee of Experts.

²²¹ Para. 50, Opinion of the Advisory Committee.

²²² Paras. 112, 115 to 117, Report of the Committee of Experts.

Finally, the commitments undertaken by Sweden under Article 11 of the Charter in respect of the media were, once again, much more extensive than the rather limited norms set out in Article 9 of the FCNM, and therefore the level of detail in the Report of the Committee of Experts is once again much greater than that in the Opinion of the Advisory Committee.²²³ For example, the Report of the Committee of Experts contains much more detailed information concerning the number of hours of television and radio programming that were broadcast, more details on scheduling of programming, and so forth. The Committee of Experts also tended to be more critical of Sweden's performance under the Charter. For example, the Advisory Committee noted "with approval" that a number of measures had recently been taken by the Swedish authorities to facilitate access to the media for persons belonging to national minorities.²²⁴ The Committee of Experts also referred to recent changes, but with a little more specificity, referring to the license requirement on certain named broadcasters to take in account the needs of minority languages. However, the Committee of Experts then noted that the means by which this was to be achieved had not been prescribed by the government, and that no targets had been set.²²⁵ Both committees referred to the cuts in broadcasting time of the Finnish language current affairs programme EKG, but provided somewhat different guidance to the Swedish authorities in response to these cuts. The Advisory Committee was perhaps somewhat stronger in its comments; it found it "essential" that the reforms in the area of broadcasting do not lead to negative developments in terms of the quality and volume of the Swedish state broadcaster's Finnish language broadcasting.²²⁶ The Committee of Experts merely "encourages" the Swedish authorities to collaborate with broadcasters and representatives of Finnish speakers to ensure that Finnish language programming does not suffer unfairly as a result of budgetary constraints, and recommended that funding for Finnish language programmes be "ring-fenced", if necessary.²²⁷

In conclusion, in spite of the fairly consistent approach taken by both committees, there were some differences in detail and, occasionally, in emphasis, and a small number of inconsistencies did emerge. Differences in treatment are, however, largely due to differences in the legal norms themselves. It did appear, though, that in some cases, differences may have been due to differences in the sort of evidence that the two committees were considering. Generally, this pattern is similar to that which emerged from the comparative analysis of the outputs of the two committees in respect of Hungary.

c) United Kingdom

The UK, which ratified the Charter on 27 March, 2001, presented its initial periodical report on 1 July, 2002, the day on which it was due. A Committee of Experts working group conducted an "on-the-spot visit" to the UK from 20 to 24 January, 2003, and the Committee of Experts adopted its report on 29 August, 2003, approximately 15 months after the initial periodical report had been submitted. The UK ratified the FCNM on 15 January, 1998, and presented its first State report on 26 July, 1999 (it was due on 1 May, 1999). The Advisory Committee began its examination of the first State report at its meeting of 27 to 30 November, 2000, and members of the Advisory Committee conducted a visit of the UK between 4 and 8 June, 2001. The Advisory Committee adopted its opinion on 30 November, 2001, approximately 28 months after the first periodical report had been submitted. Thus, the Advisory Committee took a considerably longer period to conduct its monitoring than the Committee of Experts. The Advisory Committee had also completed their work approximately 8 months before the Committee of Experts began theirs, with the result that, unlike the monitoring by the two committees of Hungary and Sweden, the periods under which the two committees conducted their work in respect of the UK did not coincide.

Of all the States considered, the application of the "personal scope" of the Charter and FCNM in respect of the UK posed perhaps the most interesting challenges, and ones

²²³ See paras. 125 to 137, 234 to 246, and 348 to 362, Report of the Committee of Experts, and paras. 41 to 46, Opinion of the Advisory Committee.

²²⁴ Para. 41, Opinion of the Advisory Committee.

²²⁵ Para. 125, Report of the Committee of Experts.

²²⁶ Para. 42, Opinion of the Advisory Committee.

²²⁷ See after para. 241, Report of the Committee of Experts.

which have had a fundamental impact on the output of the two committees. This is because the definition of “national minorities” chosen by the UK was a particularly wide one, which generally included so-called “new” minorities formed by relatively recent immigration, whereas the communities whose languages are covered by the Charter in the UK, and those whose languages were designated for the special protection afforded by Part III of the Charter, are all “traditional” or “autochthonous” minorities.

In particular, because UK law contains no definition of the concept of “national minority”, the UK government decided to base its State report under the FCNM on the concept of “racial group” as set out in the *Race Relations Act 1976* (the “RRA 1976”), which is defined as “a group of persons defined by colour, race, nationality (including citizenship) or ethnic or national origin.” This definition generally includes the ethnic minority communities—essentially, “new” minorities formed by relatively recent immigration—as well as the Scots, Irish and Welsh by virtue of their national origins, Roma, Irish Travellers, Sikhs and Jews. The Advisory Committee “strongly welcome[d] the inclusive approach of the United Kingdom in its interpretation of the term ‘national minority’”.²²⁸ The Advisory Committee also noted that the UK government did not consider the people of Cornwall to be a national minority, but that the committee had received a number of communications from persons in Cornwall who considered themselves to be a national minority; ultimately, the Advisory Committee did not pronounce upon this issue.²²⁹

In its instrument of ratification of the Charter (supplemented by two letters), the UK specified the Welsh language in Wales, the Scottish Gaelic language in Scotland, and the Irish language in Northern Ireland for the purposes of Part III of the Charter, and recognised the Scots language in Scotland, the Ulster-Scots language in Northern Ireland, the Cornish language in Cornwall, and the Manx language in the Isle of Man, as regional or minority languages which benefit from the protection of Part II of the Charter. However, none of the speakers of such languages may, under UK law, even be a racial group for the purposes of the RRA 1976 (a point which was apparently not raised before the Advisory Committee) with the result that such speakers may not form a national minority within the meaning of the FCNM. While the RRA 1976 does recognise the Welsh, the Scots and the Irish as a whole as “racial groups”, with the result that these groups would be “national minorities”, only a minority of Welsh are Welsh speakers (about 20%), and even smaller minorities of Scots are Gaelic speakers (about 1.3%) and Northern Irish are Irish speakers (optimistically estimated at 10%, but in terms of those who actually speak the language fluently and use it on a daily basis, probably less than 1%). Furthermore, many Scots, the group protected under the FCNM by virtue of the UK’s reliance on the RRA 1976 definition of “racial group”, would not consider Gaelic to be a part of their cultural heritage, and many “Irish” in Northern Ireland (who would presumably include Northern Irish Unionists and Protestants) would not consider the Irish language to form any part of their cultural heritage.

