

Romani CRISS
Roma Center for Social
Intervention and Studies

Roma and the Council of Europe's Framework Convention for the Protection of National Minorities

A text compilation regarding the interpretation of the Framework Convention for the Protection of National Minorities and reports regarding the implementation of Articles 4 and 6 of the Convention, irrespective, the rights of equality before the Law and protection against ethnic discrimination; for the use of the Roma non-governmental organizations, Human rights advocates and legal advisers

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Foreword

“All human beings are born free and equal in dignity and rights...”

This beautiful phrase opens the United Nations Universal Declaration on Human Rights, agreed 54 years ago on 10th December 1948. It followed the terrible Second World War and the genocide of Jews and Roma/Gypsies throughout Europe. The Declaration continues:

“They are endowed with reason and conscience and should act towards one other in a spirit of brotherhood.”

All of us, who work together for justice and human rights in the world, know that if only Article 1 of the United Nations Declaration on Human Rights were implemented in its letter and spirit our lives and the values in society would be transformed. However it is important to go beyond this Article to give it some breadth and depth. How can we interpret this Article in our daily lives to embrace peoples' individual and collective needs? How can we include civil and political issues? How can we include economic, social and cultural concerns? What should be the approach towards minority communities and topics such as political and economic participation? How is this approached in other European countries?

This publication by Romani CRISS takes us a long way forward in answering these questions in a thoughtful and practical way. It concentrates on specific regional minority standards, in particular the new and dynamic Council of Europe Framework Convention for the protection of National Minorities (FCNM), its detailed standards that include demands for legislation and policies, its describes mechanisms for monitoring the implementation of these standards through the rule of law and practical programmes, and provide interpretations from existing jurisprudence on FCNM of the Council of Europe.

The first words of the Charter of the United Nations are *“We, the peoples of the United Nations, determined....”*

It does not say *“We, the States, determined....”* nor does it say *“We, the Foreign Ministers, determined....”*, this was no accident after a world war that was caused by dictatorial ambitions, in which tens of millions of people were killed. Yet too often over the last 50 years international human rights standards, that include minority rights standards, have been treated as State secrets. They have been regarded as the domain of Ministries of Foreign Affairs to be used in foreign relations or, occasionally, dusted down and reviewed to produce reports for treaty monitoring bodies in Geneva or Strasbourg.

Human Rights with the duty on us all to respect the equality in dignity and rights of others, need to be owned and enjoyed by everyone in his or her daily life. Where rights are respected these should be celebrated and where they are rejected this should be criticised by us all.

Romani CRISS's crucial work to broaden the understanding and ownership of minority rights throughout Romania from Botosani to Bucharest deserves praise and support. I know from personal experience how Romani CRISS played an important and constructive role on promoting the implementation of FCNM when I was Vice President of COE Advisory Committee on FCNM. They had a profound understanding of the individual and collective issues confronting Roma throughout the country. This was in part due to their practical project work in Roma communities and the high quality advocacy lead by Roma men and women working together. Romani CRISS provided accurate, concise and authoritative evidence and recommendations that were important to the Council of Europe but, more importantly, has helped good government officials and donors understand the complex issues and start implementing changes nationally and locally.

This new publication may be equally valuable, promoting an understanding of minority rights throughout the country. It will also make it more likely that Roma and non-Roma will enjoy a growth in equality, dignity and rights throughout Romania.

Alan Phillips
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Author's note

The existence of stereotypes and prejudice with respect to Roma has determined the society they live in to restrict access to individual fundamental rights for Roma persons. Therefore, was realised implicitly a *de facto* conditionality of "the right to have rights" imposed through the practice of discriminatory behaviour which resulted and still results in restricting or annulling a right. Roma history from the access to rights point of view is conditioned by the majority's will which had proven to be in fact restrictive towards Roma. For some people, probably, this point of view is no longer subscribed to taking into consideration the development of international relations and judicial system regarding the protection of human rights; however, some remarks – at least from the point of view of a human rights organization are required.

Face to face, the state and the Roma "minority" present two points of view diametrically opposed. Individual protection by the state is guaranteed both by the state's fundamental law as well as by the international human rights framework the state is party to. By discussing Roma either as the European, national or ethnic minority or as the Roma person regardless of the state he belongs to, the two opposite perspectives can be distinguished.

On one hand, the state identifies the Roma issue as an exclusively social one with economic, educational or sanitary approaches, with a certain social exclusion tendency, while the Roma civil society argues the lack of access to fundamental rights.

On the other hand, the state promotes at certain moment integration public policies, but the emphasis is once again placed on the social perspective, without balancing the perspective of accession to civil rights and adoption of non-discriminatory measures.

The European and international policies have developed in such a manner that the protection of national minorities represents an essential criterion which states must consider, but also guarantee. In this context, states argue the judicial protection of the individual and ensure equality before the law, granted both in the national and international relations. Is this sufficient?

Moreover, the existence of discrimination against Roma in general is denied, and in some cases this fact is argued by the existence of legal provisions in the Constitution or different normative acts, coupled with the lack of complaints regarding the commitment of discrimination acts.

In this context, Roma non-governmental organizations claim and emphasize the existence of discrimination, underlining the necessity of adopting strong legal measures to ensure equal access to rights and sanction of discrimination at the same time.

From a different point of view, the adoption of anti-discrimination legislation and specialised bodies for implementing it has passed the stage of necessity. The existence of independent

mechanism and their actual functioning must balance the two points of view. Adopting anti-discriminatory measures is not sufficient if it lacks effective implementation and a coherent institutional framework in which the judicial and non-judicial relations are implicitly regulated by ensuring independent bodies.

It seems that up to the present moment, this balance has not been reached at the national level in the domestic legislative system. The Framework Convention for the Protection of National Minorities is an example in this sense. Established as an international instrument for protecting human rights, the Framework Convention – through its evaluation and implementation mechanism – stress out the situation of minorities from the judicial perspective and realize the balance between the two points of view.

The opinions of the Advisory Committee and the resolutions of the Committee of Ministers of the Council of Europe on the situation of Roma with regard to article 4 and 6 are suggestive at the least: *Roma are a minority which should be acknowledged at national and international level, but at the same time we express concern regarding the discrimination Roma are subject to in different CoE member states countries.*

What until recent years was expressed as recommendation has now become an obligation for the majority of states. Adopting Directive 43/ 2000 of the Council of the European Union has imposed to both EU member states and candidate countries the year 2003 as deadline for adjusting the legislative system with respect to judicial protection against discrimination.

The opinions of the Advisory Committee suggest in fact the same thing. It is up to the intergovernmental bodies and international specialised mechanisms to monitor this process followed by the effective implementation at national level.

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December 2002

Introduction

“Roma and the Framework Convention for the Protection of National Minorities” is a paper as a compilation of texts elaborated by different international institutions or experts on minority issues and the field of human rights protection. The publishing of such a paper was possible through the financial support granted to a project elaborated by the Human Rights Department of Romani CRISS – Roma Center for Social Intervention and Studies. This project was financed by Minority Rights Group International from United Kingdom, whose expertise and activities are focused mainly on minorities.

Minority protection is now high on the agenda both at the European level and within many candidate states and a variety of legal and policy initiatives are underway to improve opportunities for racial and ethnic minorities.

Two main approaches to the protection of minorities have emerged in Europe: enforcement of anti-discrimination norms, and support for minority rights. Anti-discrimination measures are designed to ensure that individuals are not treated differently from others for unjustifiable reasons. Minority rights protections aim to allow individuals and communities to preserve their differences so as to avoid forced assimilation into a majority culture.

More than any other group, Roma faces immediate and pressing problems of systematic exclusion from the societies in which they live, including discrimination in access to education, employment, health care, and goods and services, for which legal redress is rarely forthcoming. Yet Roma are targeted in part because they form a separate community – a community which has been historically marginalized and prevented from developing according to its own interests.¹

Analytical approach in elaborating the paper

The present paper tries to emphasize - by reference to the human rights protection system – Roma as a European minority in the context of states party to the Framework Convention for the Protection of National Minorities of the Council of Europe.

The situation of Roma in CoE member states is different from state to state, but at the same time seems that exclusion and discrimination are common features for Roma situation regardless of the state they are in. Concerning this issue, we tried to point out the aspects related particularly to the Roma minority in the context of certain articles of the

¹ See Open Society Institute, “Monitoring the EU accession process: Minority Protection”, Open Society Institute, Budapest, September 2001, available at the web address <http://www.eumap.org>

Convention, mainly articles 4 and 6 which refer to equality before the law and protection against discrimination.

The approach of this issue starts with Roma and a short description of their appearance in Europe, followed by an analysis of the development of minorities' protection on the agenda of the Council of Europe and finalized with the general presentation of the Framework Convention. The thematic of Roma minority in the context of the Framework Convention is presented beginning from the definition of the national minority notion and following its statute within states party to the Convention by reference to other non-judicial or political mechanisms like the European Commission against Racism and Intolerance (ECRI), the European Parliament, the Organization for Security and Co-operation in Europe (OSCE), etc. Further on, there is an analysis of the Framework Convention party states' reports, opinions of the Advisory Committee and resolutions of the Committee of Ministers. All these documents are analyzed from the perspective of Roma and Articles 4 and 6 of the Framework Convention.

To whom is addressed this paper?

A pertinent question regarding the present paper would be first of all, to whom is addressed. Obviously, this addresses Roma non-governmental organizations activating in the field of human rights.

Thus, the first part of the paper is generally explanatory referring to notions regarding the Framework Convention. The role of non-governmental organizations in the process of implementing the convention can be significant and essential for the opinions and even resolutions adopted by the Committee of Ministers of the Council of Europe.

The second part of the paper follows the process of adoption of resolutions and opinions, therefore the information presented can be used by NGOs as an instrument for influencing public policies in the respective states.

At the same time, the paper is also a reference point for the governments of the party states to the Framework Convention for the Protection of National Minorities. From this perspective, the present paper is a means of persuasion for national acknowledgement of Roma minority, in adopting at national level legislative measures for sanctioning discrimination and implementing it through independent bodies, as well as adoption of public policies regarding Roma.

A third target group of the paper is constituted of persons activating human rights and Roma issues, particularly lawyers, experts, activists, as well as international non-governmental organizations.

Who are and why Roma/Gypsy?

The terminology for Roma/Gypsy:

Gypsy: Term used to denote ethnic groups formed by the dispersal of commercial, nomadic and other groups from/ within India from the tenth century, and their mixing with European and other groups during their Diaspora.

Roma/Rom: A broad term used in various ways, to signify:

(a) Those ethnic groups (e.g. Kalderash, Lovari, etc.) who speak the 'Vlach', 'Xoraxane' or 'Rom' varieties of Romani language.

(b) Any person identified by others as 'Tsigane' in Central and Eastern Europe and Turkey, plus those outside the region of East European extraction.

(c) Romani people in general.

The term Roma is used, because this is generally the preferred term of this community in Central and Eastern Europe. Although the terms Gypsy can be offensive to Roma in Central and Eastern Europe²

The first Roma/Gypsy groups reached Europe from the East in the fourteenth and fifteenth centuries. At this time, they still remembered their homeland, as testified by numerous documents dated between 1422-1590, a period during which their Indian roots were gradually obscured by legends of Egyptian origins.

With their arrival came attempts from the local populations to categorize the newcomers, with diverse names referring to their supposed origins. For example in Greece a sect from Asia Minor, whose members had a reputation as soothsayers and magicians, had been collectively known for centuries by the name of 'Atsinganos' ('untouched, untouchable'). When the new group arrived from the East, this name was attributed to them, and, with variations, was to remain in use in numerous countries (as 'Tsigan' in Bulgaria, Romania, and Hungary, 'Cigain' and later 'Tsiganes' in France, 'Zigeuner' in Germany, 'Zingari' in Italy, 'Ciganos' in Portugal, etc.). Similarly, many regions frequented by Travellers of Eastern origin were, at that time, known as 'Little Egypt'. This is probably why, when these Travellers moved on to other European countries, they were frequently dubbed

² See Minority Rights Group International, Jean-Pierre Liegeois and Nicolae Gheorghe, "Roma/Gypsies: A European Minority", Minority Rights Group International, 1995, page 6, available at the official web address: <http://www.minorityrights.org>

'Egyptians', another name which has remained in a variety of forms, with 'Gypsies' in English and 'Gitanos' in Spanish.

It was not until the late eighteenth century that a comparative study, carried out in Hungary, of Roma/Gypsy terminology and of Indian languages, made it possible to formulate the hypothesis – subsequently confirmed by linguists – of the Indian origin of those communities we shall be calling 'Gypsy' or 'Roma'. The migrations of their ancestors, originating in India, probably developed over a number of centuries prior to their arrival in Europe. More recent research demonstrates that the chronicles of Persian and Arab historians and geographers confirm linguistic findings.³ The following reference dates indicate the first recorded Roma/Gypsy presence in various European countries, bearing in mind that earlier arrivals may well have gone unnoticed:

1407 Germany; 1419 France; 1420 Netherlands; 1422 Italy; 1425 Spain; 1501 Russia; 1505 Scotland, Denmark ; 1512 Sweden; 1514 England; 1533 Estonia; 1540 Norway; 1584 Finland.

Once in Western Europe, groups often continued to travel from one region or country to another, however, others reduced or discontinued their migrations and adapted their work practices in response to local demand, for example taking up trade, craftwork or seasonal agricultural labour. In the course of their travels, these Roma/Gypsy groups encountered other Travellers of indigenous European origin. For example in Ireland from the twelfth century a group known as 'Tinklers' or 'Tynkers' has maintained an identity, social organization, and Celtic linguistic variants distinct from those of the surrounding population. Similarly the 'Quinquis' of Spain from the sixteenth century, and the 'Jenisch' in Germany from the seventeenth century, have maintained separate identities.

These encounters led to cultural and social exchange, leading to stratification, and vast linguistic and cultural diversification, both within a given region and from one region to another. The names attributed to these communities by outsiders are, like the names used by the communities themselves, also very diverse. They have acquired deeply pejorative connotations in most languages, with political and administrative texts often using colloquial terms, or inventing paraphrases or metaphors encapsulating official policy at the time. For example, *personnes d'origine nomade* (people of nomadic origin), negates any reference to culture, and was the preferred term in France in the 1970s, when the policy was one of assimilation. This report sometimes uses the term 'Travellers', which is often the preferred name of a number of communities of non-Indian origin, and is relatively free of negative overtones. The term 'Gypsies' is not generally viewed in a pejorative sense, however it does have some negative overtones, for example in Germany, due to the stigma attached to the word 'Zigeuner' during the Nazi era. However, insofar as the communities covered by these designations have no collective term for themselves and use these terms in the political context (for example 'Tsiganes' in French, 'Gypsies' in English, etc.), they are acceptable options, particularly for Western Europe.

As for the name 'Rom' or 'Roma', while it does not cover all of the groups concerned, it is increasingly being used in the political sphere, and it does have the

³ For further details on this point see Kenrick, D., "Gypsies: From India to the Mediterranean", Gypsy Research Centre-CRDP Midi-Pyrenees, Interface Collection, Toulouse 1994.

advantage of clear demarcation from terms imposed from outside. Furthermore it is the self-designation of a significant number of these groups, and that which best corresponds to the sociocultural reality and political will of groups in Central and Eastern Europe, which make up 70 per cent of the population identified as Gypsies/Tsiganes in Europe. ⁴

The danger of defining the term "minority"

What is, in fact a minority? The answer to this question often depends on whether it is being asked by an academic or politician. For example, by denying the existence of a minority, or by defining it in such way as to diminish or change its status, a state can deny rights to that minority. It can argue that it need not make special provision for those who do not officially exist and, once it has redefined or divided a minority to suit its perceptions, the state can then claim that no educational rights are being refused, save those refused to any other of its citizens.

However, it is important to stress that most states *do* recognize many of the minorities residing within their territory." Minority" is obviously, at one level, a term that is in contradistinction to that of majority'. Yet that distinction also raises problems. If the majority/minority distinction is being made on numerical grounds, the poor and women, although discriminated against in their daily lives, are not minorities (since they are numerical majorities). If it is made in terms of access to economic, political and educational power, then some minorities, such as the rich, are very powerful. Sometimes, other types of minorities can be powerful in other ways, although such power is often disputed.

A stigmatized minority, denied access to traditional sources of social mobility, may concentrate on those areas of life where the barriers are lower, frequently using education as the ladder to surmount the barrier.⁵

The point of this seemingly casuistic argument is to show that the term is more complicated than it often first appears. If dominant groups define minorities, they will compile a list very different from that compiled by groups defining like EC and the UN define minorities in both ways, along a continuum of control: State Definitions----Group Definitions.⁶ Thus the definitions will differ from state to state and the defining process *within* the state will differ according to specific circumstances, usually relating to the state's perception of the political power of the groups under discussion. Even the definitions upheld by international organisations are subject to similar forces and these perceptions will also

⁴ For more in-depth treatment of the topics covered in this chapter, see Jean Pierre Liegeois, "Roma/Gypsies, Travellers", Council of Europe, Publications, Strasbourg, 1994

⁵ "a classical historical example would be the way in which Jewish people, denied access to most avenues for social mobility during the nineteenth(and most of the twentieth) century in many of the states in which they resided, concentrated on others over which they were allowed some measures of freedom and control, such as education. One consequence was their prominent position in the intellectual life of both centuries. More modern examples would be Jains in India, Copts in Egypt and Chinese in Malaysia. Whether the key to their success is education or religion is a moot point. Their economic power is also fragile, as it often lacks supporting political power, as East African Asians found out to their cost to the 1960s ad 1970s"- Quoted from Minority Rights Group, 94/1, "Education Rights and Minorities", edited by MRG International, 1994, page7.

⁶ See Minority Rights Group International, "Education Rights and Minorities", 94/1, MRG International, 1994, page7.

change over time, leading to further redefinition. The most common result of such a process is the definition of a minority in terms of a particular socio-economic attribute or set of such attributes. The most usual of these are detailed in Figure 1. As Figure 1 demonstrates, there are many different categories of minorities and people can classify themselves (or may be classified by others) in more than one of these categories.

The point here is that to see a minority group solely as, say, an *ethnic* minority may be too narrow a perspective since who is making that definition is also important. We can define ourselves, and the groups to which we belong, in terms of language, history, culture, religion and so forth, but others may define us in different ways. They may only see our religious affiliations or our skin colour and define us in terms that suit *their* prejudices and stereotypes rather than *our* sense of ourselves and our group.⁷

FIGURE 1 The differentiation of minorities

i. Economic

The rich in any state are a minority, but seldom one for whom concern is expressed in the terms of this report.

ii. Disability

People with disabilities are often stigmatized, particularly in education.

iii. Religion

Religious minorities have often been persecuted, and continue to be so.

iv. Language

Linguistic minorities frequently have their language rights ignored by dominant linguistic groups.

v. Nationality

By this is meant a group that sees itself as a distinct people or nation *within* a larger state, with long-established historical claims to territory within that state.

vi. Refugees and asylum-seekers

These minorities, unlike the others, do not so much make legal claims upon the state they have

Fled to, although of course they have them, but mainly appeal to larger international organizations for their limited minority rights.

vii. 'Race'

A meaningless term in science but describing a public perception.

viii. Ethnicity

Something of a catch-all concept, meaning a group that sees itself and/or is seen by others as being Distinctive within the state, by having certain attributes in common such as history, culture, language, religion and so forth.