These ambiguities and complexities, which are in part a product of the much different personal scope of the two treaties in the UK context, caused a wide range of divergences in the reports of the two committees. For example, devolved government in Scotland, Wales and Northern Ireland is praised by the Advisory Committee in unequivocal terms under Article 15 of the FCNM for its “contribution to creating the conditions necessary for the persons concerned [i.e. Scots, Welsh and Northern Irish] to participate effectively in cultural, social and economic life and in public affairs.”²³⁰ In the context of Article 5 of the FCNM, the Advisory Committee was “pleased to note that devolution has brought with it significant progress in the preservation and development of the culture of the people of Wales, Scotland and Northern Ireland,” and recognised that devolution had also “brought with it increased awareness and demand for recognition of the essential elements of the different communities’ identity and in particular their language.”²³¹ Of course, as the foregoing discussion, together with the very significant demographic and sociolinguistic information contained in the Report of the Committee of Experts, will have made clear, there is no single culture or language in

²²⁸ Para. 14, Opinion of the Advisory Committee on the United Kingdom, ACFC/INF/OP/I(2002)006, 30 November, 2001, hereafter referred to in this section as the “Opinion of the Advisory Committee”.

²²⁹ Para. 16, Opinion of the Advisory Committee.

²³⁰ Para. 93, Opinion of the Advisory Committee.

²³¹ Para. 37, Opinion of the Advisory Committee.

any of the devolved jurisdictions, and devolution has not necessarily brought equal benefits to all of the languages and cultures and identities of the devolved jurisdictions. The possibility that devolution was not an unalloyed good for at least some of the minority language communities apparently was not fully canvassed by the Advisory Committee.

The Committee of Experts, forced by the subject matter of the Charter to focus more narrowly on linguistic issues, was much more circumspect in its assessment of devolution, at least in respect of the effect of devolution on the regional or minority languages. On the one hand, the Committee of Experts noted that devolution had the advantage of ensuring that the policies and measures for implementing the Charter are adopted closer to the speakers of the relevant languages.²³² However, given that the devolved institutions had significant responsibilities in the implementation of the Charter, the Committee of Experts also noted that each administration had adopted a different approach, which seemed to be largely dependent on the strength of political will to support regional or minority languages.²³³ Thus, in respect of its assessment of implementation of Article 7, paragraph 1 (c), the Committee of Experts noted that, in the case of the devolved governments in Wales and Northern Ireland, particular efforts had been made to integrate the issue of regional or minority language protection and promotion into all areas of policy, whereas they expressed regret at not finding the same approach at the devolved government level in Scotland.²³⁴

The relative marginalisation of the autochthonous language communities which resulted from the UK's approach to defining the term "national minority" under the FCNM resulted in other notable differences in the output of the two committees. As already noted, with regard to Article 15, the Advisory Committee placed great emphasis on devolution as a strongly positive measure for the Scots, Welsh and Northern Irish as a whole, but made no specific reference to the bodies mentioned by the Committee of Experts under Article 7, paragraph 4, such as Comunn na Gàidhlig in Scotland, the Department of Culture, Arts and Leisure in Northern Ireland, and the Welsh Language Board in Wales, all of which have a particular role to play in the development of the autochthonous language communities in those countries.²³⁵ By contrast, the Committee of Experts made note of the fact that in Scotland, in particular, there were a number of organisations active in the Gaelic language community, and regretted that the State had not engaged in a more structure dialogue with such organisations, and that they had not been consulted during the process of ratification of the Charter.²³⁶

With regard to substantive measures in support of minority linguistic communities, there were significant differences between the two reports in both the amount of detail included and also in overall tone. In the context of Article 14 of the FCNM, which contains the most significant standards in relation to minority language-medium education, the Advisory Committee's comments in respect of Welsh and Scottish Gaelic were cursory, and merely welcomed "the increasing possibilities for receiving education" in such languages.²³⁷ While the Advisory Committee also welcomed such increasing opportunities in respect of Irish in Northern Ireland, they also noted the receipt of representations from persons in the Irish language community to the effect that more could be done to support Irish language education (similar representations had been made with respect to Ulster Scots, the opinion also noted), and expressed the view that the Government should examine with the parties concerned what further measures could be taken to support, in particular, Irish language education but also the teaching of Ulster Scots.²³⁸

²³² Para. 34, Draft Report of the Committee of Experts on the United Kingdom, MIN-LANG (2003) 7, 23 September, 2003, hereafter referred to in this subsection as the "Draft Report of the Committee of Experts".

²³³ Para. 35, Draft Report of the Committee of Experts.

²³⁴ Para. 51, Draft Report of the Committee of Experts.

²³⁵ See paras. 93 to 99, Opinion of the Advisory Committee, and paras. 89 to 94, Draft Report of the Committee of Experts.

²³⁶ Para. 90, Draft Report of the Committee of Experts, in respect of the UK's obligations under Article 7, paragraph 4, the Charter.

²³⁷ Para. 92, Opinion of the Advisory Committee.

²³⁸ *Ibid.*

The Committee of Experts consideration of educational issues was considerably more detailed. This was certainly due in part to the fact that the provisions of Article 8 of the Charter are much more detailed than any of the comparable provisions of the FCNM, and invite consideration of minority language educational provision at various levels in the educational system. Significantly, the tone of the Committee of Experts was somewhat more critical than that of the Advisory Committee, particularly in respect of Scottish Gaelic. For example, the overall assessment of the Committee of Experts was that the measures referred to by the UK authorities taken in respect of Gaelic in the educational system were insufficient to meet the requirements of the undertakings chosen by the UK under the Charter.²³⁹ The Committee of Experts added that, given the further decline in numbers of Gaelic speakers and the concurrent increase in demand for and interest in Gaelic-medium education, there was an urgent need to strengthen teacher training.²⁴⁰ With regard to Welsh-medium education, the Committee of Experts noted that its practical availability varied, and that they could not rule out the possibility that there may be areas where the UK's obligations under the Charter are not fulfilled.²⁴¹ They also found problems with provision at the level of further and higher education.²⁴²

With regard to broadcasting matters, the Advisory Committee noted "with approval" the various measures of support provided to Welsh medium broadcasting, merely "noted" the measures taken in respect of Gaelic (while welcoming the consideration that was then being given by the UK government to the creation of a dedicated Gaelic television service) and again simply "noted" that there was no Irish language television station in Northern Ireland, that there were complaints from Irish speakers on the lack of progress on the development of Irish television production and from Ulster Scots speakers about the general lack of provision for their language, and concluded that the government should explore what further steps that could be taken to cater for the needs of persons in the Irish-speaking community in particular, as well as the needs of Ulster Scots.²⁴³ Once again, the Committee of Experts' treatment of broadcasting issues was generally much more detailed and, again, this is not surprising, given the significant normative differences highlighted earlier in this study. With regard to the tone of the conclusions, the Committee of Experts noted that broadcast services in Welsh were well developed, but also noted that shortcomings existed in the services in Irish and Scottish Gaelic, particularly regarding television.²⁴⁴ Significantly, the Committee of Experts took a less positive view of the efforts of the UK government in respect of the establishment of a Gaelic television service; they noted that the new Communications Act (2003) did not expressly provide for the promotion or establishment of a Gaelic television channel, and although representatives of the UK government's Department of Culture, Media and Sport stated that this legislation would "enable" a station to be established, "should funding become available", the Committee of Experts "regretted" that there was no evidence of such funding being made available. They concluded by stating that compliance with the undertaking chosen by the UK required more than the creation of a legal framework within which a channel can exist, but also requires positive action (including where necessary funding) on the part of the authorities to encourage and/or facilitate the creation of a channel.²⁴⁵ It should be noted that timing may explain some of this difference in tone; the Advisory Committee conducted its work at a relatively early stage in the development of the 2003 legislation, whereas the Committee of Experts conducted its work at the end of the legislative process, at a point when the early promise had been somewhat overtaken by events. Differences in emphasis and tone which are attributable to such timing issues are obviously unavoidable.

Finally, there are a few factual items which are referred to by one committee but not mentioned by the other. For example, with respect to trans-frontier exchanges, the Committee of Experts makes reference to the Nova Scotia Initiative, a joint initiative in respect of Scottish Gaelic between the government of the Canadian province of Nova Scotia and the Highland Council in Scotland, to the cross border language body, Foras na Gaeilge, formed under the Belfast Agreement between the UK and the Republic of Ireland, and the work of the

²³⁹ Para. 198, Draft Report of the Committee of Experts.

²⁴⁰ Para. 230, Draft Report of the Committee of Experts.

²⁴¹ Para. 106, Draft Report of the Committee of Experts.

²⁴² Para. 113, Draft Report of the Committee of Experts.

²⁴³ Paras. 67, Opinion of the Advisory Committee.

²⁴⁴ Conclusion G, Draft Report of the Committee of Experts.

²⁴⁵ Para. 263, Draft Opinion of the Committee of Experts.

Welsh Language Board on special education projects in the Welsh-speaking areas of Patagonia, Argentina.²⁴⁶ However, no mention is made of any of these initiatives in the relevant portions of the opinion of the Advisory Committee, although that committee did refer to the Belfast Agreement.²⁴⁷ These views were reflected in the Committee of Experts' conclusions, in which they noted that minority language education is patchy and even non-existent in certain relevant parts of Scotland, and that more must be done in terms of coherent policy-making and planning in the field of education, including the allocation of adequate resources.²⁴⁸

To conclude, the output of the two committees in respect of the UK showed perhaps the most significant divergences in approach of all of the three cases considered in this study. This was due, to a very considerable degree, it would appear, to the considerable differences in the personal scope of the two treaties, and in particular to the definition given by the UK to the term "national minority". While the definition applied was laudably inclusive, possibly it focused attention away from the particular needs and circumstances of the autochthonous language communities who are the principle beneficiaries of the Charter. It would also appear that, due to the differences in the personal scope of the two treaties which resulted from the UK approach to the FCNM, considerably different emphasis was placed by the UK in respect of its state reporting under each treaty. It is also fairly clear from the divergences in the approaches taken by the two committees that somewhat different evidence was uncovered in the process of monitoring of the State reports. Even if the two committees do employ somewhat different information-gathering processes, it would seem to be important that both committees receive as wide a range of information as is possible, and that both have access to the same sources of information.

d) Concluding Comments

Based on the three cases which were the subject of this study, there do appear to be some notable differences in the approaches taken by the two committees in respect of their monitoring of similar provisions of the two treaties. By the same token, there is relatively little evidence of serious inconsistencies or outright contradictions in the output of the two committees. Such differences as do occur are to a significant extent the result in differences in the norms themselves; although the two treaties do deal with similar issues, the actual legal norms with respect to those issues tend to diverge in important ways. Given these normative differences, it is not surprising that different approaches are taken by the two committees, and, indeed, such differences in approach are entirely justified, given these normative differences. However, in some cases, differences in approach and, indeed, differences in factual content seem to have been due to the two committees having had access to different information. It would be appropriate, both in terms of minimising any unnecessary inconsistencies and divergences, and in terms of simply ensuring the highest possible quality of output, that such differences in information are minimised, and this shall be explored further, in the conclusions and recommendations, at the end of this study.