⁷ The Figure 1 presented in this Chapter is a component part of the booklet "Education Rights and Minorities", edited by Minority Rights Group International, 1994, page 8.

CHAPTER I. Protection of the Rights of National Minorities on the Council of Europe's Agenda

I. Introduction

The Council of Europe has examined the situation of national minorities on a number of occasions over a period of more than forty years. In its very first year of existence (1949), the Parliamentary Assembly recognised, in a report of its Committee on Legal and Administrative Questions, the importance of "the problem of wider protection of the rights of national minorities". In 1961, the Assembly recommended the inclusion of an article in a second additional protocol to guarantee to national minorities certain rights not covered by the European Convention on Human Rights (ECHR). The latter simply refers to "association with a national minority" in the non-discrimination clause provided for in Article 14.

Recommendation 285 (1961) proposed the following wording for the draft article on the protection of national minorities: "Persons belonging to a national minority shall not be denied the right, in community with the other members of their group, and as far as compatible with public order, to enjoy their own culture, to use their own language, to establish their schools and receive teaching in the language of their choice or to profess and practise their own religion."

The committee of experts, which had been instructed to consider whether it was possible and advisable to draw up such a protocol, adjourned its activities until a final decision had been reached on the Belgian linguistics cases concerning the language used in education (European Court of Human Rights. Judgment of 27 July 1968, Series A No. 6). In 1973 it concluded that, from a legal point of view, there was no special need to make the rights of minorities the subject of a further protocol to the ECHR. However, the experts considered that there was no major legal obstacle to the adoption of such a protocol if it were considered advisable for other reasons.

More recently, the Parliamentary Assembly recommended a number of political and legal measures to the Committee of Ministers, in particular the drawing up of a protocol or a convention on the rights of national minorities. Recommendation 1134 (1990) contains a list of principles which the Assembly considered necessary for the protection of national minorities. In October 1991, the Steering Committee for Human Rights (CDDH) was given the task of considering, from both a legal and a political point of view, the conditions in which the Council of Europe could undertake an activity for the protection of national minorities, taking into account the work done by the Conference on Security and Co-operation in Europe (CSCE) and the United Nations, and the reflections within the Council of Europe.⁸

In May 1992, the Committee of Ministers instructed the CDDH to examine the possibility of formulating specific legal standards relating to the protection of national minorities. To this end, the CDDH established a committee of experts (DH-MIN) which, under new terms of reference issued in March 1993, was required to propose specific legal

⁸ See Council of Europe, FCNM Explanatory Report, Council of Europe, available at the official web page: <http://www.coe.int>

standards in this area, bearing in mind the principle of complementarity of work between the Council of Europe and the CSCE. The CDDH and the DH-MIN took various texts into account, in particular the proposal for a European Convention for the Protection of National Minorities drawn up by the European Commission for Democracy through Law (the so-called Venice Commission), the Austrian proposal for an additional protocol to the ECHR, the draft additional protocol to the ECHR included in Assembly Recommendation 1201 (1993) and other proposals. This examination culminated in the report of the CDDH to the Committee of Ministers of 8 September 1993, which included various legal standards which might be adopted in this area and the legal instruments in which they could be laid down. In this connection, the CDDH noted that there was no consensus on the interpretation of the term "national minorities".

The decisive step was taken when the Heads of State and Government of the Council of Europe's member States met in Vienna at the summit of 8 and 9 October 1993. There, it was agreed that the national minorities which the upheavals of history have established in Europe had to be protected and respected as a contribution to peace and stability. In particular, the Heads of State and Government decided to enter into legal commitments regarding the protection of national minorities. Appendix II of the Vienna Declaration instructed the Committee of Ministers:

- to draft with minimum delay a framework convention specifying the principles which contracting States commit themselves to respect, in order to assure the protection of national minorities. This instrument would also be open for signature by non-member States;
- to begin work on drafting a protocol complementing the European Convention on Human Rights in the cultural field by provisions guaranteeing individual rights, in particular for persons belonging to national minorities.

On 4 November 1993, the Committee of Ministers established an ad hoc Committee for the Protection of National Minorities (CAHMIN). Its terms of reference reflected the decisions taken in Vienna. The committee, made up of experts from the Council of Europe's member States, started work in late January 1994, with the participation of representatives of the CDDH, the Council for Cultural Co-operation (CDCC), the Steering Committee on the Mass Media (CDMM) and the European Commission for Democracy through Law. The High Commissioner on National Minorities of the CSCE and the Commission of the European Communities also took part, as observers.

On 15 April 1994, CAHMIN submitted an interim report to the Committee of Ministers, which was then communicated to the Parliamentary Assembly (Doc. 7109). At its 94th session in May 1994, the Committee of Ministers expressed satisfaction with the progress achieved under the terms of reference flowing from the Vienna Declaration. A certain number of provisions of the framework Convention requiring political arbitration as well as those concerning the monitoring of the implementation were drafted by the Committee of Ministers (517bis meeting of Ministers' Deputies, 7 October 1994).

At its meeting from 10 to 14 October 1994, CAHMIN decided to submit the draft framework Convention to the Committee of Ministers, which adopted the text at the 95th Ministerial Session on 10 November 1994. The framework Convention was opened for signature by the Council of Europe's member States on 1 February 1995.⁹

⁹ See Council of Europe, FCNM Explanatory Report, Council of Europe, available at the official web page: <http://www.coe.int>

I.1. The entry into force of the Framework Convention for the Protection of National Minorities

On 1 February 1998, the Council of Europe's Framework Convention for the Protection of National Minorities entered into force. This was an important milestone because the Convention is the first legally binding multilateral instrument devoted to the protection of minorities in general. Its effectiveness, however, is likely to depend on whether it is taken seriously by governments and the strength of the Council of Europe's monitoring mechanism to oversee its implementation.

The active involvement of non-governmental organizations (NGOs) is crucial for both of these factors. NGOs can both encourage governments to make the necessary legislative and policy changes to realize the principles enshrined in the Convention and by providing information and analysis – help to monitor governmental compliance. The Framework Convention can serve as a model and legal benchmark for the legislation and practice of Member States of the Council of Europe and of states willing to become members with regard to their treatment of minorities.

The Convention may be regarded as the most recent and comprehensive of international standards on national minorities and its adoption is becoming obligatory for applicants to become Member States of the Council of Europe. The Convention has a moral and political authority even though it may not have been legally ratified by some countries.¹⁰

I.2 Why minority rights?

The greatest attention in international human rights law has been given to the rights of individuals. Often individuals belonging to a minority are not able to enjoy fully their human rights and freedoms because they are discriminated against on the basis of their ethnic, religious or linguistic identity. However, non-discrimination provisions are not enough to ensure that minorities can enjoy full and effective equality.

Prohibition of discrimination results in equality under the law, but does not ensure equality in fact. In addition, special rights and measures for the protection of minorities are needed to overcome patterns of discrimination and to realize equality in practice. Minority rights are human rights. Minority rights are not privileges; they are available so that minorities can preserve and develop their identity, characteristics and traditions. Only then can full and effective equality be enjoyed.¹¹

Thus measures should be established in the field of education, culture, religion, but also in political, social and economic affairs, to bring minorities into effective equality with the rest of the population. Measures to promote full and effective equality are not considered to be an act of discrimination.¹²

¹⁰ See Minority Rights Group International, Catherine Barnes and Manon Olsthoorn, "the Framework Convention for the Protection of National Minorities-A Guide for Non-Governmental Organizations, MRG International, 1999

¹¹ Idem

¹² Idem

CHAPTER II The Framework Convention for the Protection of National Minorities

II.1. About the Convention

The Framework Convention for the Protection of National Minorities is the first multilateral instrument developed to address the situation of minorities in general that is legally binding. The use of the term 'framework' refers to the fact that the Convention contains 'programme-type' provisions. In view of the different situations and problems in the Member States the drafters of the Convention did not consider it feasible to include provisions with detailed or specified rights for minorities. The Convention therefore sets out general objectives and principles concerning issues such as cross-border contacts, education, full and effective equality, identity, association, religion, language, media and participation. It should be noted that a number of provisions go beyond the mere stating of principles so that the Framework Convention is sometimes called a hybrid convention.

The Preamble of the Convention says that the State Parties are obliged to implement the objectives and principles through national legislation and policies. The Explanatory Report of the Convention explains in paragraph 11 that the provisions leave the states concerned a measure of discretion in the implementation of the objectives and principles in order to enable them to take particular circumstances into account.

The Convention creates legal obligations for the Parties. It obliges State Parties to realize the principles of the Convention by taking special measures, refraining from certain practices and guaranteeing specific rights.

However, its provisions are worded as state obligations and are not couched in terms of specific rights for individuals belonging to minorities as in the ECHR¹³. If individuals believe that their rights under the ECHR have been violated, they can in most Council of Europe Member States, invoke the ECHR as a legal basis for their claims before a domestic court. If not satisfied with the outcome of the domestic remedies, they can appeal to the European Court for Human Rights. This is not the case for the Framework Convention. Thus, although some articles of the Convention make explicit references to rights of persons belonging to national minorities, it depends on the domestic legislation of the State Parties whether these rights are judicable at the domestic level or not. It is important to remember that various provisions of the Convention overlap with those of the ECHR, for example the right to freedom of expression. The main reason for this is that some Parties to the Framework Convention may not be Member States of the Council of Europe and thus may not be party to the ECHR.

Minorities can also make good use of the ECHR to further their cause. It should also be noted that the Explanatory Report states that collective rights of national minorities are not envisaged. Instead, it argues that the protection of a national minority can be achieved through the protection of the rights of individuals who are members of a minority.

¹³ ECHR represents the European Convention for Human Rights

Nonetheless the Framework Convention does not oppose the introduction of collective rights either. Rather, this is considered to be a matter of technical choice.

The emphasis is placed on the protection of persons belonging to national minorities, who may exercise their rights individually and in community with others. Nevertheless there is a collective dimension with references in Articles 10, 11 and 14 to language rights in areas inhabited by persons belonging to national minorities traditionally or in substantial numbers.

II.2. The Articles

NGOs, who want to use the convention in their work, should refer to the actual text of the Convention. It gives details of the specific obligations and its text is legally binding on the states that have ratified it. Nevertheless, the following overview should provide a general sense of what is covered by the Convention.

The Preamble is the section that provides the reason for developing the Framework Convention and provides important insight into the 'spirit' of the agreement. As explained above, the principles in the text are worded in general terms.

The statements in the preamble should be seen as a guide for interpreting the Convention. It recognizes that the upheavals of European history have shown that the protection of national minorities is essential to stability, democratic security and peace in this continent. It stresses, among other things, that 'a pluralist and genuinely democratic society should not only respect the ethnic, cultural, linguistic and religious identity of each person belonging to a national minority but also create appropriate conditions enabling them to express, preserve and develop this identity'. State Parties are thus required to take action. It also declares that "the creation of a climate of tolerance and dialogue is necessary to enable cultural diversity to be a source and a factor, not of division, but of enrichment for each society"¹⁴. A précis of the Convention follows with our emphasis given: Section I, Articles 1–3, sets out several general principles:

- ◆ Article 1 states that the protection of national minorities is part of the international system for human rights protection.
- ◆ Article 2 declares that the Convention needs to be implemented in good faith and through cooperation between states.
- ◆ Article 3 says that every person belonging to a national minority is free to choose without the risk of disadvantage whether or not to be treated as a minority, and that the rights which flow from the principles of the Framework Convention can be exercised individually or in community with others.

Section II, Articles 4–19, is the main operative part of the text and contains the 'programme-type' provisions. They set out the objectives and principles protected by the Framework Convention. The State Parties should implement the provisions through legislation and

¹⁴ See Footnote no. 10

appropriate policies at home and, where appropriate, through bilateral and multilateral agreements.

- ◆ Article 4 specifies the obligation of State Parties to guarantee the 'right of equality before law and equal protection of the law'. It also obliges states to take 'adequate measures' to promote 'full and effective equality' in all areas of life and determines that these measures shall not be considered acts of discrimination.
- ◆ Article 5 obliges State Parties to 'promote the conditions necessary' for minorities to maintain and develop their culture, and to preserve their identity. It also specifies that states should ensure that minorities are not assimilated 'against their will'.
- ◆ Article 6 asks State Parties to encourage mutual respect, tolerance, intercultural dialogue and cooperation among all persons in their country. It further obliges State Parties to protect persons from 'discrimination, hostility, or violence' targeted at them because of their minority identity.
- ◆ Article 7 concerns the right to freedom of peaceful assembly, association, expression, thought, conscience and religion.
- ◆ Article 8 deals with the right to manifest 'religion or belief and to establish religious institutions, organizations, and associations'.
- ◆ Article 9 specifies that the right to freedom of expression includes the freedom to receive and impart information in the minority language. It also protects against discrimination in access to the media and promotes the possibility for minorities to create their own media.
- ◆ Article 10 covers linguistic freedoms, including the use of the minority language in private and in public, and before administrative and judicial authorities.
- ◆ Article 11 continues with the use of minority names, and the display of information and topographical indications in the minority language.
- ◆ Article 12 addresses intercultural education such that State Parties are obligated to foster knowledge of the 'culture, history, language, and religion' of minorities and of the majority. They must also 'promote equal opportunities for access to education at all levels'.
- ◆ Article 13 protects the right for minorities to create and manage 'their own private educational and training establishments', without entailing any financial obligation for the government.
- ◆ Article 14 protects the right to learn a minority language. Furthermore, it deals with the possibility for minorities to be taught the minority language or to receive instruction in it, without prejudice to learning or being taught in the official language.
- ◆ Article 15 obliges State Parties to enable minorities to participate effectively in cultural, social and economic life, and in public affairs.
- ◆ Article 16 declares that State Parties are not allowed to 'alter the proportion of the population' in areas with concentrations of minorities when these measures are aimed at restricting the rights covered by the Convention.
- ◆ Article 17 protects the right to 'maintain free and peaceful contacts across frontiers'. It also protects the right to participate in NGO activities, both at the domestic and international levels.

- ◆ Article 18 covers cooperation between states by encouraging bi- and multilateral agreements between each other to protect minorities.
- ◆ Article 19 declares that the only 'limitations, restrictions or derogations' that State Parties can make to the Convention's principles are those permitted in other international legal instruments.

Section III, Articles 20–3, concentrates on issues regarding the interpretation of the principles in Section II.

- ◆ Article 20 requires persons belonging to national minorities to respect domestic legislation.
- ◆ Article 21 protects the territorial integrity and political independence of states.
- ◆ Article 22 defines that the Convention may not be used to limit higher standards of protection provided either in other international instruments or under domestic legislation.
- ◆ Article 23 concerns the interpretation of the rights which are subject to provisions in both the Convention and the ECHR.

Section IV, Articles 24–6, and Section V, Articles 25–32, set out the principles for the monitoring and entering into force of the Convention.

II.3. The monitoring mechanism of the Framework Convention for the Protection of National Minorities

In addition to a constructive and cooperative approach of the State Parties, the success of the Convention will to a large extent depend on the monitoring of the implementation of the Convention. A well functioning monitoring mechanism can substantially contribute to overcoming the danger of different and restrictive interpretations.

Section IV of the Convention, Articles 24–6, covers the monitoring mechanism. It provides that the Committee of Ministers of the Council of Europe will monitor the implementation of the Convention on the basis of reports submitted by states and that an Advisory Committee will assist the Committee of Ministers with this task.

In September 1997 the Committee of Ministers adopted Resolution 97(10) that provides further guidance on the composition, election and appointment of the Advisory Committee, and the procedures to be followed in performing the monitoring functions. The Resolution specifies that the Advisory Committee is composed of 'independent experts'. This is of major importance. The Committee of Ministers (deputies) is a political body in which all Council of Europe member states are represented. Consequently the involvement of an impartial body in the assessment of the State Reports reduces the level of politicization. The State Parties need to describe in their reports how the Convention is implemented in their countries.

The Advisory Committee will consider these reports first, and, in so doing, can also take account of evidence submitted by other sources, including minorities and NGOs. It then formulates its opinions on the realization of the Convention's principles.

The Committee of Ministers (deputies) will then review (both the State Report and) the opinions of the Advisory Committee to form conclusions and, as appropriate, recommendations to the state about the effectiveness of its implementation. The monitoring mechanism is thus not an individual complaints procedure as is the case with the European Court of Human Rights. Yet NGOs can play an important role by providing information and analysis that will be used when State Reports are assessed.

II.4. The State Reports

The states which have ratified the Convention are obliged to submit their initial reports within 12 months of the Convention having entered into force in the state concerned thereafter each State Party needs to submit a report every five years. In addition, the Committee of Ministers can request ad hoc reports in order to address circumstances which may arise between two periodic reports of a Party concerned. The State Reports will be made public once the Council of Europe receives them. States have the option of making their own reports public at an earlier stage. Some may do so, following the example of those states which make the preparation of the report a public process. The reports should contain 'full information on the legislative and other measures taken in order to give effect to the principles set out in the Convention'. There are detailed guidelines that specify the information to be included in the first State Reports. These have been drawn up by the Advisory Committee and are available from the Council of Europe. Part I should include an introduction about how the state has tried to implement the Convention. It should also contain basic information about the country and its policy concerning the protection of minorities. States must also indicate how they have promoted awareness of the Convention among both the public and the relevant governmental authorities. In Part II, states must document the measures taken to implement the Convention by presenting information article by article. In this way, states will have to demonstrate how they are meeting the objectives of each of the Convention's programmatic principles.

II.5. Role of the Advisory Committee and the Committee of Ministers

The duty of the Advisory Committee is to examine the State Reports and to prepare opinions on the measures that states have taken to implement the Convention. The Advisory Committee is an independent body of experts.¹⁵ The Committee of Ministers selects them from candidates proposed by the State Parties. Each member serves in his or her individual capacity and therefore is not a representative of the government. They must have 'recognized expertise' in the field of minority protection, and be independent and impartial. Their term of office is four years and they can be re-appointed only once. Although

¹⁵ The list of members of the advisory Committee can be found on the Council of Europe's website or obtained from the secretariat of the Advisory Committee.

each member is nominated by a state, this state cannot withdraw their candidate after the person has become a member of the Committee.

Advisory Committee members are not allowed to vote on the opinions regarding the State Reports of the country that nominated them. The maximum number of 'ordinary members' on the Advisory Committee is 18. It is thus inevitable that there will not be a member appointed in respect of each of the State Parties. The Committee of Ministers maintains a list of approved candidates from each State Party. It will fill vacant seats by appointing people from this list, giving priority to people nominated by those states that have not previously had a nominee in the Advisory Committee. This creates a rotation system so that the geographic composition changes over time. Meanwhile, the experts on the list serve as 'additional members' and sit on the Committee in a non-voting capacity at the time when it is reviewing the State Report from their country. Equally, as mentioned above, ordinary members do not have a vote with regard to the opinions on the State Reports from the countries that nominated them. When it is assessing a State Report, the Advisory Committee can make use of additional information to get a full picture of the implementation of the Framework Convention. It can, for example, request additional information from the state. It can also invite other sources, such as NGOs, to submit information, although it has to notify the Committee of Ministers that it intends to do so.

In May 1999 the Committee of Ministers (deputies) took note of the intention of the Advisory Committee 'to invite, during the initial reporting cycle, where appropriate, information from international organizations, ombudsmen and national institutions for the promotion and protection of human rights as well as representatives from civil society and NGOs'. Other sources, including NGOs, may also submit information on their own initiative.

The Advisory Committee can request a closed meeting with the relevant government and must have one if the government requests it. It may also hold meetings with others, if it first gets a mandate from the Committee of Ministers.

Already one state, Finland, has invited the Advisory Committee to visit Finland to enter into dialogue. During the visit the Advisory Committee met with both government representatives and NGOs. It may share information with other monitoring mechanisms of the Council of Europe,¹⁶ as well as with organs and bodies of other intergovernmental organizations.

To increase its efficiency, the Advisory Committee has formed small working groups to assess each State Report and draft opinions on the reports. Their findings are presented to the Advisory Committee as a whole and the final opinion will be made by majority-vote of the ordinary members. Their opinions on the measures taken by the state are then submitted to the Committee of Ministers.¹⁷ The Advisory Committee can also suggest to the Committee of Ministers to adopt certain country-specific recommendations. The Committee of Ministers considers both the State Report and the Advisory Committee's opinions. It forms conclusions about the adequacy of the measures taken by the state in implementing

¹⁶ Such as the Monitoring Committee of the Parliamentary Assembly, the Committee of Experts of the European Charter for Regional or Minority Languages, European Commission against Racism and Intolerance (ECRI).

¹⁷ See Council of Europe, Rules of Procedure of the Advisory Committee on the Framework Convention for the Protection of National Minorities (ACFC/INF (98)2).

the Convention. It may also make recommendations to the state and set a time limit for the state to provide information on how they are following up these recommendations. All conclusions and recommendations are made public. The Advisory Committee's opinion is also made public at the same time, unless the Committee of Ministers decides in a specific case to keep it confidential.

The conclusions and recommendations of the Committee of Ministers are not legally binding and there is no sanctioning system. Nevertheless, it is anticipated that the dialogue between the State Parties and the Committees will be constructive, and may often result in substantive changes in the country concerned. One of the significant forces will be the political pressure that arises in an atmosphere where the state is under scrutiny.¹⁸

II.6. Interpreting the Framework Convention

As described earlier, the Framework Convention for the Protection of National Minorities uses 'programme-type provisions'. States are given 'a measure of discretion' in deciding how to implement the Convention's objectives at home based on the specific circumstances in their countries. The provisions are worded in general terms and contain qualifications such as 'substantial numbers' (Articles 10.2, 11.3 and 14.2), 'sufficient demand' (Articles 11.3 and 14.2), 'a real need' (Article 10.2), 'where necessary' (Articles 4.2, 18.1 and 19), 'where appropriate' (Articles 11.3 and 12.1) and 'as far as possible' (Articles 9.3, 10.2 and 14.2).

Although it is true that the situation of minorities differs from country to country and consequently requires different approaches, the danger is that the generally worded objectives and principles will be interpreted restrictively by some of the Parties. This flexibility to translate the principles into domestic national legislation and policies which best suit their specific situation may possibly be used by some State Parties to avoid their obligations.

In this context, serious doubts have already been expressed regarding the impact of the Convention. On the other hand, one could also argue that the general wording of the Convention's provisions is not necessarily to the disadvantage of minorities. The states are obliged to interpret the provisions in the spirit of the Convention. Particularly important in this relation are the clear statements in the Preamble. NGOs can use the entry into force of the Convention as an opportunity to start a dialogue with the authorities on its interpretation and come forward with ideas for its implementation. In addition, Article 22 links the Convention to other international instruments and prohibits states from using the Convention to lower existing standards.

The Convention should be 'read with' other international instruments to ensure that the maximum standard of protection offered by international law is upheld. Article 22 also prohibits states from using the Convention to reduce existing minority protection under domestic legislation. In this respect attention should also be paid to those international instruments, which become binding instruments through bilateral treaties.¹⁹

¹⁸ See Footnote no. 10

¹⁹ Quoted from Minority Rights Group International, Catherine Barnes and Manon Olsthoorn, "The Framework Convention for the Protection of National Minorities-A Guide for Non-Governmental Organizations, MRG International, 1999

CHAPTER III Minority Status of Roma within the international system of Human Rights²⁰

III.1. What approaches have emerged Europe regarding the protection of minorities?

In the century just ended, Europe repeatedly learned the costs –to peace, security and the human condition –of failing to safeguard racial and ethnic minorities from abuse. Perhaps not surprisingly, in view of this history, the European Union’s decision to highlight “respect for and protection of minorities” as one of the core political criteria for accession has stimulated considerable interest and activity among governments and civil society. Minority protection is now high on the agenda both at the European level and within many candidate States, and a variety of legal and policy initiatives are underway to improve opportunities for racial and ethnic minorities.²¹

Two main approaches to the protection of minorities have emerged in Europe: enforcement of anti-discrimination norms, and support for minority rights. Anti-discrimination measures are designed to ensure that individuals are not treated differently from others for unjustifiable reasons. Minority rights protections aim to allow individuals and communities to preserve their differences so as to avoid forced assimilation into a majority culture. Anti-discrimination and minority rights are complementary responses to the problems facing minorities, who confront risks both of exclusion and assimilation.

For example, The Regular Reports of the European Commission employ the phrase “minority rights” broadly so as to include within its ambit both aspects of minority protection. Thus, the Copenhagen criteria requirement of “respect for and protection of minorities” necessarily embraces both protection from discrimination and traditional minority rights. Indeed, the Regular Reports of EC confirm this understanding by devoting substantial attention to problems of discrimination when they address “minority rights”.²²

More than any other group, Roma faces immediate and pressing problems of systematic exclusion from the societies in which they live, including discrimination in access to education, employment, health care, and goods and services, for which legal redress is rarely forthcoming. Yet Roma are targeted in part because they form a separate community –a community which has been historically marginalized the culture, history and languages neglected or denigrated and prevented from developing according to its own interests.²³

²⁰ This chapter is based on the Report by Marcia Rooker, “The International Supervision of Protection of Romany People in Europe” Nijmegen University Press, published on 2002. Part of the sections from this chapter represents the initial research of the author’s book, thus the present Chapter form the booklet is quoted from Marcia Rooker’s Report.

²¹ See Open Society Institute “Monitoring the EU Accession Process: Minority Protection, Open Society Institute, Budapest, 2001, page 15; available on the web address <http://www.eumap.org> .

²² Idem page 16.

²³ Idem page 17.

III.2. The issue of Minorities under the Council of Europe's Framework Convention for the Protection of National Minorities

As with other international instruments for the protection of minorities, the FCNM does not define a 'national minority'.²⁴ It was clear from the outset²⁵ that the approach of those States that had entered Declarations on whom they declared to be a national minority could be problematic. Some States may try to restrict the scope of application of the Convention, which could lead to different standards.

Declarations were entered by 14 States. Declarations from three States, Azerbaijan, Bulgaria and Russia reinforced certain aspects of the Convention, while those from Liechtenstein and Malta said that their States had no national minorities.²⁶ To date, none of these five Declarations have been a cause of concern for the Advisory Committee.

Five states, Denmark, Germany, Slovenia, Sweden and Macedonia, provided a list of national minorities, which they declared as protected under the Convention; while four States, Austria, Estonia, Poland and Switzerland, provided definitions of national minorities linked to citizenship, a qualification not referred to in the FCNM or its Explanatory Report. The Advisory Committee noted these Declarations, but also recognized that the FCNM is a multilateral Treaty owned by the Member arbiter of the Convention by entering a Declaration. Any Declaration must be made in good faith, while it must also adhere to and be consistent with the objectives and purposes of the Convention, as expressed in the Preamble, the Articles and the negotiated Explanatory Report of the Convention.²⁷

The Advisory Committee interpreted the applicability of the Convention on an Article by Article basis, as both the Preamble implies that the Convention covers more than national minorities and certain Articles apply to different groups — such as new minorities — e.g. Article 6, or minorities who inhabit areas traditionally or in substantial numbers, e.g. Articles 10, 11 and 14.

The Advisory Committee also recognized that identities and the protection needed may change over time and that it would be incorrect to take an inflexible position. However, rather than determine a State to have failed to have applied the Convention, the Advisory Committee took a more subtle approach of strongly encouraging dialogue to see if other groups might benefit from the Convention.²⁸

Nevertheless, this initially proved problematic in the debates with one or two specific States. For example, the AC issued an Opinion on Denmark, which had declared that the Convention only applied to the German minority in Southern Jutland.

²⁴ See Council of Europe, the FCNM Explanatory Report, Council of Europe, available on the official web page at the address: <http://www.coe.int>

²⁵ For details see MRG International; FCNM: Analysis and Observations on the Monitoring Mechanism, op.cit.

²⁶ Although States initially identify the FCNM's scope of application, within the context of an international Treaty it is not for States alone to determine whether a national minority exists.

²⁷ A specific session of the Advisory Committee was dedicated to this, authorities were commissioned to prepare a paper and attend, and the Vienna Convention on the Law of Treaties was carefully considered.

²⁸ The Opinions of the Advisory Committee consistently refer to this issue.

This Danish Declaration had excluded all other groups, including the Roma and Greenlanders in the mainland of Denmark. The Advisory Committee's subtle approach may remain a problem when groups claim to be a national minority, and claim protection under the FCNM, and constructive dialogue with States on an Article by Article basis does not take place. Civil society will need to be vigilant in opposing such Declarations, thereby ensuring that the Convention is not undermined by this approach from a small number of States. The AC and CoM will also need to be more forthright, if their subtle approach fails.²⁹

III.3. Minority status of Roma under the Framework Convention for the Protection of National Minorities³⁰

Several states reported to a United Nations Treaty Body that they had recognised Roma as a minority when ratifying the FCNM. From the reports studied it became clear that only one state i.e., Cyprus, denied minority rights to its Roma community. Two states i.e., Italy and Croatia were not clear about the position of their Roma populations. Five states i.e., the United Kingdom, Hungary, the Czech Republic, Slovakia, and Moldova recognised the minority status of Roma and one state i.e., Finland, included the information on a collective right assigned to the Roma minority. Again, the state that denied minority rights to its Roma population will be dealt with first, followed by the two states that did not offer an opinion on the minority status of Roma.

Cyprus limits its minorities to the following religious group's viz., Maronites, Armenians, and Latins,³¹ and the population is not classified according to ethnic origin. In Italy, a number of bills on the protection of "gypsies" were currently being examined by Parliament.³² And Croatia included the information that the concept of minority is not explicitly defined in the Constitution, and that, although certain minorities are mentioned, this list is not exhaustive. Roma are not among the minorities listed.³³ Still, Roma associations are mentioned in relation to Article 5 (measures to promote conditions necessary for persons belonging to national minorities to maintain and develop their culture).³⁴

More pronounced about the recognition of Roma are the United Kingdom, Hungary, the Czech Republic, and Slovakia. In the United Kingdom, the term 'national minority' is not legally defined, but in practice the definition as set out in the Race Relation Act 1976 is used to apply to:

²⁹ Quoted from Minority Rights Group International, Alan Philips, "The Framework Convention for the Protection of National Minorities: A Policy Analysis", MRG International, September 2002.

³⁰ For details regarding the issue of minority status of Roma within the international system on human rights see Marcia Rooker, "International Supervision of Protection of Romany People in Europe" , Nijmegen University Press, 2002.

³¹ See Council of Europe, CoE Doc ACFC/SR (99)2, p. 11, 1999.

³² See Council of Europe, CoE Doc Italian initial report, 1999

³³ See Council of Europe, CoE Doc ACFC/SR (99) 5, p. 28 - 1999.

³⁴ Ibid, p. 69 .

*'...a group of persons defined by colour, race, nationality (including citizenship) or ethnic or national origins. ... Gypsies and Travellers in Northern Ireland are also considered a racial group under the Act.'*³⁵

Hungary in its initial report included the information that it had: '...Practically adopted the so-called Capotorti definition for the definition of national and ethnic minorities. According to this, national and ethnic minorities are all groups of people that have lived in Hungary for at least a century; they represent a numerical minority in the country's population; their members are Hungarian citizens; they are distinguished from the rest of the population by their own languages, cultures, and traditions; they demonstrate a consciousness of an affinity that is aimed at preserving all of these and expressing and protecting the interests of their historical communities'. Roma are among the thirteen groups considered to constitute a minority.³⁶

The definition used by the Czech Republic 'corresponds to the status of the German, Hungarian, Polish, Roma, Slovak and Ukrainian minorities'. In the 1991 census for the first time in history it was possible for members of the Roma and Jewish groups to declare their national identity.³⁷

And in the report submitted by Slovakia, Roma were recognised as a minority or at least mentioned as one of the national minorities under Article 5.³⁸ On the basis of the report from Moldova, it may be concluded that Roma people are looked upon as a minority as they are mentioned among the national minorities that have their own associations.³⁹

And finally, Finland is most explicit about the position of its Roma minority. It reported that the FCNM covers Roma people as one of the minorities in Finland. The concept 'national minority' is not used, but groups have the constitutional right to maintain and develop their language and cultures'. Roma are mentioned as one of these groups.⁴⁰

III.4. The Council of Europe: ECRI; the European Commission against Racism and Intolerance and Minority Status for Roma

The ECRI's 'Recommendation on Combating Racism and Intolerance against Roma/Gypsies' urges governments to sign and ratify the Framework Convention for the Protection of National Minorities with regard to Roma people. Thus it seems that according to the ECRI, Roma constitute a national minority.

But from the country-to-country reports published it is apparent that minority status is not an issue for the ECRI as Roma are addressed in a number of ways. For example in the report on the 'Former Yugoslav Republic of Macedonia' Roma are referred to as minority, community, population, and group, but the report also contains the information

³⁵ See Council of Europe, CoE Doc ACFC/SR. (99) 13 p. 2 - 1999.

³⁶ See Council of Europe, CoE Doc Hungarian initial report, Article 3 - 1999.

³⁷ See Council of Europe, CoE Doc ACFC/SR(99) 6, Article 3 - 1999.

³⁸ See Council of Europe, CoE Doc Slovak initial report, Article 5 - 1999

³⁹ See Council of Europe, CoE Doc Moldova's initial report, Article 5 - 2000

⁴⁰ See Council of Europe, CoE Doc ACFC/SR (99) 3, p. 7 - 1999.

that they are recognised as a minority under the Constitution.⁴¹ Constitutional recognition of Roma was mentioned in one more report i.e., the report on Slovenia.⁴²

In other reports the following phrases are used: 'traditional minority' (Finland⁴³); 'one of several minorities' (Italy⁴⁴ and Austria⁴⁵); 'one of the national minorities' (Ukraine⁴⁶); 'small minority' (the Russian Federation⁴⁷); and 'minority group' (Hungary⁴⁸, Greece⁴⁹, Poland⁵⁰ and Slovakia⁵¹). And they are also referred to as: the 'Romany minority community' (in the second report on Slovakia⁵²); a 'minority' (the Czech Republic⁵³); a 'disadvantaged minority group' (Romania⁵⁴); a 'Vulnerable group' (Portugal⁵⁵ and Bulgaria⁵⁶); both a 'minority' and a 'community'(Albania⁵⁷); 'Roma/Gypsies' (Croatia⁵⁸, Moldova⁵⁹ and Norway⁶⁰); the 'Roma/Gypsy community' (Croatia⁶¹); the '*Jenisch* community' (Switzerland⁶²); and a 'population' (France⁶³).

The ECRI's report on Austria in 2000 is most interesting. In that country, Roma who have lived in the country for generations (and therefore are Austrian citizens) have formally been recognised as a *Volksgruppe* since 1993, and this recognition 'improved the situation for those Roma/Gypsies who are considered to form part of this group'. However, long-term resident Roma do not belong to the *Volksgruppe*. The ECRI calls for consideration of the possibility of 'widening the definition of which categories of Roma/Gypsies fall under the statute of a recognised minority.'⁶⁴ Thus, in fact the HRC's general recommendation on minorities is followed and nationality is not decisive for someone's status as a member of a minority.

⁴¹ See Council of Europe, ECRI's country-by-country approach, first round, 'Former Yugoslav Republic of Macedonia', p. 30 - 1998

⁴² See Council of Europe, ECRI's country-by-country approach, Volume II, CRI (98) 21, p. 39 - 1998

⁴³ See Council of Europe, ECRI's country-by-country approach, Volume I, CRI (97) 48, p. 21 - 1997

⁴⁴ See Council of Europe, ECRI's country-by-country approach, Volume III, CRI (98) 54, p. 33 - 1998

⁴⁵ See Council of Europe, ECRI's country-by-country approach, Volume V, CRI (99) 11, p. 9, 1999

⁴⁶ See Council of Europe, ECRI's country-by-country approach, Volume V, CRI (99) 11, p. 56, 1999

⁴⁷ See Council of Europe, ECRI's country-by-country approach, Volume IV, CRI (99) 6, p. 45, 1999

⁴⁸ See Council of Europe, ECRI's country-by-country approach, second round, Hungary, p. 9 2000

⁴⁹ See Council of Europe, ECRI's country-by-country approach, second round, Greece, p. 35, 2000

⁵⁰ See Council of Europe, ECRI's country-by-country approach, second round, Poland, executive summary, 2000

⁵¹ See Council of Europe, ECRI's country-by-country approach, Volume I, CRI (97) 48, p. 62 - 1998

⁵² See Council of Europe, ECRI's country-by-country approach, second round, Slovakia, § 17 2000

⁵³ See Council of Europe, ECRI's country-by-country approach, second round, Czech Republic, § 8-2000

⁵⁴ See Council of Europe, ECRI's country-by-country approach, Volume V, CRI (99)11 p. 35 - 1999

⁵⁵ See Council of Europe, ECRI's country-by-country approach, Volume III, CRI (98) 54, p. 53 - 1998

⁵⁶ See Council of Europe, ECRI's country-by-country approach, second round, Bulgaria, executive summary, 2000

⁵⁷ See Council of Europe, ECRI's country-by-country approach, first round, Albania, §18,1999

⁵⁸ See Council of Europe, ECRI's country-by-country approach, first round, Croatia, § 32, 1999

⁵⁹ See Council of Europe, ECRI's country-by-country approach, first round, Moldova, § 31,1999

⁶⁰ See Council of Europe, ECRI's country-by-country approach, second round, Norway, § 41,2000

⁶¹ See Council of Europe, ECRI's country-to-country approach, first round, Croatia, § 32, 1999

⁶² See Council of Europe, ECRI's country-by-country approach, second round, Switzerland, § 21, 2000

⁶³ See Council of Europe, ECRI's country-by-country approach, second round, France, § 27,2000

⁶⁴ See Council of Europe, ECRI's country-by-country approach, second round, Austria, § 30,2000

III.5. Other Council of Europe bodies and Minority Status for Roma

Apart from the country reports the ECRI published *inter alia* an overview of the Council of Europe's activities to combat racism.⁶⁵ The paragraph in this 1999 report called 'National Minorities' deals with minorities in general, without singling out a specific one. The next paragraph is called 'Roma/Gypsies' as: '*In addition to its work on minorities in general, the Council of Europe has developed a broad and substantial range of activities on the specific problems faced by Roma/Gypsy minorities?*'⁶⁶ No other paragraph of the report is devoted to a specific minority.