5. Analysis of the Work of the Committees in Preparing Reports

While the differences in approach taken by the two committees in respect of similar provisions in the two treaties were largely due to the substantive differences in the precise legal norms, the three cases analysed also indicate that there were factual differences between the two committees in places. To some extent, it would appear that the omission by one committee of matters referred to by the other was due to the decision of the first committee not to report the information, perhaps because it was felt that such level of detail was unnecessary; this appeared to be true of the Advisory Committee, whose opinions often contained less detailed information than the reports of the Committee of Experts, or contained summaries of more detailed information. Such differences in treatment are generally appropriate, as they are guided by the level of specificity required by the different legal norms

²⁴⁶ References made in the context of Article 7, paragraph 1 (i) of the Charter, at paras. 79 to 81, Draft Report of the Committee of Experts.

²⁴⁷ Paras. 102 and 103, Opinion of the Advisory Committee, in respect of Articles 17 and 18 of the FCNM.

²⁴⁸ Findings, Draft Report of the Committee of Experts.

themselves. In some cases, though, a failure to refer to particular information may have been due to one committee simply not having received such information. Also, there were a very small number of cases which suggested that the two committees received different or conflicting information. It would certainly be appropriate to endeavour to ensure, to the greatest extent possible, that both committees have the fullest information available, and that such information provides as complete and consistent a picture as possible. There would appear to be three sources of possible divergences in information.

a) Information Provided by the State: State Reports and Questionnaires

The first step in monitoring process of the two committees is the preparation by States of their periodical report (under the Charter) and State report (under the FCNM). These reports are obviously a crucial source of information to the two committees, and in many ways form the basis upon which the committees subsequently carry out their work. The format of both the periodical reports and the State reports is, as was noted above in this study, determined by the two committees, and in general follows the structure of the two treaties. Thus, the responses are guided to a considerable extent by the nature of the legal obligations. Given the normative differences between the two treaties, highlighted earlier in this study, it is not surprising that periodical reports on the one hand and the State reports on the other will include somewhat different information.

A review of these reports, and of responses to the questionnaires subsequently sent to the States by the two committees, does not reveal any obvious conflicts in information being provided. Where there is a significant difference in the timing of the submissions, as was the case with respect to the two UK reports, the later submission will, not surprisingly, make reference to events, legislative and otherwise, which have taken place since the time of the earlier report. However, there were no obvious inconsistencies or contradictions in the information provided. Rather, the reports under the two instruments differed primarily in the extent of the information provided and, to a certain degree, in the type of information provided. This, however, would once again largely be due to the differences in the nature of the two instruments and in the norms contained within them.

In particular, the periodical reports under the Charter tended to contain considerably more detail about demographic issues concerning the minority language communities. This is partly due to the fact that the framework for the periodical reports under the Charter provides for an introductory section, Part I in each report, that requires States to provide background information on the actual situation of the various regional or minority languages. The State reports under the FCNM contain no equivalent section, with the result that the State reports under the Charter ensure that somewhat more detailed background information exists. The other major difference is that the provisions of Part III of the Charter tend, as noted earlier, to be much more detailed than the equivalent provisions of the FCNM, and because of the greater particularity of the information required, a greater amount of detail generally emerges. A considerable number of examples could be provided, but the content of the State reports with respect to the provisions of the two treaties relating to minority language education (Article 8 of the Charter and Articles 12 and 14 of the FCNM) generally illustrate this point very effectively. In all three cases considered in this study, the periodical reports under the Charter provide much more detail than the State reports under the FCNM as to the precise legal regime for minority language education, at various levels in the educational system, as well as numbers of students in attendance, numbers of schools and so forth.

Given the normative differences between the two treaties, the differences in format of the two types of report and in levels of detail under each report are, to a considerable extent, unavoidable. To ensure, however, that both committees have at least the same basic information with respect to matters such as minority language education, broadcasting, public services and so forth, consideration could, for example, be given to the development of a common database, which could be built by the use of certain common prompts in the formats of the two types of reports and of certain common questions in the questionnaires sent to States that would effectively require States to summarise the legal framework for these various domains, and to provide certain basic factual information (e.g. numbers of schools, students in minority language education, numbers of television and radio stations or hours of

broadcasts, and so forth). This common database could be updated on the receipt of subsequent State reports under both instruments and of responses to questionnaires.

b) Information received from NGOs and other Written Sources

As was noted in Section 2 of this study, both the Committee of Experts and the Advisory Committee may receive information from sources other than the State. Such information has undoubtedly enriched the understanding of both committees of the matters covered by the treaties and enhanced the ability of the committees to critically assess the claims made by States in their reports and other communications. NGOs and other bodies and individuals may, however, have made submissions in respect of only one of the two treaties, or may have provided somewhat different information in respect of each treaty (perhaps, for example, because they have made submissions to each committee at different points in time, and significant changes have taken place between submissions). Where this has occurred, the two committees will be working with different information, and this may lead to important differences in output. Indeed, this possibility is most clearly illustrated by the monitoring of the United Kingdom.

The monitoring of the UK in respect of the Charter elicited a large number of submissions from various minority language NGOs representing all of the regional or minority languages in the UK to which the Charter applies. Many of these responses were very sizeable and detailed, often containing considerable amounts of demographic, historical and other relevant data. For example, the umbrella organisation representing Irish language NGOs in Northern Ireland, Pobal, submitted a 46-page document, followed by a sizeable addendum. With respect to the Ulster-Scots language community in Northern Ireland, both community-based organisations, such as the Ulster-Scots Language Society, and State-supported organisations, such as the Ulster-Scots Agency, made written submissions to the Committee of Experts.

Several organisations from the Scottish Gaelic community also submitted sizeable documents, including a 15-page report from the Edinburgh-based campaign group Fàs (Dhun Eideann), an 8-page submission from CLI (an organisation representing learners of Scottish Gaelic), and a 41-page document from Comunn na Gàidhlig (CNAG), a Gaelic development organisation partly funded by the authorities in Scotland. Several organisations representing the Scots language community in Scotland submitted information, including Scots Tung (an 11-page submission), the Scots Language Resource Centre (a 15-page submission), Scots Language Dictionary Ltd., the Scots Language Society, and a working party of the Scottish Parliament, the Parliamentary Cross-Party Group on Scots (25 pages).