It is worth noting that Parliamentary Assembly Recommendation 1203 not only resulted in the establishing of the Specialist Group, but also in the preparation of a report on the situation of Roma in Europe.⁶⁶ This report was adopted by the Commission on Migration (CDMG) on 5 May 1995- It devotes a paragraph to the claim for minority status, which contains an overview of the states that have recognised Roma as a minority, explicitly or implicitly, in the constitution or in another law. The states named here are Hungary, Romania, Slovenia, Austria, Czech Republic, Slovakia and Finland. Moreover it pays attention to the wish of some Roma groups to be recognised as a European or trans-national minority.

Some look upon such an ethno-political identity as an alternative to having a nation-state. But 'it is difficult to see how legal recognition could be given to the concept of a European minority'. Such a claim to collective rights, according to the CDMG report, is made mainly by Roma from Central and Eastern Europe, while other Roma concentrate on equal rights with the nationals of the countries in which they live, thus stressing individual human rights.⁶⁷

Information is also found in the report on the activities of the Council of Europe concerning Roma/Gypsies,⁶⁸ as this report devotes a paragraph to national minorities in general, in which the Framework Convention for the Protection of National Minorities is referred to. According to this report, the Committee of Ministers 'has stressed the pertinence of the Framework Convention for the protection of Roma/Gypsies'.⁶⁹

The Specialist Group on Roma/Gypsies explicitly recommended the recognition of Roma as a national minority in the report of its mission to Bosnia Herzegovina, realised in co-operation with the OSCE/ODIHR Contact Point for Roma and Sinti Issues.⁷⁰ And at the meeting of the specialist group in October-November 2000, the Swedish representative informed the specialist group that the Roma community had been recognised as a national minority and the Romany language as a minority language.⁷¹

⁶⁵ See Council of Europe, CoE Doc CRI (99) 56 - 1999.

⁶⁶ See Council of Europe, Doc. CRI (99) 56 p. 33 - 1999.

⁶⁷ See Council of Europe, Doc CDMG (95) 11 final - 1995.

⁶⁸ See Council of Europe, Doc MG-S-ROM (98) 13 - 1998.

⁶⁹ See Council of Europe, Doc MG-S-ROM (98) 13, p. 15 - 1998.

⁷⁰ See Council of Europe, "Fact-finding mission to Bosnia and Herzegovina on the situation of the Roma/Gypsies", Recommendation 6, 1996; "The authorities of both entities of Bosnia and Herzegovina should be urged to recognise the Roma/Gypsies as a national minority according to the Council of Europe Framework Convention for the Protection of National Minorities, bearing in mind that such recognition should not be used in a way that could discriminate against or stigmatise them".

⁷¹ See Council of Europe, Doc MG-S-ROM (2002) 2 § 13 - 2000.

III.6. The Organisation for Security and Co-operation in Europe

The Organisation for Security and Co-operation in Europe (OSCE) has adopted several documents and a trend to protect both individual members of minorities and minorities as such can be detected. These documents are very important from a political point of view and they are not legally binding.⁷²

With respect to Roma it seems their minority status has never been doubted by the CSCE or the later OSCE. The first CSCE document to mention Roma was the Final Document of the Copenhagen Meeting on the Human Dimension in 1990. The paragraphs 40-40.2 of this Final Document devoted to Roma are part of Chapter IV on National Minorities, and not of Chapter I on Human Rights and Fundamental Freedoms.⁷³

The OSCE High Commissioner on National Minorities has never doubted that Roma fall under his mandate. In this respect it should be noted that the OSCE High Commissioner on National Minorities does not protect the rights of minorities. His mandate calls for the prevention of the outbreak of ethnic violence and does not entail the assigning of rights to minorities. In pursuance of his mandate he does speak to representatives of minorities about claims the minority concerned has, and those claims may be collective claims, like political representation or a certain extent of autonomy.

The OSCE High Commissioner on National Minorities and Minority Status for Roma

In the 2000 report on Roma, the High Commissioner on National Minorities devoted a chapter to political participation. He observes that Roma are under-represented in national office. The report mentions that with respect to states where Roma constitute the, or one of the, largest minorities, there are only three Roma members of parliament i.e., one in the Czech Republic, one in Bulgaria, and one in Romania, the latter of which was elected to a reserved minority seat. The Slovak and Hungarian parliaments do not have Roma representatives among their members.

The situation at the local level seems to be a little better. A wide variety of some kind of political participation is mentioned in the report: minority self-government in Hungary; and in other countries different forms of consultative bodies; minority consultative commissions; ad hoc commissions and processes; governmental departments and offices; and participation at a local level. The report recommends early involvement, inclusiveness, transparency, participation, training, and the improvement of citizenship rights in order to promote political participation.⁷⁴

⁷² Advisory Committee on Human Rights and Foreign Policy, 1995, p. 32-33.

⁷³ See CSCE Document of the Copenhagen Meeting of the Conference on the Human Dimension in the CSCE, 1990

⁷⁴ See OSCE, OSCE High Commissioner for National Minorities "Report on Roma and Sinti on the OSCE Area", OSCE High Commissioner for National Minorities, 2000.

The OSCE/ODIHR Contact Point for Roma and Sinti Issues and Minority Status for Roma

The consolidating of minority rights of Roma people is a key activity of the OSCE/ODIHR Contact Point for Roma and Sinti Issues. Assimilation and social integration, which were identified as the dominant trends in the eighties, came about with little or no participation of Roma in the implementation of such policies, and have to be replaced by political recognition and political influence. That is the message of the background paper for the OSCE Human Dimension Implementation meeting in October 1998.⁷⁵

Recognition as a minority does not seem to be a straightforward aim of the contact point, but Roma political activities are supported by offering training and the facilities to exchange experience to those Roma elected in political bodies and those running for such positions.

III.7. The European Parliament

The minority status of Roma needs to be promoted according to the European Parliament. The resolution on the situation of Gypsies in the Community, adopted by the European Parliament in 1994 recognises that Roma "constitute one of the largest minorities in the European Union."⁷⁶

The specific cultural and traditional characteristics of Roma calls for action.⁷⁷ Most importantly, the resolution calls upon the Commission and the Council of Europe to add a protocol to the European Convention of Human Rights "in which the definition of minorities explicitly includes Gypsies in the form of a reference to landless minorities."⁷⁸

III.8. The United Nations Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance, and minority status for Roma

In the reports of the United Nations Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance, a few references to a possible minority status of Romany people were found.⁷⁹

The 1997 report included the Austrian remark that Romany people's status as a national minority had been officially recognized in Austria in 1993.⁸⁰

And the 1999 report included the information that Roma have the right to maintain and develop their own languages and cultures in Finland.⁸¹ In the special rapporteur's report on his visit to the Czech Republic, Romania, and Hungary, he refers

⁷⁵ See OSCE, Doc .Policies Concerning Roma and Sinti in the OSCE Region, background paper 4, pp.10-13-1998.

⁷⁶ See European Union, EU Doc Resolution on the Situation of Gypsies in the Community, A3-0124/94, E - 1994.

⁷⁷ *ibid*, G.

⁷⁸ *ibid*., 4

to Roma as the 'Roma minority'. With respect to the Czech Republic he remarks that "the Czech Government's basic position is that the integration of the Roma as a national minority is absolutely necessary".⁸² And in the part devoted to Hungary much attention is paid to the minority self-government system in this country. A system that also applies to the Romany community.⁸³

III.9. Conclusions

The United Nations, the Council of Europe, the OSCE and the European bodies regularly express the opinion that Roma constitute a minority and should be recognised as such. The United Nations Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance quotes governments who have recognised the minority status of Romany people i.e., Austria, Finland, the Czech Republic, and Hungary. In his report on his mission to the Czech Republic, Romania, and Hungary he refers to Roma as 'minority'. He seems to take Roma's minority status for granted.

The minority status of Roma is unchallenged by most Council of Europe organs. More importantly, the Committee of Ministers does not only think that the Framework Convention for the Protection of National Minorities applies to the Roma, but stresses the pertinence of this Convention. As early as 1995, the minority status of Roma was recognised in a CDMG report. At the same time, the ECRI does not advocate minority status in its country-to country approach, as it looks at discrimination of Roma, and in this respect the issue of minority status is irrelevant. Only in a report on Austria the ECRI seems to follow the HRC's General Comment on Article 27 ICCPR⁸⁴ with respect to the irrelevance of nationality for recognition as a member of a minority. ECRI suggest Austria not only recognises Roma with Austrian nationality as belonging to the *Volksgruppe* Romany people but to extend that recognition to all Roma living in Austria. The Specialist Group on Roma/Gypsies and the OSCE/ODIHR Contact Point for Roma and Sinti Issues explicitly recommend the recognition of Roma as a minority in Bosnia and Herzegovina. The OSCE High Commissioner on National Minorities obviously recognises Roma; if they were not covered by his mandate he would not have devoted two reports to them. Thus no non-legal supervisory mechanism objects to a minority status for Roma.⁸⁵

⁷⁹ Quoted from Marcia Rooker, "International Supervision of Protection of Romany People in Europe", Nijmegen university Press, 2002.

⁸⁰ See UN Doc E/CN.4/1997/71 § 64 - 1997.

⁸¹ See UN Doc E/CN.4/1999/15 § 43 - 1999.

⁸² See UN Doc E/CN.4/2000/16/Add.I § 32 - 2000.

⁸³ See UN Doc E/CN.4/2000/16/Add.I - 2000.

⁸⁴ ICCPR is the International Convention on Civil and Political Rights

⁸⁵ Quoted from Marcia Rooker, "International Supervision of Protection of Romany People in Europe", Nijmegen University Press, 2002.

CHAPTER IV Roma under the Framework Convention for the Protection of National Minorities within Article 4 and 6

IV.1. Introduction

The Framework Convention within the Articles 4–19, is the main operative part of the text and contains the ‘programme-type’ provisions. They set out the objectives and principles protected by the Framework Convention. The State Parties should implement the provisions through legislation and appropriate policies at home and, where appropriate, through bilateral and multilateral agreements.

Article 4 specifies the obligation of State Parties to guarantee the “right of equality before law and equal protection of the law”. It also obliges states to take “adequate measures” to promote “full and effective equality” in all areas of life and determines that these measures shall not be considered acts of discrimination. The purpose of this article is to ensure the applicability of the principles of equality and non-discrimination for persons belonging to national minorities.

Paragraph 1 takes the classic approach to these principles. Paragraph 2 stresses that the promotion of full and effective equality between persons belonging to a national minority and those belonging to the majority may require the Parties to adopt special measures that take into account the specific conditions of the persons concerned.

Such measures need to be “adequate”, that is in conformity with the proportionality principle, in order to avoid violation of the rights of others as well as discrimination against others. This principle requires, among other things, that such measures do not extend, in time or in scope, beyond what is necessary in order to achieve the aim of full and effective equality. Its aim is to ensure to persons belonging to national minorities effective equality along with persons belonging to the majority.⁸⁶

Article 6 of the Framework Convention asks State Parties to encourage mutual respect, tolerance, intercultural dialogue and cooperation among all persons in their country. It further obliges State Parties to protect persons from ‘discrimination, hostility, or violence’ targeted at them because of their minority identity. Paragraph 1 stresses a spirit of tolerance and intercultural dialogue and points out the importance of the Parties’ promoting mutual respect, understanding and co-operation among all who live on their territory. The fields of education, culture and the media are specifically mentioned because they are considered particularly relevant to the achievement of these aims.

In order to strengthen social cohesion, the aim of this paragraph is, *inter alia*, to promote tolerance and intercultural dialogue, by eliminating barriers between persons belonging to ethnic, cultural, linguistic and religious groups through the encouragement of intercultural organisations and movements which seek to promote mutual respect and understanding and to integrate these persons into society whilst preserving their identity. This provision from the paragraph 2 is inspired by the Copenhagen Document of the CSCE. This obligation aims at the protection of all persons who may be subject to threats or acts of discrimination, hostility or violence, irrespective of the source of such threats or acts.⁸⁷

⁸⁶ See Council of Europe, FCNM Explanatory Report, Council of Europe, also available on the official web page at <http://www.coe.int>

⁸⁷ See Council of Europe, FCNM Explanatory Report, Council of Europe, available on <http://www.coe.int>

IV.2. States Reports and references to discrimination of Roma within the State Parties to FCNM

With respect to the implementation of the FCNM from the first reports that were submitted fifteen contained information on Roma. From this Reports submitted only a few states included information on the discrimination experienced by Roma in their country: Croatia, the Czech Republic, Hungary, and the United Kingdom.

Croatia submitted an extensive report from which it became apparent that the Romany minority is not among the minorities listed in the Constitution.⁸⁸ Specific information on the discrimination of Roma is supplied with respect to Article 4. A Romany association filed an application with the Health Ministry 'for ensuring sanitary and epidemiological protection of the Romany people' in August 1998. The Ministry concluded that in several Roma neighbourhoods sanitary and epidemiological conditions and the vaccination rate of Romany children were inadequate.⁸⁹ Furthermore, in co-operation with UNICEF research is being conducted into the position of Roma: Roma have a high birth-rate, a high infant mortality and limited access to medical assistance; problems that influence the living conditions of Roma are the absence of drinking water and of sanitary facilities in Romany neighbourhoods; and a high unemployment level, low educational level, and criminality are some more conditions observed in Romany neighbourhoods.⁹⁰

The Czech Republic in its report referred to the well-known problems of citizenship,⁹¹ and the wall in Usti nad Labem.⁹² The report also paid attention to the fact that xenophobia persisted in the country especially with regard to Roma, and that verbal and physical attacks on Roma were often not reported as the victims did not trust the police.⁹³ Discrimination of Romany people was also established with respect to the labour market and social and economic life in general.⁹⁴

Hungary reported that the Roma encountered social problems and problems with job training and education. The discrimination with respect to labour was elaborated when reporting on the implementation of Article 4. The Roma population was being: '*squeezed out of the labour market to a degree and at a rate never experienced before [and] there are settlements where 90%-100% of the Gypsy population is unemployed*'.⁹⁵ Also Hungary pointed to the report published by the European Commission on Racism and Intolerance (ECRI) that recognises that Hungary is aware of the problems of its Roma in the fields of housing, education, employment and racial discrimination.⁹⁶ In its State Report

⁸⁸ See Council of Europe, Doc ACFC/SR(99) 5, 1999, p.28.

⁸⁹ *ibid* p.49-50.

⁹⁰ *ibid* 50-52.

⁹¹ See Council of Europe, Doc ACFC/SR (99) 6, 1999.

⁹² *Ibid*.

⁹³ *ibid*.

⁹⁴ *ibid*.

⁹⁵ See Council of Europe, Hungary State Report to FCNM, Part I, 1999.

⁹⁶ *Ibid*, Article 1.

Hungary also reported on case law on minorities. One of the cases reported is a complaint from the minorities Ombudsman to the police about the abuse of power by some representatives of a local government. An application for a building site was rejected, as the settlement of more Gypsy families was undesirable. The competent authority for investigating the complaint refused to conduct an investigation. A complaint filed against the decision was rejected, first at a local level, later at a national level. The reason given was that '[t]he negative decision did not cause a disadvantage, but failed to confer an advantage, the enforcement of which has no legal basis'. Another case reported concerned a restaurant that refused to serve Romany people. The authorities that investigated this case arrived at the conclusion 'that the investigation did not ascertain that a crime had been committed'. This decision was annulled in appeal and closed, because no evidence of discriminatory treatment could be obtained in a new investigation. And finally Hungary gave figures on reported cases of incitement against a minority community. Fifty-seven cases were examined, twenty-one involved members of the Romany population. Another development mentioned here is that since 1989 the criminal statistical records no longer include data on nationality, ethnicity or religion. The expression 'Gypsy crime' is no longer used.⁹⁷

The United Kingdom submitted minimal information on discrimination suffered by one of its Traveller communities i.e., the case that the Irish travellers in Northern Ireland are recognised as a racial group for the purposes of the Race Relations (Northern Ireland) Order.⁹⁸

IV.3. The Advisory Committee and references to Roma within the Opinions on state parties to FCNM

The duty of the Advisory Committee is to examine the State Reports and to prepare opinions on the measures that states have taken to implement the Convention. The Advisory Committee is an independent body of experts. When it is assessing a State Report, the Advisory Committee can make use of additional information to get a full picture of the implementation of the Framework Convention. It can, for example, request additional information from the state. It can also invite other sources, such as NGOs, to submit information, although it has to notify the Committee of Ministers that it intends to do so. In May 1999 the Committee of Ministers (deputies) took note of the intention of the Advisory Committee 'to invite, during the initial reporting cycle, where appropriate, information from international organisations, Ombudsmen and national institutions for the promotion and protection of human rights as well as representatives from civil society and NGOs'. Other sources, including NGOs, may also submit information on their own initiative. The Advisory Committee can also suggest to the Committee of Ministers to adopt certain country-specific recommendations.

⁹⁷ Ibid, Article 6.

⁹⁸ See Marcia Rooker, "International Supervision of Protection of Romany People in Europe", Nijmegen University Press, 2002.

With regard to its Opinions on the States party to the FCNM for example on Czech Republic “the Advisory Committee is of the opinion that, despite increased Governmental action, problems persist with regard to the implementation of the provisions of the Framework Convention on inter-cultural dialogue and tolerance as well as on the protection against threats, discriminatory acts, violence and hostility, and observes that these problems concern Roma in particular. The Advisory Committee is particularly concerned about the discrimination faced by the Roma in various fields, and the manner in which this minority is treated by the police. More generally, the Advisory Committee is concerned about the insufficient level of communication with the Roma within the Czech society.” In this respect, the Advisory Committee welcomes the determination of the Czech authorities to improve significantly the situation of the Roma minority through a long-term policy, devised and adopted in the course of 2000.⁹⁹

With respect to Article 4 of the FCPMN, the AC in its Opinion on Czech Republic mention: “At the same time, the Advisory Committee notes with concern, as recognized by the Government in the State Report, that there is widespread discrimination in the Czech Republic, notably against Roma and ethnic groups... The Advisory Committee therefore welcomes the decision of the Czech authorities to adopt the “Concept of the Government policy towards the members of the Roma community, supporting their integration into society” (Resolution of the Government of the Czech Republic No. 599 of 14 June 2000). It also welcomes the fact that the Government has already launched a strategic action plan for the period 2001-2020, in order to implement the above-mentioned policy. The Advisory Committee is of the opinion that greater participation of Roma women should be ensured in that process.

With regard to Article 6, the Advisory Committee notes that there is still insufficient inter-cultural dialogue in the Czech Republic. Attitudes of intolerance and hostility towards national minorities, especially Roma, are still widespread. In this respect, the Advisory Committee is troubled by the information, supplied by the Government in its State Report, that the media continue to project negative stereotypes of certain national minorities, especially the Roma, and that they encourage attitudes of hostility and intolerance towards certain groups... The Advisory Committee is also concerned by the information about discrimination in the fields of employment, housing and access to places of entertainment. However, the Advisory Committee remains concerned by the discriminatory, intolerant and hostile attitudes adopted by certain representatives of local government towards various categories of the population (refugees, asylum seekers and persons belonging to national minorities, especially the Roma). Several recent judgments by regional courts have highlighted the persistence of this phenomenon.

Regarding Italy in the opinion of the Advisory Committee “the situation of the Roma gives rise to deep concern..., the Advisory Committee notes that by placing them in camps, the authorities have so far failed to place due emphasis on their integration into Italian society. This state of affairs should in future give way to a comprehensive and coherent strategy to

⁹⁹ see Council of Europe, Advisory Committee on FCNM, Opinion on Czech Republic adopted on 6 April 2001, available at the address <http://www.coe.int>

provide them with housing, end the discrimination and socio-economic inequalities from which they suffer, and encourage their participation in the public affairs concerning them.

With concern to Article 4 of the FCMN the Advisory Committee notes that Italian legislation contains provisions against discrimination, some of which have been extended in recent years. Concurring with the European Commission against Racism and Intolerance (ECRI), the Advisory Committee nonetheless observes that gaps remain in the protection afforded by civil law and administrative law.

For years the Roma have been isolated from the rest of the population by being assembled in camps where living conditions and standards of hygiene are very harsh. Numerous concurring reports suggest that problems of overcrowding persist: in several camps some huts have neither running water nor electricity and proper drainage is often lacking. While some Italian Roma do undeniably continue to lead an itinerant or semi-itinerant life, the fact remains that many of them aspire to live under housing conditions fully comparable to those enjoyed by the rest of the population. Far from effectively aiding integration of the Roma, the practice of placing them in camps is liable to aggravate the socio-economic inequalities affecting them, to heighten the risk of discriminatory acts, and to strengthen negative stereotypes concerning them. Considering the seriousness of the situation, the Advisory Committee feels that the government should envisage a comprehensive and coherent strategy at national level, no longer to be centred on the model of separation in camps.

Where the Roma are concerned, the Advisory Committee is perturbed by the negative image often associated with their identity in Italian society, and by the fact that they are often rejected. The Advisory Committee also notes that the Italian authorities still frequently refer to the Roma community in general as "Gypsies" ("Zingari") or "nomads" ("nomadi"); this is apparent from the headings of several regional laws applying to this community and from certain documents issued by the Interior Ministry.

Regarding the Article 6 The Advisory Committee note that "Roma are placed in a plainly different situation which causes deep concern with regard to the discrimination which they incur. It is clear to the Advisory Committee that more satisfactory integration of Roma cannot be confined to a purely social approach but depends primarily on recognising and eliminating all forms of discrimination faced by this population. In the media field, the Advisory Committee notes the persistence of information presented in such a way as to strengthen the stereotypes associated with Roma. For instance, in reporting criminal facts, some newspapers mention the ethnic origin of the alleged perpetrators, especially when those belong to the Roma community, thus reinforcing the prevalent clichés.¹⁰⁰

Referring to **United Kingdom**, the Advisory Committee note: "Despite some commendable efforts, the Advisory Committee is of the opinion that the implementation of the Framework Convention has not been fully successful as concerns Roma / Gypsies and Irish Travellers. The Advisory Committee is concerned by continuing problems caused by the lack of adequate stopping places as well as significant socio-economic differences, and differences

¹⁰⁰ See Council of Europe, Advisory Committee on FCNM, Opinion on Italy adopted on 14 September 2001 available on the web address <http://www.coe.int>

in educational levels, between Roma / Gypsies and Irish Travellers and the remaining population.

With regard on Article 4, the Advisory Committee notes with concern that many of the Roma/Gypsies and Irish Travellers face considerable socio-economic difficulties in comparison to both the majority and other national minorities, in particular in the fields of education, health, employment and housing, including the availability of stopping sites). This situation is recognised by the United Kingdom Government. The situation calls for the preparation and implementation of further measures to realise full and effective equality taking into account the Committee of Ministers' Recommendation No. (2001) 17 on improving the economic and employment situation of Roma/Gypsies and Travellers in Europe. Despite these efforts, the Advisory Committee considers that the Government and the devolved Executives should continue their efforts to ensure full and effective equality for Roma / Gypsies and Irish Travellers.

Regarding Article 6 a further concern of the Advisory Committee is the negative portrayal and anti-Roma/Gypsy and Irish Traveller statements in the media. Taking into account the above concerns, the Advisory Committee notes two possible recourses open to those affected by such negative portrayals in the media. The first is the use of provisions under the Public Order Act (1986) relating to incitement to racial hatred and the second is the use of the Press Complaints Commission.¹⁰¹

In its Opinion on Croatia the main concern of the Advisory Committee is that practice related to the implementation of the Framework Convention has improved regrettably slowly. In particular at the local level, there appears to be a level of reluctance amongst certain authorities, not only with regard to remedying the negative consequences of past discriminatory practices and other minority-related problems, but also with regard to ensuring that such problems do not occur in today's Croatia. These problems are particularly prevalent in the framework of the return process but they are also severe in other fields. In this connection, the Advisory Committee considers that one area that merits particularly urgent attention and measures is the protection of national minorities, including the Serbian and *Roma* minorities, in the field of employment. The Advisory Committee also calls for further measures in the field of media, aimed at fair portrayal of persons belonging to national minorities and their improved access to various media.

In connection with Article 4 as regards the question of citizenship, the Advisory Committee notes that, despite certain improvements in the applicable rules and practice, persons belonging to national minorities still encounter difficulties, in an inequitable manner, in their attempts to invoke the relevant norms, including when seeking a confirmation of their Croatian citizenship. In particular, the Advisory Committee believes that additional efforts should be made to ensure equal treatment of all in this sphere, including by addressing the problems of Roma and persons belonging to other national minorities resulting from the past disappearance or destruction of their identity documents. The Advisory Committee finds that Croatia has not been able to secure full and effective equality between the majority

¹⁰¹ See Council of Europe, Advisory Committee on FCNM, Opinion on United Kingdom, adopted on 30 November 2001, available on web address <http://www.coe.int>

population and Roma and that the situation of Roma remains difficult in such fields as employment, housing and education. It appears, however, that Roma issues have recently received increasing attention from the central authorities. The Advisory Committee finds it important that this commitment increases the vigour with which sectorial projects for Roma, such as the ones in the field of education are pursued and leads to the development, in consultations with Roma, of more comprehensive programmes and strategies to address the concerns of this national minority.

In relation to Article 6 the Advisory Committee notes with satisfaction that there has been a marked improvement in the attitudes of highest central authorities vis-à-vis national minorities and that the Government has on a number of occasions emphasised the need for tolerance and for intercultural dialogue. Such messages are of utmost importance in Croatia, where inter-ethnic relations are still seriously affected by the legacy of the conflict. It is nevertheless disappointing to note that these views are not consistently reflected in the statements and acts of authorities, in particular those operating at the local level.¹⁰²

In the Opinion on Romania the Advisory Committee mention that "the situation of the Roma gives rise to deep concern, notably regarding numerous acts of discrimination in a wide range of societal settings. Despite the determination of the authorities to speed up the social integration of the Roma, the Advisory Committee remains concerned about the persistence of wide socio-economic differences and living conditions between a large number of Roma and the remaining population, which are aggravated by the unsatisfactory status of the Roma in the educational system. The Advisory Committee is also concerned by the persistence of cases of police brutality and the way in which those are being prosecuted. With references to Article 4 as a general observation concerning the realisation of full and effective equality between persons belonging to a national minority and those belonging to the majority, the Roma in Romania face a broad range of serious problems to a disproportionate degree.

Regarding Article 6 the Advisory Committee recognises that, as a result of the regulations adopted and policies pursued by the Romanian authorities, inter-community relations have become markedly less tense in recent years and that a climate of greater tolerance has developed.

In the media field, the Advisory Committee notes that information is still being presented in a manner which is likely to strengthen the stereotypes associated with members of certain minorities - particularly Hungarians, Roma and Jews. As for the Roma, many newspapers draw on defamatory stereotypes. Moreover, in reporting crimes of which Roma are accused; some newspapers regularly mention ethnic origin, thus reinforcing the prevalent clichés. In this connection, the Advisory Committee is deeply concerned to see that, according to some press articles, this information comes directly from the police.

With respect to Article 6 paragraph 2 of the Framework Convention, the Advisory Committee is deeply concerned about the persistence of numerous acts of discrimination in Romania, many of them directed at members of national minorities, especially at Roma. It

¹⁰² See Council of Europe, Advisory Committee on FCNM, Opinion on Croatia adopted on 6 April 2001 also available on web address <http://www.coe.int>

believes that fuller integration of the Roma cannot be confined to a strictly social approach, but requires, first of all, recognition and elimination of all the forms of discrimination which they face. The Advisory Committee notes, for example, that there is open social and economic discrimination in Romania. Newspapers publish advertisements for jobs or housing which expressly exclude Roma, and neither editors nor advertisers incur any sanctions. Credible allegations also point out that a public agency operating within the Ministry of Labour and Social Protection recently published on its notice board a similar discriminatory advertisement drafted by a private company. Also, as the People's Advocate notes in his Special Report, Roma are sometimes refused admission to certain places of entertainment. The Advisory Committee hopes that the new anti-discrimination legislation will make it possible to combat discrimination of this kind more effectively.¹⁰³

In its Opinion on Hungary the Advisory Committee conclude: "The situation of the Roma in Hungary gives rise to deep concern, notably regarding numerous acts of discrimination in a wide range of societal settings, widespread negative social perceptions and significant differences in socio-economic and living conditions between Roma and the remaining population. The Advisory Committee welcomes the decision of Hungary to develop medium and long-term plans of action towards improving the living conditions of the Roma/Gypsy minority. The Advisory Committee *concludes* that the legal standard for ensuring equality before the law and the equal protection of the law (protection from discrimination) is not fully in place.

As the Government openly recognises, the Roma/Gypsies in Hungary face a broad range of serious problems to a disproportionate degree, be it in comparison to the majority or in comparison to other minorities. Therefore it *recommends* that Hungary vigorously pursue the policies upon which they have embarked, bearing in mind that a commitment to long-term approaches should not lead to a delay in achieving improvements that can be secured in the short or medium-term. The Advisory Committee note that in Hungarian society today the Roma/Gypsy identity is surrounded by negative perceptions, which lead, *inter alia*, to persons making efforts to hide their identity, rather than maintain and develop it.

With respect to Article 6 the Advisory Committee *concludes* that there is reason for concern about physical attacks/injury and threats against Roma as well as about the investigation and prosecution of such acts not being given sufficient priority and that these are further compounded by reports of police brutality and anti-Roma sentiment among members of the police force.¹⁰⁴

With respect to Article 4 in its Opinion on Finland despite special measures to promote equality, the Advisory Committee notes that, as is recognised in the Report, the socio-economic differences between the majority population and the Roma remain considerable. Surveys conducted in this field suggest, *inter alia*, that the unemployment rate

¹⁰³ See Council of Europe, Advisory Committee on FCNM, Opinion on Romania adopted on 16 April 2001, available on the web address at <http://www.coe.int>

¹⁰⁴ See council of Europe, Advisory Committee on FCNM, Opinion on Hungary adopted on 22 September 2000, available on the web address at <http://www.coe.int>

amongst the Roma is considerably higher than the average rate in the country, and their housing situation remains far from satisfactory. In addition to supporting additional special measures in these specific fields, the Advisory Committee is convinced that improvements in the sphere of education - addressed elsewhere in this opinion - may yield positive results also in the field of employment and housing. Finally, the Advisory Committee underlines that, when implementing special measures, particular attention should be paid to the situation of Roma women.

With respect to Article 6 the Advisory Committee mention that "it was informed by representatives of minorities that a number of mainstream media outlets regularly issue defamatory reports about minorities, strengthening the prevailing negative stereotypes, in particular as regards the Russian-speaking population and the Roma as well the Somalis and other more recent minority groups." The Advisory Committee is concerned about the credible reports indicating that discrimination in supplying services continues against Roma despite the fact that such discrimination is prohibited under the Finnish Penal Code. Roma have, for example, been denied entry to a number of restaurants solely on the basis that they belonged to the said minority and were wearing traditional clothing of the Roma. While acknowledging that some initiatives haven been taken to fight these phenomena, the Advisory Committee finds it essential that Finland step up its efforts in this sphere and take additional measures, including in terms of investigation and prosecution of such incidents.¹⁰⁵

With respect to Article 4 on Denmark the Advisory Committee considers that despite the existence of useful institutions such as the Ombudsman and the Board for Ethnic Equality, it is noted that these bodies do not have the competence to address the full range of individual complaints which may arise about discrimination.

With regard to Article 6 the Advisory Committee is concerned about information on intolerant attitudes in Danish society. In this respect the Advisory Committee is particularly concerned about reports of discrimination against foreigners and naturalised Danes in the labour market, housing etc. It therefore considers that the Danish authorities should maintain continuous vigilance in this respect as well as take measures to counteract the spreading of intolerant attitudes.

The Advisory Committee note that despite the historic presence of Roma in Denmark, they appear to have been *a priori* excluded from the protection of the Convention. This approach is not compatible with the Framework Convention. Furthermore, the Advisory Committee considers a limited territorial application, leading to the *a priori* exclusion of certain groups, not to be compatible with the Framework Convention. The Advisory Committee therefore considers that Denmark should, in consultation with those concerned, examine the application of the Framework Convention.¹⁰⁶

¹⁰⁵ See Council of Europe, Advisory Committee on FCNM, Opinion on Finland adopted on 22 September 2000, available at the web address <http://www.coe.int>

¹⁰⁶ See Council of Europe, Advisory Committee on FCNM, Opinion on Denmark adopted on 22 September 2000, available on the web address <http://www.coe.int> .

On its Opinion on Slovakia it is noted that despite a marked increase in the efforts of the Government, the Advisory Committee is of the opinion that there remain problems in the implementation of the Framework Convention as concerns Roma. The Advisory Committee is particularly concerned about the discrimination encountered by Roma in various fields as well as the treatment of this minority by law-enforcement officials, including reported collection of personal ethnicity data without clear legal basis. The Advisory Committee is also concerned about extremely wide socio-economic differences between some of the Roma and the majority population, which are aggravated by the unsatisfactory status of Roma in the educational system.¹⁰⁷

Given the limited information provided by the Government of San Marino and Malta and obtained from other sources, the Advisory Committee is not in a position to assess the statement of the San Marinese and Maltese authorities, according to which there are no national minorities in the territory of San Marino.¹⁰⁸

The Advisory Committee takes note of the declaration contained in the instrument of ratification according to which Liechtenstein considers that no national minorities in the sense of the Framework Convention exist in its territory.¹⁰⁹

The Advisory Committee is aware that the potential for application of a number of provisions of the Framework Convention is rather limited. Also the Advisory Committee Opinions on Estonia and Cyprus have no references to Roma.¹¹⁰

IV.4. The Committee of Ministers and references to Roma within the Resolutions on the implementation by state parties to FCNM

The Committee of Ministers considers both the State Report and the Advisory Committee's opinions. It forms conclusions about the adequacy of the measures taken by the state in implementing the Convention. It may also make recommendations to the state and set a time limit for the state to provide information on how they are following up these recommendations. All conclusions and recommendations are made public. The Advisory Committee's opinion is also made public at the same time, unless the Committee of Ministers decides in a specific case to keep it confidential.

The conclusions and recommendations of the Committee of Ministers are not legally binding and there is no sanctioning system. Nevertheless, it is anticipated that the dialogue between the State Parties and the Committees will be constructive, and may often result in substantive changes in the country concerned. One of the significant forces will be the political pressure that arises in an atmosphere where the state is under scrutiny.

¹⁰⁷ See Council of Europe, Advisory Committee on FCNM, Opinion on Slovakia adopted on 6 July 2001 available on web address at <http://www.coe.int>

¹⁰⁸ See Council of Europe, Advisory Committee on FCNM, Opinion on San Marino adopted on 30 November 2000, Opinion on Malta adopted on 30 November 2000, available on <http://www.coe.int>

¹⁰⁹ See Council of Europe, Advisory Committee on FCNM, Opinion on Liechtenstein adopted on 30 November 2000.

¹¹⁰ See Council of Europe, Advisory Committee on FCNM, Opinion on Cyprus adopted on 30 November 2001, Opinion on Estonia adopted on 14 September 2001.

In the Resolution adopted on the implementation of the FCNM by Czech Republic, the Committee of Ministers mention: -Despite increased governmental action, there is still scope for improvement, including by law-enforcement officials, with regard to inter-cultural dialogue and tolerance and the protection against ethnically motivated threats, violence and hostility, especially as concerns Roma

-Despite the determination of the Czech authorities to improve significantly the situation of Roma through a long-term policy, real problems remain, notably as regards the discrimination encountered by persons belonging to this minority in various fields.¹¹¹

In the Resolution adopted on the implementation of the FCNM by Romania, the Committee of Ministers mention: - Despite the determination of the authorities to speed up the social integration of the Roma, real problems remain, notably as regards acts of discrimination in a wide range of societal settings and wide socio-economic differences between a large number of Roma and the remaining population as well as their treatment by some law-enforcement officials.¹¹²

In the Resolution regarding the implementation of the FCNM by Hungary, the Committee of Ministers mention: - Despite efforts to improve the situation of the Roma minority, real problems remain notably regarding acts of discrimination in a wide range of societal settings, negative social perception and significant differences in socio-economic and living conditions between some of the Roma and the majority population.¹¹³

In the Resolution on the implementation of the FCNM by Croatia the Committee of Ministers mention: Practice related to the implementation of the Framework Convention has improved regrettably slowly. In particular at the local level, some authorities appear reluctant to implement measures to remedy the negative consequences of discriminatory practices and other minority-related problems that occurred in the past to ensure that such problems do not occur in today's Croatia.¹¹⁴

In th Resolution on the implementation of the FCNM by Italy, the Committee of Ministers note that "real problems remain in respect of the implementation of the Framework Convention as concerns Roma, especially as regards access to housing, certain

¹¹¹ See Council of Europe, Committee of Ministers, Resolution ResCMN (2002)2 on the implementation of the Framework Convention for the Protection of National Minorities by the Czech Republic Adopted by the Committee of Ministers on 6 February 2002 at the 782nd meeting of the Ministers' Deputies.