In Wales, both the Welsh Language Board, the non-departmental public body created by the UK government to implement the *Welsh Language Act 1993*, and various community-based NGOs, including Cymuned, a campaigning organisation (a 16-page submission, a 10-page addendum and additional research material), Mudiad Ysgolion Meithrin, a pre-school education NGO, and Parents for Welsh Medium Education, made submissions. Finally, a number of NGOs in Cornwall, including Kowethas an Yeth Kernewek (a 24-page submission), Agan Tavas ("Our Language", a 17-page submission), Cornwall 2000, the Cornwall Subcommittee of the European Bureau for Lesser Used Languages, and the Constitutional Committee of the Cornish Stannery Parliament, all made submissions to the Committee of Experts.

In the large majority of cases, it appears that these submissions were made prior to the "on-the-spot visit" of the Committee of Experts to the United Kingdom, therefore enhancing the understanding of the working group and, perhaps, its effectiveness when meeting with policy makers, officials and bodies constituted under the law of the State.²⁴⁹

The record of responses by British-based NGOs in respect of the FCNM was very different. Based on information provided to the author of this study by the Secretariat to the

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It should be recalled that the Committee of Experts has adopted a policy of not considering information received more than a month after the "on-the-spot visit"; the ongoing receipt of new information could, in the absence of such a policy, result in delays in the production of the committee's report.

FCNM, it appears that none of these minority language NGOs made any submission to the Advisory Committee prior to its visit to the UK, with the exception of the Cornish Stannery Parliament, which provided a press release relating to the Cornish language. Indeed, the only linguistic minority community which did take the opportunity to make significant submissions was the Cornish community; a very thorough and extensive submission, entitled “The Cornish and the Council of Europe Framework Convention for the Protection of National Minorities”, was made by an ad hoc organisation called the Cornish National Minority Report, and a significant number of letters (12, in all) were submitted by individual members of the Cornish community. As will be discussed, below, the Advisory Committee working group visited Belfast, where it met with some of the language organisations which had later submitted material to the Committee of Experts in respect of the Charter, and two of these organisations, Pobal and the Ulster-Scots Language Society, both made submissions to the Advisory Committee after the visit to Belfast. In both cases, however, the submissions were rather short (the English version of the Pobal submission was less than 4 pages, and that of the Ulster-Scots Language Society was less than three), and in both cases, the submissions did not contain anything close to the range and depth of information on language issues which was provided by these two organisations to the Committee of Experts.

This pattern of submission was much more marked in respect of the monitoring of the UK than in respect of the monitoring of Hungary and Sweden, and it is not altogether clear why such a pattern emerged. One reason may simply be the approach taken by the UK to the personal scope of the FCNM, described above, in which the definition of “national minority” used by the UK was particularly broad, but did not, perhaps, focus attention as clearly on linguistic minorities. The poor response record by language NGOs in the UK to the process of monitoring under the FCNM may suggest that many of these NGOs either did not know of the existence of the FCNM or were not aware that monitoring was taking place (perhaps because the UK authorities had not sufficiently publicised the FCNM or invited NGO participation in the preparation of the UK State report). Another possibility is that such NGOs knew that monitoring was taking place, but did not feel that the FCNM was particularly relevant or useful to them, given either the rather broader and less detailed norms of the FCNM, or the broad approach taken by the UK to the personal scope of the FCNM. Determining whether these, or other additional factors, played a role would require a consultation of the various NGOs, and perhaps of the State authorities, and this is clearly beyond the scope of this study. The pattern of submissions does, however, suggest that some, and perhaps all of these factors were at play.

The UK experience does suggest, however, that differences in NGO participation in the monitoring process help to explain differences in the output of the two committees, not simply in relation to factual matters, but also, perhaps, in terms of tone and even conclusion. The large number of strong and critical representations made by NGOs in respect of UK implementation of the Charter, for example, may help to explain the rather critical approach taken by the Committee of Experts in their report; contrast, for example, the rather limited discussion of Scottish Gaelic in the report of the Advisory Committee and the detailed and robust comments and conclusions arrived at by the Committee of Experts. While NGOs obviously cannot be forced to make submissions in respect of State reports under both the Charter and the FCNM, nor can they be expected necessarily to provide the same information (given the substantive differences between State commitments under the two treaties, highlighted earlier in this study), the possibility that discrepancies can arise might be reduced by taking steps to ensure that NGOs are advised of the opportunity to make submissions to both committees. A database of NGOs could, for example, be jointly prepared by the secretariats to the two committees. Also, both committees could, in the process of subsequent rounds of scrutiny, make reference to submissions by NGOs to both committees under previous scrutiny rounds.

c) Information Obtained on the Visit to States

The ability of both committees to visit States as part of the monitoring process is, as noted above, a laudable aspect of the practice of both committees, and it has contributed considerably to the quality of the output of the scrutiny process. To the extent, however, that the working groups of the two committees meet with different NGOs, public bodies and

governmental officials, differences can emerge in the information that the two committees receive and in the impressions that the two committees form.

Once again, the monitoring by both committees of the UK provides a good example of the divergences which can occur, as there were very considerable differences in the itinerary of the two committees and therefore in the identity of NGOs, public bodies and governmental officials met by the two committees. The Advisory Committee working group visited only London and Belfast, while the Committee of Experts working group visited Edinburgh, Stornoway and Cardiff as well London and Belfast, and this had the practical effect of considerably expanding the range of organisations and officials which the committee could meet, and also arguably gave them a somewhat broader taste of the actual situation of linguistic minorities, at least, in various parts of the UK. There were also very considerable differences in both the governmental bodies and the NGOs which the working groups of the two committees met.

With regard to governmental bodies, the Advisory Committee working group met with a range of Westminster departments, such as the Department of Education and Employment, several sections within the Home Office which dealt with ethnic minority matters, the Department for Culture, Media and Sport, and the Lord Chancellor's Department. They also met with the Commission for Racial Equality and the BBC programming office. When in Northern Ireland, they met with the Northern Ireland Human Rights Commission, the Police Ombudsman for Northern Ireland, and the Northern Ireland Education and Employment Departments. Although they met with the Welsh Office and the Scottish Office, the two Westminster departments with responsibility for Scotland and Wales, they did not meet with the devolved assemblies (the Scottish Parliament and the Welsh Assembly) or the devolved administrations (the Scottish Executive, and the Welsh Assembly Government).