¹¹² See Council of Europe, Committee of Ministers, Resolution ResCMN (2002)5 on the implementation of the Framework Convention for the Protection of National Minorities by Romania Adopted by the Committee of Ministers on 13 March 2002 at the 788th meeting of the Ministers' Deputies.

¹¹³ See Council of Europe, committee of Ministers, Resolution ResCMN (2001)4 on the implementation of the Framework Convention for the Protection of National Minorities by Hungary (Adopted by the Committee of Ministers on 21 November 2001 at the 773rd meeting of the Ministers' Deputies).

¹¹⁴ See Council of Europe, Committee of Ministers, Resolution ResCMN (2002)1 on the implementation of the Framework Convention for the Protection of National Minorities by Croatia Adopted by the Committee of Ministers on 6 February 2002 at the 782nd meeting of the Ministers' Deputies.

discriminatory practices and socio-economic inequalities and participation in the public affairs concerning them. The existing statutory provisions for safeguarding the identity and culture of the Roma are not yet adequate, and Italy should consider a comprehensive and coherent strategy *vis-à-vis* the Roma, particularly so as to promote their integration in Italian society.”¹¹⁵

The Resolution on the implementation of the FCNM by Slovakia, the Committee of Ministers note that despite efforts by the Government, there remain problems in the implementation of the Framework Convention as concerns Roma, in particular discrimination encountered by persons belonging to this minority in various fields as well as their treatment by some law-enforcement officials and the extremely wide socio-economic differences between some of the Roma and the majority population.¹¹⁶

In the Resolution on the implementation of the FCNM by United Kingdom, the Committee of Ministers note that Despite some commendable efforts, the implementation of the Framework Convention has not been fully successful as concerns Roma / Gypsies and Irish Travellers, *inter alia*, due to the lack of adequate stopping places as well as the significant socio-economic differences, and differences in educational levels, between Roma / Gypsies and Irish Travellers and the remaining population.¹¹⁷

In the resolution adopted on the implementation of the FCNM by Finland, the Committee of Ministers note that despite some commendable efforts, the implementation of the Framework Convention has not been fully successful as concerns Roma, *inter alia*, in the educational system and the media. There is also reason for concern about the *de facto* discrimination suffered by Roma as well as the existing socio-economic differences between some of the Roma and the majority population.¹¹⁸

The other Resolutions on the implementation of the FCNM by San Marino, Liechtenstein, Malta, Estonia, Cyprus, and Denmark do not make any reference to Roma.¹¹⁹

¹¹⁵ See Council of Europe, Committee of Ministers, Resolution ResCMN (2002)10 on the implementation of the Framework Convention for the Protection of National Minorities by Italy (Adopted by the Committee of Ministers on 3 July 2002 at the 802nd meeting of the Ministers' Deputies).

¹¹⁶ See Council of Europe, Committee of Ministers, Resolution ResCMN (2001)5 on the implementation of the Framework Convention for the Protection of National Minorities by Slovakia (Adopted by the Committee of Ministers on 21 November 2001 at the 773rd meeting of the Ministers' Deputies).

¹¹⁷ See Council of Europe, Committee of Ministers, Resolution ResCMN (2002)9 on the implementation of the Framework Convention for the Protection of National Minorities by the United Kingdom Adopted by the Committee of Ministers on 13 June 2002 at the 799th meeting of the Ministers' Deputies.

¹¹⁸ See Council of Europe, Committee of Ministers, Resolution ResCMN(2001)3 on the implementation of the Framework Convention for the Protection of National Minorities by Finland Adopted by the Committee of Ministers on 31 October 2001 at the 771st meeting of the Ministers' Deputies.

¹¹⁹ See Council of Europe, Committee of Ministers, resolutions of the Committee of Ministers on San Marino, Malta, Cyprus, Liechtenstein, Estonia and Denmark, available on the web address <http://www.coe.int>.

IV.5. Conclusions

Despite the fact that only a few States has submitted information on discrimination faced by Roma within their State Reports, or by the fact that for example San Marino, Malta and Liechtenstein authorities declare that there are no national minorities on there territories,¹²⁰ the Advisory Committee's Opinions and the Committee of Ministers Resolutions as a general remark shows that Roma face discrimination in almost all spheres of life, existing a concerned about the persistence of wide socio-economic differences and living conditions between a large number of Roma and the remaining population, which are aggravated by the unsatisfactory status of the Roma in various fields.

The Advisory Committee note in its Opinions that is particularly concerned about the discrimination faced by the Roma in various fields, like employment, housing, health, education and access to places of entertainment and the manner in which this minority is treated by the police in Czech Republic, Romania, Hungary, Slovakia or Finland. It also note that the media continue to project negative stereotypes of Roma and is concerned about the persistence of information presented in such a way as to strengthen the stereotypes associated with Roma. For instance, in reporting criminal facts, some newspapers mention the ethnic origin of the alleged perpetrators, especially when those belong to the Roma community, thus reinforcing the prevalent clichés for example on Italy, Romania, and Czech Republic. The negative portrayal and anti-Roma/Gypsy statements in the media are present also on United Kingdom, Croatia or Finland.

The Advisory Committee note that despite the historic presence of Roma in Denmark, they appear to have been *a priori* excluded from the protection of the Framework Convention for the Protection of National Minorities. Also Malta, San Marino and Liechtenstein declare that under their territories there are no national minorities while there are no mentions regarding discrimination faced by Roma within the Advisory Committee Opinions on Cyprus or Estonia.

In the same time the Advisory Committee welcomes the decision, for example of the Czech authorities to adopt the "Concept of the Government policy towards the members of the Roma community, supporting their integration into society", the decision of Hungary to develop medium and long-term plans of action towards improving the living conditions of the Roma/Gypsy minority, or the adoption of the Government Ordinance 137/2000 regarding the elimination and sanctioning all forms of discrimination in Romania and the Government National Strategy for the improvement of the Roma situation.

The existence of discrimination in all these geographical areas imposes effective measures for the remedy of infringed rights. The lack or insufficiency of anti-discriminatory juridical norms makes the adoption of such normative acts not just necessary but compulsory. The enforcement of such provisions can only be done by a body with special functions in the prevention and combat of discrimination. To this purpose, the ECRI General Policy Recommendation no. 2 provides for the principles to be followed by such a body. Nevertheless, from necessity to obligation there is an important step.

¹²⁰ See Council of Europe, Advisory Committee, Opinions of the AC on San Marino, Malta, Liechtenstein, available on the web address at <http://www.coe.int>

This was taken in late June 2000, when the Council of the European Union adopted Directive 2000/43/EC, "implementing the principle of equal treatment between persons irrespective of racial or ethnic origin" (the 'Race Equality Directive' or 'Directive'). The product of a ten-year campaign by a broad network of non-governmental organizations, the Race Equality Directive was given renewed political impetus by the electoral developments in Austria in the winter of 1999-2000, which prompted a number of EU member governments to offer tangible evidence of their commitment to combating racism. Within three years (by mid-2003), all EU member states must adopt the laws, regulations and administrative provisions necessary to implement the principles. In addition as a part of the *acquis communautaire*, the Directive must adequately transposed by all candidate countries who seek to join the European Union. To date, protection against discrimination in a number of EU member and accession states has been weak or non-existent. If effectively enforced, the Directive has the potential to transform anti-discrimination law and litigation throughout Europe.¹²¹

¹²¹ See Dezideriu Gergely, *Good Practices: Compilation of Court cases of discrimination against Roma in access to public places*, produced within a project financed by OSCE/ODIHR; unpublished, 2002; also *INTERIGHTS Bulletin*, 2001 volume 13 no. 3, *European Law: New Possibilities in the Fight against Discrimination* by James A. Goldston, p.127.

CHAPTER V. The Council of Europe's Framework Convention for the protection of National Minorities and measures to promote protection against discrimination at national level

V.1. Introduction

Article 1 of the FCNM, state that the protection of national minorities is part of the international system for human rights protection. The main purpose of Article 1 is to specify that the protection of national minorities, which forms an integral part of the protection of human rights, does not fall within the reserved domain of States. The statement that this protection "forms an integral part of the international protection of human rights" does not confer any competence to interpret the present Framework Convention on the organs established by the European Convention on Human Rights.

The article refers to the protection of national minorities as such and of the rights and freedoms of persons belonging to such minorities. This distinction and the difference in wording make it clear that no collective rights of national minorities are envisaged and the Parties do however recognise that protection of a national minority which can be achieved through protection of the rights of individuals belonging to such a minority.¹²²

The State Parties should implement the provisions from the Framework Convention for the Protection of National Minorities through legislation and appropriate policies at home and, where appropriate, through bilateral and multilateral agreements.

V.2. State reports submitted to the Advisory Committee with reference to article 4¹²³ and 6¹²⁴ under the FCNM with relevance to anti-discrimination provisions at national level

The states which have ratified the Convention are obliged to submit their initial reports within 12 months of the Convention having entered into force in the state concerned¹²⁵. Thereafter each State Party needs to submit a report every five years. In addition, the Committee of Ministers can request ad hoc reports in order to address circumstances which may arise between two periodic reports of a Party concerned. The State Reports will be made public once the Council of Europe receives them. States have

¹²² See Council of Europe, the FCNM Explanatory Report available on the web address at <http://www.coe.int>

¹²³ Article 4 specifies the obligation of State Parties to guarantee the "right of equality before law and equal protection of the law". It also obliges states to take "adequate measures" to promote "full and effective equality" in all areas of life and determines that these measures shall not be considered acts of discrimination. The purpose of this article is to ensure the applicability of the principles of equality and non-discrimination for persons belonging to national minorities.

¹²⁴ The Article 6 of the Framework Convention asks State Parties to encourage mutual respect, tolerance, intercultural dialogue and cooperation among all persons in their country. It further obliges State Parties to protect persons from 'discrimination, hostility, or violence' targeted at them because of their minority identity. This obligation aims at the protection of all persons who may be subject to threats or acts of discrimination, hostility or violence, irrespective of the source of such threats or acts.

¹²⁵ See Annex of the present booklet .

the option of making their own reports public at an earlier stage. Some may do so, following the example of those states which make the preparation of the report a public process. The reports should contain 'full information on the legislative and other measures taken in order to give effect to the principles set out in the Convention'. There are detailed guidelines that specify the information to be included in the first State Reports.¹²⁶ These have been drawn up by the Advisory Committee and are available from the Council of Europe.

With relevance to Article 4 and 5 The State Report on Switzerland submitted to the AC mention: Equality before the law and the prohibition of discrimination stem in Switzerland from Article 8 of the Federal Constitution, on the one hand, and, on the other, from international instruments.¹²⁷ Article 8(2) of the Federal Constitution sets forth several prohibitions of specific forms of discrimination; however, the list is not exhaustive. Consequently, all discrimination based on membership of a national minority is prohibited. In Switzerland, persons who, on account of their language or their ethnic, cultural or religious identity, are liable to be exposed to discriminatory, hostile or violent acts or to the threat of such acts are protected at different levels. In their contacts with the authorities, they may invoke all the constitutional rights conferred upon them by the Federal Constitution, in particular the right to equality before the law. In the context of the criminal law, both ordinary and military, they qualify for the protection of the provisions against racial discrimination.¹²⁸

With respect to Article 4 and 6 Poland in its State Report present the legal provisions with reference to the Constitution and to other provisions on different laws: "In accordance with

¹²⁶ See Council of Europe, Outline for the Reports submitted pursuant to Article 25 Paragraph 1 of the FCNM adopted by the Committee of Ministers on 30 September 1998(ACFC/INF(98)1).

¹²⁷ such as the European Convention on Human Rights, the United Nations Covenant on Civil and Political Rights and the United Nations Convention on the Elimination of all Forms of Racial Discrimination.

¹²⁸ Article 261 bis of the Swiss Criminal Code regarding Racial discrimination: "Whosoever, publicly, incites hatred or discrimination towards a person or a group of persons by reason of their membership of a racial, ethnic or religious group; Whosoever, publicly, propagates an ideology which seeks to disparage or denigrate systematically members of a race, an ethnic group or a religion; Whosoever, with the same design, organises or encourages acts of propaganda or takes part in such acts; Whosoever, publicly by words, in writing, by pictorial representation, gestures, assaults or by any other means, degrades or discriminates against a person or a group of persons in a manner which detracts from human dignity, by reason of their race, their membership of an ethnic group or their religion, or, for the same reason, denies, grossly minimises or seeks to justify a genocide or other crimes against humanity; Whosoever refuses to provide a service aimed at the general public to a person or a group of persons because of their membership of a race, an ethnic group or a religion, Shall be punished by imprisonment or a fine." Article 171c of the Military Criminal Code: "1. Whosoever, publicly, incites hatred or discrimination towards a person or a group of persons by reason of their membership of a racial, ethnic or religious group; Whosoever, publicly, propagates an ideology which seeks to disparage or denigrate systematically members of a race, an ethnic group or a religion; Whosoever, with the same design, organises or encourages acts of propaganda or takes part in such acts; Whosoever, publicly by words, in writing, by pictorial representation, gestures, assaults or by any other means, disparages or discriminates against a person or a group of persons in a manner which detracts from human dignity, by reason of their race, their membership of an ethnic group or their religion, or, for the same reason, denies, grossly minimises or seeks to justify a genocide or other crimes against humanity; Whosoever refuses a service aimed at the general public to a person or a group of persons in a manner by reason of their membership of a race, an ethnic group or a religion, Shall be punished by imprisonment or a fine. If the offence is minor, it shall be punished by a disciplinary measure."; See Council of Europe, ACFC/SR (2001) 2, Initial Report of Switzerland on the implementation of the FCNM, 16 May 2001.

article no.32 from the Constitution, all persons shall be equal before the law. All persons shall have the right to equal treatment by public authorities. No one shall be discriminated against in political, social or economic life for any reason whatsoever. The prohibition of discrimination is introduced by the provision of art. 11³ of the Labour Code under which no direct or indirect discrimination in employment, especially on grounds of sex, age, disability, race, nationality, political or religious convictions or union membership is allowed. Other regulations concerning prohibition of discrimination on any grounds are contained in art. 13 of *the Constitution* and in the *Penal Code*. The Polish *Penal Code* in a number of articles provides for penalisation of actions involving discrimination on any grounds.¹²⁹

In accordance with the Constitutional Act on State Independence of the Republic of Azerbaijan of 18 October 1991, all citizens of the Republic of Azerbaijan are equal before the law. The state report mention the Legal provisions concerning equality before the law from the Constitution and the legislation in the field of criminal law, violation of equality of citizens which is a crime against constitutional human rights and freedoms (Article 154 of the Criminal Code of the Republic of Azerbaijan).¹³⁰ According to Article 16.1, part I, of the Labour Code of the Republic of Azerbaijan, in it is prohibited labour relations to permit any discrimination between workers. In accordance of article 16, parts III and IV, of the Labour Code of the Republic of Azerbaijan «the employer or other physical person committed in the process of labour relations discrimination between workers specified in part I of present Article bear relevant responsibility stipulated by legislation. A worker subjected to discrimination may appeal to the court with complaint demanding of restoration of the violated rights». Other relevant provisions are mentioned on Law "On education", the Law

¹²⁹ Penalisation of acts of violence on national, ethnic, racial, political, religious grounds or on grounds of other convictions and perspective on life is provided for in art. 118 of the Penal Code. § 1 of this article provides that whoever, acting with an intent to destroy, in full or in part, any national, ethnic, racial, political group or group with a different perspective on life, commits homicide or causes a serious determent to the health of a person belonging to such group, shall be subject to the penalty of the deprivation of liberty. § 2 art. 118 of the Penal Code provides for penalisation of actions involving creating, for persons belonging to such a group, living conditions threatening their biological destruction, applying means aimed at preventing births within this group, or forcible removal of children from the persons constituting this group. It should be emphasised that also making arrangements to commit the offence specified in § 1 and 2 shall be subject to penalty. While under art. 119 § 1 of the Penal Code, is it prohibited to use violence or make illegal threats towards a group or an individual because of their national, ethnic, political or religious affiliation or because of their lack of religious beliefs. Crime specified in art. 256 of the Penal Code is also public promotion of fascist and other totalitarian system of state or inciting hatred based on national, ethnic, racial or religious differences or for reason of lack of any religious denomination. This crime is subject to a fine, penalty of restriction of liberty or penalty of deprivation of liberty for up to 2 years. While under art. 257 of the Penal Code, whoever publicly insults a group within the population or individual persons because of their national, ethnic, racial or religious affiliation or because of their lack of any religious denomination or for those reasons breaches personal inviolability of another individual shall be subject to the penalty of deprivation of liberty for up to 3 years; See Council of Europe, Doc. ACFC/SR (2002) 2, report of Poland on the implementation of FCNM, 10 July 2002.

¹³⁰ "Actions intended to arouse national, racial or religious hostility, to lower national dignity, as well as to restrict the rights of citizens, or to establish superiority for citizens on the ground of their national or racial identity, attitude to religion..." are also recognized as criminally prosecuted (article 283 of the Criminal Code of the Republic of Azerbaijan).

“On political parties”, The Law “On employment” which prohibits the discrimination of persons belonging to national minorities in the field of employment.¹³¹

The state report on Ireland mention several provision regarding anti-discrimination in The *Employment Equality Act 1998*, which outlaws discrimination in the employment context on nine grounds including religion, race, and membership of the Traveller community. The Act, which has been in operation since October 1999, is comprehensive and covers direct and indirect discrimination in relation to access to employment, conditions of employment, equal pay for work of equal value, training, promotion and work experience. The *Equal Status Act 2000* complements the *Employment Equality Act* and protects against discrimination on the same nine grounds in education, provision of goods, services and accommodation, and the disposal of property. *The Equal Status Act 2000* came into full operation at the end of October 2000. Also The Prohibition of Incitement to Hatred Act, 1989 makes it an offence to incite hatred against any group of persons in the State or elsewhere on account of their race, colour, nationality, religion, ethnic or national origins, and membership of the Traveller community or sexual orientation.¹³²

The Constitution of the Republic of Albania guarantees everybody's equality before the law (Article 18, paragraph 1) and prohibits unjust discrimination for reasons such as gender, race, religion, ethnicity, language, political, religion or philosophical beliefs, economic, educational and social status or ancestry (Article 18, paragraph 2). A series of legal provisions exist relating to the protection of the national minority people residing in Albania or the denunciation of discriminating acts towards them. For example Article 265 and 266 of the Penal Code¹³³. The Albanian Penal Code considers crime also the discrimination in the public sphere.¹³⁴ In equal treatment in the field of the relations with the public administration for national minority members is also guaranteed in Article 11 of the Administrative Procedure Code¹³⁵, The national minority people living in Albania are protected from discriminating acts also in the field of labour and social insurance. Hence, Article 9 of the Code of Labour, which covers the labour relations both in public and in private sectors,

¹³¹ See Council of Europe, Doc. ACFC/SR (2001) 1, Report of Azerbaijan on the implementation of FCNM, 4 June 2002.

¹³² See Council of Europe, Doc. ACFC/SR (2001) 6, Initial Report of Ireland on the implementation of FCNM report, 13 November 2001.