The Committee of Experts working group, by contrast, had only limited contact with Westminster departments—they met with representatives of the Ministry for Culture, Media and Sport, and with representatives of the Foreign Office—and did not meet with bodies with special responsibilities in respect of so-called “new minorities”, such as the Commission for Racial Equality, at all. The Committee of Experts working group did, however, meet with a wide range of governmental and public bodies in Scotland, Northern Ireland and Wales which the Advisory Committee did not meet, including the Scottish Parliament, the Scottish Courts Service, three local councils in Scotland, representatives of the Welsh Assembly (including members of its culture committee), representatives of various departments within the devolved Welsh administration, and departments in the devolved Northern Irish administration with special responsibility for linguistic matters, such as the Northern Ireland Department of Culture, Arts and Leisure. The Committee of Experts working group also met with bodies established by government with special responsibility for linguistic matters, such as the Welsh Language Board, the Gaelic Language Board, S4C (the Welsh-language television channel), the Gaelic Broadcasting Committee (which funds the production of Gaelic television and radio programming in Scotland), Foras na Gaeilge (the Irish Language development body), the Ultach Trust (set up by the Westminster government to promote cross community understanding through the Irish language), and the Ulster Scots Agency.

With regard to NGOs and other bodies, there were also very dramatic differences in the organisations with whom the two committees met. The Advisory Committee working group met with a very large number of NGOs active in the visible minority communities and who represent the so-called “new minorities”, but met with very few organisations representing autochthonous communities, and few with a minority language remit. In particular, the Advisory Committee working group apparently met with no organisations representing the Welsh-speaking, Scottish Gaelic-speaking and Scots-speaking communities; they met with a few organisations representing Cornish interests (though not all of these necessarily had a particular interest in the Cornish language), two organisations representing Irish speakers in Northern Ireland (Pobal and An Gaeilge), and two representing the Ulster-Scots language community (the Ulster-Scotch Heirskip Council, and the Ulster-Scotch Language Society). The Committee of Experts working group, by contrast, met with no representatives of “new minorities”—which is not surprising, given that the Charter does not apply in respect of the languages of such communities—and met with a very large number of

language NGOs working in the Welsh, Scottish Gaelic, Irish, Scots, Ulster Scots and Cornish language communities, as well as certain private sector organisations, such as independent producers of Gaelic television programmes.

The significant differences in the itineraries of and the nature of governmental and non-governmental bodies with which the working groups of the two committees met almost certainly resulted in significant differences in the nature and amount of information the two committees obtained, and this may help to explain some of the differences in the content of the reports produced by the two committees. Yet, the differences in itinerary and in identities of groups and individuals met were understandable and, to a certain extent, at least, justifiable, given both the normative differences between the two treaties, discussed earlier in this study, and, especially, in the approach taken by the UK government to the personal scope of the FCNM, which, as noted earlier, placed considerable emphasis on “new minorities”. However, given that the FCNM does have a significant number of provisions relevant to linguistic minorities, it may have been appropriate for the Advisory Committee working group, in particular, to have had the opportunity to have met with a much wider range of NGOs representing autochthonous language communities—particularly the Welsh, Scottish Gaelic and Scots communities—and governmental and other public bodies serving such communities.

While the differences in itineraries of the working groups of the two committees and in the nature of governmental and non-governmental organisations with which they met were particularly stark in the case of the UK, such differences also existed with respect to Sweden and Hungary. On its visit to Sweden, the Committee of Experts working group visited Stockholm, Kiruna, Lulea and Pajala; the Advisory Committee working group visited all such locations except Pajala. With respect to governmental bodies, there was a considerable overlap in those with whom the working groups of the two committees met, particularly in Stockholm. Both working groups met with representatives of the Ministry of Foreign Affairs, the Ministry of Education, the Ministry of Media and Culture, the Swedish Association of Local Authorities, and the Ombudsman Against Discrimination. However, the Committee of Experts working group met with a somewhat wider range of divisions within the Ministry of Education, with the Inter-Ministerial Working Group on Issues Related to National Minorities, and also met with Swedish TV and the Swedish Broadcasting Company. On the other hand, the Advisory Committee working group also met with certain governmental bodies which the Committee of Experts working group did not meet, such as the Division for Immigrant Integration and Diversity within the Ministry of Industry and Employment, and the Ministry of Agriculture; they also met with parliamentarians, and, in particular, with the Parliament's Committee on the Constitution.

With regard to NGOs and other bodies, there was also some overlap in those with whom the working groups of the two committees met, although the working group of the Committee of Experts generally met with more such organisations. For example, both working groups met with: representatives of the Sami Parliament, Sami Radio and Sami TV in Kiruna; representatives of the Municipality of Haparanda in Lulea; representatives of the Swedish Tornedalian Association (although in different locations, Pajala and Kiruna); the Swedish Bureau of Lesser Used Languages; representatives of the Swedish Finnish Umbrella Organisation; a representative of the Finnish Institute; representatives of the Roma National Union; the Roma International Union; representatives of Skansk Framstid; and, representatives of the Official Council of Jewish Communities. However, the working group of the Advisory Committee met with a few bodies which the Committee of Experts working group did not, such as certain representatives of various branches of the local authority administration in Kiruna, and the chairperson of the regional Swedish-Finnish Organisation in Lulea. The working group of the Committee of Experts, on the other hand, generally met with a wider range of organisations. For example, they met with the Sami Cultural Council, the Sami School Board, and a Sami magazine in Kiruna, and also visited a Sami school there. They met with representatives of a range of Swedish-Finnish organisations in Kiruna, and their visit to Pajala allowed them to meet with a wide range of organisations representing the Tornedalian/Meänkieli community. Finally, in Stockholm, the working group of the Committee of Experts also met with a wider range of organisations representing the Swedish-Finnish

community, including the Finnish radio station, the Finnish language television broadcaster SVT, two weekly Finnish language newspapers, and the Swedish-Finnish Youth organisation.

A similar pattern emerged in Hungary. The Advisory Committee working group only visited Budapest. While the Committee of Experts working group spent most of their time in Budapest, they also visited Pilisvorosvarra, a German-speaking community, Szentrendren, a Serbian-speaking municipality, and Mlynki, a Slovak-speaking municipality, where they were able to meet local governmental officials, visit schools, and so forth. Generally, though, the working groups of the two committees tended to meet many of the same organisations. They both met with representatives of national governmental ministries such as the Ministries of Education, Culture and Media, the Interior, and Foreign Affairs. They both met with the Parliamentary Commissioner for the Rights of National and Ethnic Minorities, and with parliamentarians, including a representative of the Parliamentary Committee on Human Rights, and the National Minority Self Governments. The Committee of Experts working group also met with representatives of all regional or minority language communities covered by both Part II and III of the Charter (although all were members of the National Minority Self Governments), and with representatives of Hungarian State TV. The Advisory Committee working group, on the other hand, met with a range of Roma groups, including the Roma Parliament, the European Roma Rights Centre and the Foundation for Romani Civil Rights, met with human rights NGOs such as the Hungarian Helsinki Committee, and with a variety of organisations which deal with the rights of national minorities, including the Public Foundation for National and Ethnic Minorities, the Public Foundation for Roma in Hungary, and the Legal Defence Bureau for National and Ethnic Minorities. Again, given the relatively wider scope of the FCNM, and the particular relevance of the FCNM to Roma issues, these differences are not surprising, and are, indeed, appropriate.²⁵⁰

To summarise, there were clear differences in both the itineraries of the working groups of the two committees and in the nature and identity of many organisations, governmental and otherwise, with which they met in all three States. Given both the normative differences between the two treaties and the somewhat different approaches taken by the same States to their application (and in particular, to their personal scope) and their implementation in those States, many of the differences identified in this subsection are understandable. Yet, it would also appear that some of the organisations with which one or the other of the working groups met would have been able to provide information of relevance to the other working group; this appears to be particularly true with respect to some of the NGOs representing “autochthonous” minority language communities which met with the working group of the Committee of Experts but not that of the Advisory Committee. While it would not be advisable, given the differences between the two treaties, nor even possible to ensure that the “on-the-spot visits” of the working groups of the two committees are identical, it may be useful for the two committees to be apprised of the itineraries of the other on any previous “on-the-spot visit” or visits, and to be provided with a copy of the summaries of the visits which are prepared by the two secretariats after completion of the visits. It may also be advisable for the two secretariats to confer with each other in preparing itineraries for subsequent visits. In this way, it may be possible to ensure a higher degree of consistency of information and, indeed, to ensure that a wider range of information is available for both committees. Certainly, a common database of governmental departments, public bodies and NGOs, containing contact details and, perhaps, a short summary of the organisation's competencies, could be of considerable benefit to both committees, and could ensure that the options as to information gathering are maximised and, significantly, that organisations which are of particular importance with respect to matters covered by both treaties are not overlooked.

6. Conclusions and Recommendations to Enhance Consistency

Based on the three cases considered in this study, there appear to be clear differences in the output of the Committee of Experts and the Advisory Committee in respect of those points where the Charter and the FCNM overlap, as illustrated in section 4 of this

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This analysis is based only on material relating to the first monitoring cycle under both treaties.

study, above. To a very considerable extent, however, such differences appear to be largely due to the significant differences in the actual content of the legal norms under the Charter and the FCNM, as illustrated in section 3 of this study, above. To the extent that differences in output are due to differences in the norms themselves, such differences would appear to be inevitable, and should not be a cause for concern. As noted in section 3 of this study, the two treaties, while similar, and to a considerable extent complementary, do also differ in important respects.

The analysis in section 4 of this study did, however, reveal some inconsistencies and, in a very few cases, contradictions which did not appear to be based on normative differences. Rather, such inconsistencies and contradictions appear to have been due to differences in the factual information available to or relied upon by the two committees, or to differences in the interpretation of such data by the two communities. The extent of such problems does not appear, on the evidence of the three cases considered, to be significant. Nevertheless, such problems should be avoided or minimised. The following recommendations are based on the possibilities for co-operation between the two committees (and between their two secretariats) which are created under the rules of procedures of both committees, discussed in section 2 of this study. The recommendations are as follows:

1. Both committees should consider the output of the other committee in respect of a State that is being monitored, and this should be done at an early stage in the process of monitoring of the State report, if this is not already done as a matter of standard practice. Such consideration would act as an early warning system in respect of potential inconsistencies which may ultimately arise.

2. There were some differences in the information provided by States themselves, both in their State reports and in the supplementary information provided in response to questionnaires. The structure of the State reports, as required by the two committees under the two treaties, differ in many respects, but as the State reports follow the content and structure of the two treaties, such differences are unavoidable. It would be inappropriate to attempt to reduce the possibilities of such differences by amending the structure of the State reports. Similarly, the follow-up questionnaires must be guided by the information requirements dictated by the treaty the implementation of which is being monitored. Differences in disclosure of information by States in reporting under the two treaties might be better addressed by ensuring that each committee (or each secretariat) shares and then reviews the State reports and responses to questionnaires provided to both committees. A particular State will always have submitted its report and, usually, its responses to the questionnaire under one of the two treaties when the process of scrutiny under the other treaty commences. A review of information provided by the State under the one treaty may highlight information not disclosed or inadequacies or contradictions in the information provided by the State in respect of the other treaty. It is likely that each committee will, when conducting its second round of monitoring under either treaty, make reference to the initial periodical report or first State report, as the case may be, and responses to the first questionnaire in respect of that treaty. Each committee could at this point also usefully make reference to any State report or responses to a questionnaire provided in respect of the other treaty. While the consideration of information provided by a State under the other treaty may put additional pressures on the two committees and, indeed, on the two secretariats, the advantages gained, in terms of additional information and redressing of potential inconsistencies could be considerable.