¹³³ Article 265 “instigating racial, national or religious hatred and disputes, as well as preparation, dissemination or keeping with the intention to distribute, writings relevant to them”, whereas Article 266 punishes “risking of public peace, calling for hatred against parts of population, by offending or slandering against them, demanding the use of violence or arbitrary acts against them” etc.

¹³⁴ Under its Article 253, sentences up to 5 years in jail are passed for “a state administration or public service employee, when due to his duty and while in the exercise of his duty, inflicts discrimination on grounds of origin, gender, health situation, religious political convictions, involvement in trade union activity or on account of relevance to a certain ethnic group, nation, race or religion, which effects unjust privileges or the denial of a right or benefit under the law.”

¹³⁵ its first paragraph, which says that: “In relations to private persons, the public administration is guided by the equity principle, i.e. no one shall be either privileged or discriminated against in view of gender, race, religion, ethnicity, language, political, religious or philosophical views, economic, academic, social situation or parental belonging.”

prohibits any sort of discrimination in employment or in the professional life. Also the legislation in the field of education guarantees equal rights to all.¹³⁶

Regarding Norway, in its State Report it mentions that: The principle of non-discrimination, as it is enshrined in the European Convention on Human Rights and the two International Covenants on Civil and Political Rights and Economic, Social and Cultural Rights is part of Norwegian law, since these conventions were incorporated into Norwegian legislation by the Human Rights Act of 21 May 1999. Apart from this, Norwegian legislation contains no general provisions prohibiting discrimination on grounds of race or ethnic origin, neither in the Constitution nor in other statutes. Section 55 a of Act of 4 February 1977 No. 4 relating to Worker Protection and Working Environment, etc. (the Working Environment Act) prohibits the differential treatment of applicants for employment on grounds of "race, colour, national or ethnic origin or homosexual orientation or homosexual cohabitation".

Act of 22 May 1902 No. 10 (the General Civil, Penal Code) contains provisions intended to protect citizens against racist utterances, racially motivated actions and discrimination. In this regard for example Section 135 a of the Penal Code prohibits public utterances or communications which threaten, insult or subject any person to hatred, persecution or contempt because of their religion, race, colour or national or ethnic origin. Furthermore, racial motivation may be considered an aggravating circumstance, for instance in connection with an offence against the person (cf. section 232 of the Penal Code). Section 349 a, first paragraph, of the Penal Code prohibits any person in an occupational or similar activity from refusing any person goods or services on the same conditions as apply to others because of his or her religion, race, colour or national or ethnic origin. Pursuant to section 349 a, second paragraph, of the Penal Code, any person who refuses a person admission to a *public* performance, exhibition or other public gathering on the same conditions as apply to others because of his or her religion, race, colour or national or ethnic origin is liable to a penalty. A gathering is public when it is accessible to the general public with or without payment. These provisions will also affect persons belonging to a national minority. Contraventions of the Penal Code may result in imprisonment and/or fines.¹³⁷

The Article 37 of the Constitution of the Republic of Armenia declares that citizens belonging to national minorities are entitled to the preservation of their traditions and the development of their language and culture. Subject to the Article 15 of the Constitution of the Republic of Armenia "Citizens regardless of national origin, race, sex, language political or other persuasion, social origin, wealth or other status, are entitled to all the rights and freedoms and subject to the duties determined by the Constitution and the Laws". And the Article 16 as additional guarantee declares that all are equal before the Law and shall be given equal protection of the Law without discrimination. Then the Article 38 of Constitution

¹³⁶ Article 3, of Law 7952, dated 21.06.1995, "On Pre-university Education System", ensures "equal rights to all citizens to be educated at all education levels determined by this law, regardless of the social status, nationality, language, gender, religion, race, political belonging, health state and economic level."; See Council of Europe, Doc. ACFC/SR (2001) 5, Initial Report of Republic of Albania on the implementation of the FCNM, 26 July 2001.

¹³⁷ See Council of Europe, Doc. ACFC/SR (2001) 1, Initial Report of Norway on the implementation of the FCNM, 2 March 2001.

constitutes that everyone is entitled to defend his or her rights and freedoms by all means not otherwise proscribed by Law. Everyone is entitled to defend in court the rights and freedoms fixed in the Constitution and the Laws".¹³⁸

The Constitution of the Republic of Slovenia guarantees general human rights to everyone regardless of nationality, race, sex, language, religion, political or other belief, financial position, birth, education, social status or any other circumstance and guarantees judicial protection of human rights and freedoms (see item 19). The legal protection of human rights in Slovenia is based on these principles. In Slovenia each individual shall be guaranteed equal human rights and fundamental freedoms irrespective of national origin, race, sex, language, religion, political or other beliefs, financial status, birth, education, social status or whatever other personal circumstance. All persons shall be equal before the law.(Article 14); human rights and fundamental freedoms shall be guaranteed judicial protection and the right to obtain redress for the abuse of such rights and freedoms (Article 15); Each person shall be entitled to freely identify with his national grouping or ethnic community, to foster and give expression to his culture and to use his own language and script (Article 61); All incitement to ethnic, racial, religious or other discrimination, as well as the inflaming of ethnic, racial, religious or other hatred or intolerance shall be unconstitutional (Article 63)¹³⁹

Regarding equality before the law and Article 4 from the FCNM, the State Report of Austria mention: This requirement has been fulfilled in Austria by the general principle of equality (Article 7 para. 1 of the Constitutional Law), which is one of the pillars of the Austrian Constitution. According to this principle, all federal nationals are equal before the law. It is equally binding upon all state organs, viz. organs at the federal, regional and local levels. In addition, Article 66 para. 1 of the Treaty of St. Germain-en-Laye, which is of constitutional standing, stipulates that all Austrian nationals shall be equal before the law and shall enjoy the same civil and political rights without distinction as to race, language or religion. Item 5.5. of the Code of Honour of the Austrian press prohibits any discrimination on racial, religious, national, sexual or other grounds. The code contains self-imposed principles regarding the work of the Austrian media. Legal provisions regarding discrimination also exist in the civil and administrative laws of Austria.¹⁴⁰ The protection of persons belonging to national minorities as required by Article 6 para. 2 from the FCNM, is first and foremost guaranteed by the general provisions of the Penal Code (Strafgesetzbuch), A special provision that is aimed, inter alia, at securing the protection of ethnic minorities is enshrined in s. 283 of the Penal Code (incitement to hostile action).¹⁴¹ Finally, it must be pointed out that anyone who discriminates in an unjustified manner against persons on the sole ground

¹³⁸ See Council of Europe, Doc. ACFC/SR (2001), Initial Report of Armenia on the implementation of the FCNM, Ma 2000.

¹³⁹ See Council of Europe, doc. ACFC/SR (2000) 4, Report of Slovenia on the implementation of the FCNM, 2000

¹⁴⁰ See Council of Europe, Doc. ACFC/SR (2000), Report of Austria on the implementation of the FCNM, 30 June 2000; see also Versammlungsgesetz, Vereinsgesetz, etc.

¹⁴¹ It stipulates that any person who, inter alia, urges or incites others to commit a hostile act against a group defined by its affiliation to a nation or tribe or who publicly stirs up hatred against such a group or in a manner which violates human dignity, insults or seeks to disparage it, shall be liable to punishment.

of their national or ethnic origin or prevents them from entering places or relying on services intended for general public use, commits an administrative offence under Article IX para. 1 subpara. 3 of the Introductory Provisions to the Laws on Administrative Procedure (EGVG).

The principle of equality before the law and the ban on discrimination are enshrined in the Basic Law of the Federal Republic of Germany and in the Constitutions of the *Länder*, as well as in various subject-specific laws, and comply with the obligations under paragraph 1. Central provisions of the Basic Law are Article 3, para. 1 ("All persons are equal before the law."), and Article 3, para. 3, 1st sentence, stipulating that no person shall be prejudiced or favoured because of sex, birth, race, language, national or social origin, faith, religion or political opinions.

In some of the *Land* Constitutions, additional safeguards have been included to enforce the ban on discrimination.¹⁴² The constitutional ban on discrimination is also contained in various ordinary laws of the *Bund* and the *Länder*.¹⁴³ Protection against discrimination is, on the basis of the general legal order, also ensured for the members of national minorities and ethnic groups. They are entitled, under the Criminal Code (*StGB*), to the same protection of legal rights as everybody else. In this respect, particular importance is attached, in the field of criminal law, to the following offences: incitement of the people, public incitement to criminal acts, and insult (covering insult, calumny and defamation).¹⁴⁴ The principles of equality and non-discrimination between citizens apply to the country's entire legal and

¹⁴² - thus, for instance, in Articles 1 and 134 of the Hessian Constitution, Article 6 of the Constitution of the Free State of Saxony, Article 12 of the Constitution for the Land of Brandenburg, Article 1 of the Constitution of the Land of Schleswig-Holstein, and Article 2, para. 1, of the Constitution of the Land of Baden-Württemberg. In the Constitution of Berlin, in Article 10, para. 2, an overarching non-discrimination clause has been included, under which "nobody shall be prejudiced or favoured because of their sex, birth, race, language, national or social origin, faith, religion or political opinions". In Article 4, para. 1, of the Land Constitution of North Rhine-Westphalia, the prohibition of discrimination on the grounds of belonging to a national minority in that Land has also been expressly laid down. In Bremen, the ban on discrimination is enshrined in Article 2 of the Land Constitution.

¹⁴³ Thus, non-discriminatory school education is specifically laid down in Section 1, para. 1, 1st sentence, and para. 2, Section 3, para. 3, of the Hessian Schools Act and in Section 1, para. 1, of the Schools Act of Baden-Württemberg.

¹⁴⁴ See Council of Europe, doc. ACFC/SR (2001) 1, initial Report of the Federal Republic of Germany on the implementation of the FCNM, 24 February 2000; In Section 130 para. 1 (incitement of the people), the Criminal Code provides for a term of imprisonment from three months to five years to be imposed on whomever, in a manner designed to interfere with public peace, violates the dignity of others by inciting hatred against parts of the population, inciting violent or arbitrary action against them, or insulting, maliciously disdainingly or disparaging them. Under Section 130, para. 2, of the Criminal Code (incitement of the people [occasionally also termed incitement to national dissension]), a term of imprisonment of up to three years or a fine will be imposed on whoever disseminates writings which incite to hatred against a national, racial, religious or ethnic group, incite violent or arbitrary action against them, or violate the dignity of others by insulting, maliciously disdainingly or disparaging parts of the population or any of the aforementioned groups. Under Section 111 of the Criminal Code (public incitement to criminal acts), a person will be punished as an accessory before the fact (Section 26) who publicly, at a meeting or by dissemination of writings, incites to an illegal act; under Section 26 of the Criminal Code (instigation), whoever, as an accessory before the fact, intentionally has designated another to his intentionally committed illegal act, will be punished as a perpetrator. If the incitement is unsuccessful, the act will be punishable with imprisonment not exceeding five years, or with a fine (Section 111, para. 2, 1st sentence, of the Criminal Code). Section 11, para. 3, of the Criminal Code provides that sound and video recordings, illustrations and other displays are equivalent to writings within the meaning of Sections 111 and 130 of the Criminal Code. Illegal acts within the meaning of Section 111 of the Criminal Code may be, for example: incitement to national dissension (Section 130, Criminal Code), insult (Sections 185 ff.), criminal acts against life (Sections 211 ff.) or against physical integrity (Sections 223 ff.).

institutional system. According to the Moldovan Constitution "*it is the foremost duty of the State to respect and protect the human person*" (Art. 16(1)). Equality before the law and the public authorities, irrespective of nationality, ethnic origin, language or religion, is also guaranteed by the Constitution (Art. 16(2)).

The Law on the Civil Service (OM No. 61 of 02.11.95) states that anyone can be employed by the civil service without distinction of nationality or confession. The principle of equality is set out in the Law on the Civil Service, No. 443/1995, the Law on the Legal Status of Foreign Citizens and Stateless Persons in the Republic of Moldova, No. 275/1994, the Law on the Rights of the Child, No. 338/1994, the Code of Criminal Procedure, the Code of Civil Procedure, the Law on the Administration of Justice, No. 514/1995, and the Labour Code. The Law on Citizenship, adopted in 1991 following the Declaration of Independence, is an legislative act concerned with the principle of non-discrimination against national minorities.¹⁴⁵ The Constitution of the Russian Federation (paragraphs 1 and 2 of Article 19) proclaims the equality of everyone before the law and before the court. At the same time the State guarantees the equality of rights and freedoms of a person and citizen irrespective of gender, race, nationality and language. Restriction of rights in any form on the grounds of social, racial, national, linguistic or religious affiliation is forbidden. Protection by the court is also guaranteed by Article 46 of the Constitution of the Russian Federation. The principle of equality of everyone before the law and the court is also enshrined in Article 7 of the Federal Constitutional Law on the Judicial System of the Russian Federation, where it is stressed that the courts shall not give preference to any bodies, persons, or parties to the proceedings on the grounds of race, nationality and language.¹⁴⁶ The report of Spain concerning the article 4 of the FCNM and anti-discrimination provisions mention the followings: As well as Article 14 of the Constitution¹⁴⁷, Institutional Law 10/1995 of 23 November, establishing the Criminal Code, has relevant sections related to discrimination: Article 22.4¹⁴⁸, Article 314¹⁴⁹ etc.¹⁵⁰

¹⁴⁵ See Council of Europe, Doc. ACFC/SR (2000) 2, Report of Republic of Moldova on the implementation of the FCNM, 29 June 2000.

¹⁴⁶ See Council of Europe, Doc. ACFC/SR (99) 15, Report of the Russian Federation on the implementation of the FCNM, 8 May 2000.

¹⁴⁷ See other relevant Offences committed in the exercise of fundamental rights and public freedoms guaranteed by the Constitution: Article 510: "Persons inciting discrimination, hatred or violence against groups or associations for racist, anti-Semitic or other reasons relating to their members' ideology, religion or beliefs, family situation, ethnic group or race, country of origin, sex or sexual orientation, illness or disability, shall be liable to imprisonment for one to three years, or a fine equivalent to six to twelve months' salary. The same penalties shall apply to persons who knowingly, or with disregard for the truth, circulate false and offensive information concerning the ideology, religion or beliefs, ethnic group or race, country of origin, sex or sexual orientation, illness or disability, of members of groups or associations."

Article 511: "Persons responsible for public services who refuse a person benefits or services to which he/she is entitled, on account of his/her ideology, religion, beliefs, ethnic group or race, country of origin, sex or sexual orientation, family situation, illness or disability, shall be liable to imprisonment for six months to two years and a fine equivalent to twelve to twenty-four months' salary, and shall be barred from holding public employment or office for one to three years. The same penalties shall apply where the offence is committed against an association, foundation, company, corporation or its members, for reasons of ideology, religion or beliefs, or on account of one or more members' ethnic group, race, ..."

Article 512 "Persons who, in pursuing their occupation, refuse a person benefits or services to which he/she is entitled, on account of his/her ideology, religion or beliefs, ethnic group, race or nationality ... shall be barred from practising a profession or trade, or running an industrial or commercial enterprise, for a period of one to four years."

Article 515: "It shall be a punishable offence to form an illegal association. The following shall be considered as such: 5. Those which foster discrimination, hatred or violence against persons, groups or associations on account

V.3. The Advisory Committee Opinions and need for anti-discrimination legislation at national level

The Advisory Committee in its Opinion on Czech Republic "notes the existence of certain legislative provisions prohibiting discriminatory acts, for example the recently amended Employment Act. Nonetheless, it notes equally that, as mentioned in the State Report, the legislation in force does not provide for appropriate sanctions for acts of racial and ethnic discrimination committed in the education, health or prison systems and in a number of other areas and that, where such sanctions do exist, they are insufficient. For this reason, the Advisory Committee is of the opinion that the Czech Republic could consider adopting a full range of legal measures, prohibiting public authorities and private entities from committing such acts. Equally, the Advisory Committee considers that the Czech authorities should guarantee the existence of effective remedies and appropriate sanctions for such cases."¹⁵¹

The Advisory Committee notes" that Italian legislation contains provisions against discrimination, some of which have been extended in recent years. Examples are the criminal law provisions on racial, ethnic or religious discrimination. ...the Advisory Committee nonetheless observes that gaps remain in the protection afforded by civil law and administrative law, and that it would be expedient to develop a more comprehensive body of provisions outlawing discrimination in a number of societal settings including employment, delivery of services, and housing. It would also be expedient to review the legal remedies and the penalties prescribed in respect of discrimination and if necessary to fill any gaps. The Advisory Committee therefore considers that the Italian Government should review its anti-discrimination legislation in order to ensure that all acts of discriminations are outlawed and effective remedies and sanctions are available to all persons who suffer from discrimination, both by public authorities and private entities."¹⁵²

The Advisory Committee notes with satisfaction that there exist general guarantees against discrimination in the Constitutional law on human rights of Croatia and the rights of national and ethnic communities or minorities, as well as in the Criminal Code of Croatia, and the Committee encourages their full implementation. However, aside from the area of employment, there appears to be no specific anti-discrimination legislation pertaining to a number of important societal settings, such as education and housing. The Advisory

of their ideology, religion or beliefs, one or more members' ethnic group, race or nationality, sex or sexual orientation, family situation, illness or disability, or which incite thereto."

¹⁴⁸ Aggravating circumstances: "Committing an offence for racist, anti-Semitic or other reasons involving discrimination on the basis of the victim's ideology, religion or beliefs, ethnic group, race or nationality, sex or sexual orientation or an illness or disability from which he/she suffers".

¹⁴⁹ "Persons guilty of serious discrimination in employment, whether public or private, on account of a person's ideology, religion or beliefs, membership of an ethnic group, race or nationality, sex or sexual orientation, family situation, illness or disability ..., shall be liable to imprisonment for six months to two years, or a fine equivalent to six to twelve months' salary."

¹⁵⁰ See Council of Europe, Doc. ACFC/SR (2000) 5, Report of Spain on the implementation of the FCNM, 19 December 2000.

¹⁵¹ See Council of Europe, Advisory Committee on FCNM, Opinion on Czech Republic adopted on 6 April 2001.

¹⁵² See Council of Europe, Advisory Committee on FCNM, Opinion on Italy adopted on 14 September 2001.

Committee therefore associates itself with the conclusion drawn by the European Commission against Racism (ECRI) in its first Report on Croatia, made public on 9 November 1999, that it would be desirable to develop anti-discrimination legislation to cover such fields. The Advisory Committee emphasises that such legislation should protect individuals from discrimination by both public authorities and private entities.¹⁵³

The Advisory Committee in its Opinion on Hungary *concludes* that the legal standard for ensuring equality before the law and the equal protection of the law (protection from discrimination) is not fully in place. Notably, effective remedies against acts of discrimination by public authorities and private entities in a number of societal settings, such as education, job-advertisements and housing, still need to be developed. Furthermore, the operation of existing provisions and their enforcement by state agencies pose difficulties in practice. The Advisory Committee *recommends* that the Hungarian authorities carry out a full review of both the legal situation and of enforcement procedures and, on that basis, adopt the necessary legislation and introduce, strengthen or re-design enforcement institutions and procedures.