3. Where the subject matter of the Charter and FCNM did overlap, even though there are often differences in the substantive norms, it is often the case that the two committees may be monitoring the same pieces of domestic legislation and may be considering the activities of the same administrative bodies, governmental departments, regional and local authorities, and so forth. It may therefore be advisable for the committees to develop a common database that would contain references to all relevant domestic legislation, perhaps organised by subject matter, as well as a list of all relevant public sector bodies, together with appropriate contact persons and/or contact departments with such bodies. As new information is uncovered by either treaty body (new or additional legislation, other public bodies relevant to linguistic issues, and so forth), the database could be amended, to the

benefit of both treaty bodies. A database of relevant public bodies would be a particularly useful in planning “on-the-spot visits”. ECRI might also be profitably included in such an exercise.

4. The ability of both committees to both accept and even seek out information from NGOs and other sources is one of the most commendable aspects of the monitoring mechanisms established under both the Charter and the FCNM. However, differences in the input received by the committees from such sources can occur, both due to differences in the content of submissions by the same NGO or other source in respect of the two treaties (in part because of their normative differences), and due to the fact that not all of the same NGOs and other sources of information will have submitted information under both treaties. Based on such NGO and other material as was scrutinised in the preparation of this study, the major source of potential difficulties appeared to be the latter problem. Indeed, while the structure of submissions and, in some cases, the actual content of submissions made by NGOs sometimes differed, this was, again, largely due to the differences in the structure of the two treaties, the State reports to which NGOs were responding, and the normative differences already described. Such differences are unavoidable, and are not a problem. The more important problem was an occasional lack of commonality in the NGOs and other sources which submitted information to the two committees, and this did seem to result in some differences of output, particularly evident in the Report of the Committee of Experts and the Opinion of the Advisory Committee on the UK's implementation of its obligations under the Charter and the FCNM, respectively. A possible way of resolving this problem would be the development of a common database of NGOs and other non-state sources, including academic and other writing on the States. The database could contain a description of the body or source providing the information, the particular role and competencies of the body or source, and its relevant contact details, including relevant personnel. The database could also provide a short summary description of the information already made by the body or source, thereby allowing the two committees and/or their secretariats to determine whether to access such submissions already provided or to invite the body or source to provide additional information. Given the large amounts of material that must already be considered by the committees and their secretariats in the course of monitoring of a State report, it is advisable to leave to the discretion of the committee or secretariat whether they wish to consult such material. It may, however, be advisable for both committees to use the common database to ensure that, to the maximum extent possible, all NGOs and other sources of information are made aware of the possibility of submitting information in respect of subsequent monitoring of State reports, and that such bodies and sources are considered in the planning of the “on-the-spot visit”. Once again, ECRI might also be profitably included in such an exercise.

5. The ability of both committees to conduct “on-the-spot visits” of the States whose reports are being monitored and to meet with governmental bodies, non-governmental public bodies, regional and local authorities, and NGOs is another highly commendable and innovative feature of the monitoring mechanisms established under both treaties. However, it is clear that there were differences in the itineraries of the two committees, in terms of the bodies and people that they met and, sometimes, even in the locations visited. The preparation of the databases of public sector bodies and NGOs and other sources, referred to in points 3 and 4 of this section, may help to reduce such discrepancies, ensuring that both committees are receiving input from as many of the same bodies (at least in respect of language matters) as possible. An absolute identity of those consulted during an “on-the-spot visit” may be neither possible nor desirable in all cases, particularly given the normative differences and, indeed, the potentially much broader personal scope of the FCNM. However, it would seem advisable that both committees should be able to identify those public sector bodies and NGOs and other sources that are most important in terms of language issues—particularly those which are most capable of providing detailed, comprehensive and reliable information. In addition to consulting the databases referred to above, it may also be desirable for the working group and secretariat of the committee which is about to visit a State to contact or meet with the committee or the secretariat under the other treaty, with a view to planning an itinerary. Such consultations may promote a greater consistency with respect to the material covered, and may help the two committees in

planning the most effective itinerary, in terms of identifying the most important potential sources of information.

6. As noted in section 3 of this study, there are significant normative differences in those provisions of the two treaties which cover overlapping subject matter. As discussed at the end of section 3, though, there are certain concepts which are common to both treaties, such as sufficiency of demand, and the concept of the territory within a State in which speakers of minority languages are present traditionally and/or in sufficient numbers to justify the implementation of various measures of State support. Based on the three cases considered in this study, it does not appear that any inconsistencies or contradictions resulted from a different interpretation of these concepts by the two committees. Nonetheless, given the rather elastic nature of such concepts, the potential for such inconsistencies or contradictions exists. It may therefore be advisable for the two committees to develop a common set of principles which could guide their application in practice. Furthermore, it may be advisable for the one committee to consult with the other committee when it is considering the application of these concepts in the context of a particular State. To the extent that the other committee has already considered the issue, the second committee would at least be alerted to that fact in carrying out its scrutiny (of course, a consideration of the output of the other committee, as suggested in point 1, above, would highlight this in any case). The committee which is about to apply such concepts may, however, wish to consult the other committee or at least the secretariat in coming to a determination of how it will apply the concept. This may allow for the development of a common approach, and will, at very least, put the other committee on notice that a potential inconsistency could arise and that it should consider such a possibility in carrying out its work on that State's next report under the other treaty.

In making these recommendations, the author of this study is aware of some potentially significant barriers to their implementation. For example, any of these measures would require the commitment of at the very least additional human resources. In particular, the preparation and maintenance of databases and the review of additional material can require significant amounts of time. Both committees and their respective secretariats are already extremely busy under what are already very heavy workloads, and these commitments will become even greater as more States sign up to the treaties, and as both committees embark on their second round, and in a few cases under the Charter, the third round of monitoring. Funding of both secretariats has been limited. Nonetheless, the importance of implementing measures which can both reduce any inconsistencies and worse, contradictions in the output of the two committees and more generally further strengthen the already high quality of output should be given serious consideration. If such co-ordination as is suggested here would require the commitment of additional resources, this would simply constitute one further argument for additional funding for both Secretariats from the Council of Europe.