Regarding its Opinion on Finland, while recognising the existence of adequate legislative guarantees against discrimination by both public authorities and private entities, the Advisory Committee is concerned about problems related to their implementation in practice and the continuing reports concerning *de facto* discrimination.¹⁵⁴

The Advisory Committee with regard to Denmark in its Opinion “considers that, as provisions on non-discrimination may not themselves constitute a source of unjustified distinctions, such legislation and enforcement structures and procedures should protect all persons from discrimination on the grounds of language, culture, ethnicity and religion. Whereas many legal provisions prohibiting such acts are in force, it seems that effective remedies are not always available. Despite the existence of useful institutions such as the Ombudsman and the Board for Ethnic Equality, it is noted that these bodies do not have the competence to address the full range of individual complaints which may arise about discrimination. The Advisory Committee considers that the Danish Government should examine its legislation in order to ensure that effective remedies are available to all persons who suffer from discrimination, both by public authorities and private entities.”¹⁵⁵

The Advisory Committee notes “that in Cyprus there is legislation in force prohibiting discrimination by public authorities, as well as providing for remedies in cases where individuals are discriminated against. However, the Advisory Committee notes that a comprehensive set of legal provisions outlawing such acts by private entities in societal settings, such as education and housing, still needs to be developed along with effective remedies, particularly those allowing the individual to obtain compensation for damages. It is further noted that no body exists which has the authority to address the full range of individual complaints which may arise concerning discrimination.”¹⁵⁶

¹⁵³ See Council of Europe, Advisory Committee on FCNM, Opinion on Croatia adopted on 6 April 2001.

¹⁵⁴ See Council of Europe, Advisory Committee on FCNM, Opinion on Hungary adopted on 22 September 2000.

¹⁵⁵ See Council of Europe, Advisory Committee on FCNM, Opinion on Denmark adopted on 22 September 2000.

¹⁵⁶ See Council of Europe, Advisory Committee on FCNM, Opinion on Cyprus adopted on 6 April 2001.

The Advisory Committee notes with satisfaction that there exists a general prohibition of discrimination in the Constitution as well as in the Criminal Code of Estonia and encourages the full implementation of these norms. However, aside from the field of employment, there appears to be no specific anti-discrimination legislation pertaining to a number of important societal settings, such as education and housing. The Advisory Committee considers it desirable to develop and implement anti-discrimination legislation to cover such fields. The Advisory Committee emphasises that such legislation should protect individuals from discrimination by both public authorities and private entities.¹⁵⁷

Based on the information currently at its disposal, the Advisory Committee considers that implementation of the articles 4 and 6 does not give rise to any specific observations in Lichtenstein, Malta or San Marino.¹⁵⁸

The Advisory Committee strongly welcomes that the Romanian Government has recently adopted an Ordinance on Preventing and Punishing All Forms of Discrimination. It is to be hoped that the Parliament will be in a position to enact this Ordinance as a law in order to consolidate its status in the domestic legal order. Insofar as this new piece of legislation, long-awaited by national minorities, punishes discrimination and expressly covers a number of situations pertaining to private and public sectors, it represents a considerable extension of the protection so far offered by the Romanian legal framework. It is now essential that the State authorities ensure that this ordinance is promptly and fully implemented. The Advisory Committee expresses the hope that the National Council for the Prevention of Discrimination, to be set up by the Government to investigate and punish offenders, will promptly be given the resources it needs for its work, and will enjoy the support and co-operation of all State bodies.¹⁵⁹

The Advisory Committee recognises the positive steps that have been taken by the United Kingdom over the recent years to fight against discrimination and promote equality. The Race Relations Act (1976), as amended recently by the Race Relations Amendment Act (2000), provides an important body of anti-discrimination legislation, making discrimination unlawful in employment and training, the provision of goods, facilities and services, education, housing and certain other specified activities. The Act enables individuals who have been discriminated against to bring proceedings and claim damages. The Act also provides for the establishment of the Commission for Racial Equality. The Amendment Act (2000) significantly strengthens the protection by outlawing race discrimination (direct and indirect) in all public authority functions (including the police) with certain limited exceptions. The Amendment Act (2000) also places a general duty on the main public authorities to be proactive in promoting race equality in carrying out their functions.¹⁶⁰

¹⁵⁷ See Council of Europe, Advisory Committee on FCNM, Opinion on Estonia adopted on 14 September 2001.

¹⁵⁸ See Council of Europe, Advisory Committee on FCNM, Opinion on Liechtenstein, Malta, San Marino, all adopted on 30 November 2000.

¹⁵⁹ See Council of Europe, Advisory Committee on FCNM, Opinion on Romania adopted on 6 April 2001: the Government Ordinance 137/2000 was approved by the Romanian Parliament by Law 48/2000 and the National Council for combating discrimination was effectively established only on August 2002.

¹⁶⁰ See Council of Europe, Advisory Committee on FCNM, Opinion on United Kingdom adopted on 30 November 2001.

V.4. Conclusions

Regarding the implementation of the Articles 4 and 6 of the FCNM from the perspective of the equality before the law and protection against discrimination, the states Party of the Framework Convention quarantines these principles within their Constitutions. In this regard, constitutional provisions concerning discrimination in general exist in almost all the State Party to the Framework Convention for the Protection of National Minorities.¹⁶¹

Concerning a specific legislation regarding discrimination on the State Party to the FCNM, according to the State Reports, Opinions of the Advisory Committee and the Council of Europe¹⁶², *a comprehensive anti-discrimination legislation does not exist on* Albania, Armenia, Azerbaijan, Bosnia-Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, Germany, Hungary, Italy, Liechtenstein, Malta, Moldova, Norway, Poland, Portugal, Russia, San Marino, Slovakia, Slovenia, Spain, Switzerland, Ukraine and Yugoslavia.

A few State have adopted specific legislation on discrimination like for example: Austria,¹⁶³ Belgium,¹⁶⁴ Netherlands,¹⁶⁵ Romania,¹⁶⁶ Sweden,¹⁶⁷ United Kingdom¹⁶⁸.

Provisions concerning discrimination in general on the Criminal Law, Civil or Administrative Law of the Party states of the FCNM, exist in : Albania,¹⁶⁹ Austria,¹⁷⁰ Bulgaria,¹⁷¹ Cyprus,¹⁷² Czech Republic,¹⁷³ Denmark,¹⁷⁴ Estonia¹⁷⁵, Finland,¹⁷⁶ Germany,¹⁷⁷ Hungary,¹⁷⁸ Ireland,¹⁷⁹

¹⁶¹ Albania, Armenia, Austria, Azerbaijan, Bosnia-Herzegovina, Bulgaria, Croatia, Czech Republic, Denmark, Estonia, Finland, Germany, Hungary, Ireland, Italy, Liechtenstein, Lithuania, Malta, Moldova, Norway, Poland, Portugal, Romania, Russia, San Marino, Slovakia, Slovenia, Spain, Sweden, Switzerland, Ukraine, United Kingdom and Yugoslavia.

¹⁶² See (ECRI) European Commission against Racism and Intolerance, "Legal Measures to combat racism and intolerance in the member states of the Council of Europe", Report prepared by the Swiss Institute of Comparative Law Lausanne, Strasbourg, 2000.

¹⁶³ The prohibition statute 1947 as amended to 1992, Constitutional Law of 1973 implementing the ICERD.

¹⁶⁴ The Law of 30 July 1981 supplemented by the law of 15 February 1993 for the creation of the center for Equal Opportunities and by a law of 12 April 1994.

¹⁶⁵ The Equal Treatment Act 1994.

¹⁶⁶ Law 48/2002 for the adoption of the Government Ordinance 137/2000 regarding the prevention and sanctioning of all forms of discrimination.

¹⁶⁷ Act against ethnic discrimination of 7 April 1994.

¹⁶⁸ Race Relation Act 1976 and the Race Relation Amendment Act 2000.

¹⁶⁹ Law no.7895, "Criminal code", dated 27.01.1995, art. 73, 74, 131, 132, 133; "Labour Code" art. 9, 115, 181.

¹⁷⁰ Concerning racism Art. 283, 321 Criminal Code; see *Versammlungsgesetz*, *Vereinsgesetz* etc.

¹⁷¹ Art. 162, 163, 416, 417, 418 Criminal Code; law on political parties, law on public assemblies, law on radio and television

¹⁷² Concerning racism Law no.11(III)/1992 amended by Law no.12/1967.

¹⁷³ Concerning racism Articles 196-198a and 159-263a Criminal Code; order no.182/1991 on the Ministry for Labour and social Security Act.

¹⁷⁴ Art.266b of the Criminal Code, Act 289/1971; Act 1996/459 prohibiting discrimination in the employment market, act 466/1993 setting up the Committee on Ethnic Equality.

¹⁷⁵ Concerning racism art.72 Criminal Code.

¹⁷⁶ Article 8, 9, Chap.11 of Criminal Code, Employment Act.

¹⁷⁷ Art.130, 220a Criminal Code, Federal directory statute on the law governing civil servants, Federal Civil Servants Act, Aliens Act etc.

¹⁷⁸ Art.155, 156, 157 Criminal Code, Art.8, 76 Civil Code, Art.5 Labour Code, Act IV of 1991 art.2, Act LXXIX of 1993.

¹⁷⁹ Prohibition of incitement to Hatred Act 1989, video recordings Act 1989, Hotel proprietors Act 1963, Genocide Act 1973).

Italy,¹⁸⁰ Liechtenstein,¹⁸¹ Lithuania,¹⁸² Moldova,¹⁸³ Norway,¹⁸⁴ Poland,¹⁸⁵ Portugal,¹⁸⁶ Romania,¹⁸⁷ Russia¹⁸⁸, Slovakia,¹⁸⁹ Slovenia,¹⁹⁰ Spain,¹⁹¹ Sweden,¹⁹² Switzerland,¹⁹³ Former Yugoslav Republic of Macedonia, Ukraine, United Kingdom.¹⁹⁴

The prevention and combat of discrimination involve considerable effort, which states must keep in mind when they apply such policies. The recommendations of European institutions and international organizations provide, besides anti-discriminatory legislative measure, the effective ways to enforce these. The European Commission against Racism and Intolerance adopted on July 13, 1997, the recommendation for general policy No. 2 regarding specialized bodies in the combat of racism, xenophobia, anti-Semitism and intolerance at the national level as well as the basic principles for such mechanisms.¹⁹⁵ The need to establish specialized bodies to combat discrimination as a means of avoiding the judiciary (as a way to apply to a Court) in the protection of national minorities is most stringent: "...it is necessary to establish specialized State bodies to combat discrimination. In a number of OSCE countries, such bodies have made a valuable contribution toward combating racism and other forms of discrimination. Another model that has proven effective in some countries is that of an ombudsman."¹⁹⁶

Why is it necessary to establish specialized bodies for the combat and sanctioning of discrimination? ECRI reports regarding Council of Europe member states, taken as a whole, led to a conclusion. Moreover, the system for the protection of human rights develops such as to cover all spheres of life and to ensure the protection of the individual. With the adoption of domestic anti-discriminatory legislation, by compulsory international regulations presently assisting the process, states have gone beyond the recommendations stage. The year

¹⁸⁰ Acts Nos.645 of 1952, 654 of 1975 and 205 of 1993, labour law, prison law, law on education etc.

¹⁸¹ Concerning racism Articles 283, 321 Criminal Code.

¹⁸² Concerning racism Art 72 Criminal Code.

¹⁸³ Art.71, Criminal Code, art.8 Code of Criminal Procedure, Labour Code art.17, Children's Rights Code

¹⁸⁴ Articles 135a, 232 and 349a of the Criminal Code

¹⁸⁵ Concerning racism Art. 272, 273, 274.

¹⁸⁶ Art.132 and 189 Criminal Code, art.483 ff. Civil Code, Law decree no.85-C/1975, Law Decree no.64-A/1989 etc.

¹⁸⁷ Concerning racism Articles 166,247 and 317 of the Criminal Code.

¹⁸⁸ Labour Code, Mass Media Code, Public associations Law etc.

¹⁸⁹ Concerning racism Art.196-198a and 259-263a of the Criminal Code.

¹⁹⁰ Art.134, 141 Criminal Code.

¹⁹¹ Art.137bis, 165, 181bis, 173.4 Criminal Code, Estatuto de los Trabajadores, Law no.8/1988.

¹⁹² Art.8 and 9 chapter 16, art.2 chapter 29 of the Criminal Code, Act against ethnic discrimination, labour law, Act on civil responsibility.

¹⁹³ Art.261 bis Criminal Code, art.171c Code of Military Justice, Article 28 et seq of the Civil Code, art.336 and 328 of the Code of Obligations, Act on public transport, Postal Services Act.

¹⁹⁴ Public Order Act 1986, Malicious Communications Act 1988, Football (Offences) Act 1991, Race Relations Act 1976, Race Relation Amendment Act 2000.

¹⁹⁵ See ECRI, "Recommendation for general policy No. 2 regarding specialized bodies in the combat of racism, xenophobia, anti-Semitism and intolerance at the national level" and ECRI, Compilation of ECRI's General Recommendation, Strasbourg 2001, pages 16-22.

¹⁹⁶ See OSCE, "Report on the situation of Roma and Sinti in the OSCE Area"; OSCE High Commissioner for National Minorities, 2000, page 3.

2003 is a term by which European Union member states shall have to amend their legislation according to the Directive 43/2000 while candidate states shall have to do the same.¹⁹⁷ In its Country by Country Report, the European Commission against Racism and Intolerance is approaching issues like persistence of discrimination against Roma, the need for anti-discrimination legislation and the adoption of a specialized body in combating discrimination. These issues are identified regarding the Czech Republic¹⁹⁸, Bulgaria¹⁹⁹, Turkey²⁰⁰, Croatia²⁰¹, Slovakia²⁰², Hungary²⁰³, Poland²⁰⁴, Macedonia²⁰⁵, Cyprus²⁰⁶, Greece²⁰⁷, Germany²⁰⁸, France²⁰⁹.²¹⁰

¹⁹⁷ See Dezideriu Gergely, Good Practices: Compilation of Court Cases of discrimination against Roma in access to public places, 2002, unpublished.

¹⁹⁸ See ECRI, Second Report on the Czech Republic, March 21, 2000, page 8, "given that discrimination against Roma/Gypsies ..., ECRI urges the authorities urgently to consider the establishment of a comprehensive anti-discrimination law ...".

¹⁹⁹ See ECRI, Second Report on Bulgaria, March 21, 2000, page 8, "No specific body of civil and administrative legislation exists in Bulgaria concerning discrimination in the fields of... public services or social services...ECRI's General Policy Recommendation No. 2 stresses the important role played by specialized bodies...in combating racism and discrimination...".

²⁰⁰ See ECRI, Second Report on Turkey, July 3, 2001, page 10, "there are no comprehensive civil or administrative law provisions against discrimination. ECRI strongly encourages the Turkish authorities to consider the adoption of such provisions".

²⁰¹ See ECRI, Second Report on Croatia, July 3, 2001, page 8, "Croatia lacks civil and administrative legislation relating to discrimination... although members of ethnic and national minority groups may face discrimination in all of these fields."

²⁰² See ECRI, Second Report on Slovakia, June 27, 2000, page 7, "ECRI recommends that Slovakia set up a specialized body to combat racism and intolerance along the lines set out in ECRI's general policy recommendation No. 2 on specialized bodies.

²⁰³ See ECRI, Second Report on Hungary, March 21, 2000, page 7, "it is ECRI's opinion that the introduction of a body of anti-discrimination law covering all fields of life should be seriously considered by the Hungarian authorities as a possible way of improving the legislative framework in this field.

²⁰⁴ See ECRI, Second Report on Poland, June 27, 2000, page 7, "ECRI encourages the Polish authorities to introduce a comprehensive body of criminal, civil and administrative legislation prohibiting racism and discrimination in all field of life".

²⁰⁵ See ECRI, Second Report on The former Yugoslav Republic of Macedonia, April 3, 2001, page 6, "there is no specific anti-discrimination legislation in the fields of employment, housing and the provision of goods and services"

²⁰⁶ See ECRI, Second Report on Cyprus, July 3, page 8, "ECRI considers that the establishment of comprehensive civil and administrative anti-discrimination provisions can be a useful tool to help countering discrimination".

²⁰⁷ See ECRI, Second Report on Greece, July 27, 2000, page 7, "No specific body of legislation currently exists in Greece concerning discrimination... ECRI stresses that the introduction of a single and comprehensive body of anti-discrimination legislation has proved a valuable tool in many countries".

²⁰⁸ See ECRI, Second Report on Germany, July 3, 2001, page 7, "ECRI notes with regret that at present Germany still lacks at national level a commission or ombudsman able to accept individual complaints and assist victims in pursuing these complaints."

²⁰⁹ See ECRI, Second Report on France, June 27 2000, page 7, "the establishment of a specialized body with specific competence in combating racism and intolerance should be considered by the French authorities".

²¹⁰ See also a comprehensive approach regarding the legislation (including anti-discrimination and lack of such legislation) in the member states of the Council of Europe in "Legal measures to combat racism and intolerance in the member States of the Council of Europe", Report prepared by the Swiss Institute of Comparative Law Lausanne for the European Commission against Racism and intolerance (ECRI), 2000.

Further more, as a general remark, the Opinions of the Advisory Committee regarding the implementation of Articles 4 and especially 6 paragraph 2 concerning anti-discrimination measures, generate one conclusion: member states-Party of the FCNM should adopt anti-discrimination legislation at national level. This process has to be realized either by adopting anti-discrimination laws or by reviewing the present domestic legislation. As regard to those states which already has adopted anti-discrimination legislation, the Advisory Committee is concerned about the implementation of these provisions and to ensure the effective remedies to all persons who suffer from discrimination, both by public authorities and private entities.²¹¹

²¹¹ See Council of Europe, Advisory Committee Opinions on States Party to the Framework Convention for the Protection of National Minorities.

Recommendations regarding the Framework Convention for the Protection of National Minorities and for the adoption and effective implementation of measures on protection against discrimination

1. All States Should ratify the FCNM and, pending the removal of legal constraints, should seek to implement the principles of the FCNM in practice. States should continue to develop the FCNM's scope of application, seeking to protect all established minorities with the Convention.
2. State should recognize at national level, the minority status of Roma, including under the protection of the Framework Convention for the protection of National Minorities.
3. All states should be pressed to report on time and the Advisory Committee's Opinions should be published within 12 months of the submission of state Reports
4. The elaboration of the State report on the implementation of the FCNM should be a public process with transparency on the elaboration.
5. States should involve minority non-governmental organizations, and especially Roma organizations in the reporting and implementation of the FCNM. Joint task groups should be set up around problem areas to encourage minority participation and agreed responses.
6. States should initiate a programme to rise awareness of minority rights and the FCNM. This should include the translation into key languages of the text and the Explanatory Report of the FCNM, Opinions, Comments and Resolutions and these should be widely disseminated.
7. In the public awareness process, minority organizations should be involved in order to ensure that materials on minority rights are accessible on the local minority communities and persons belonging to national minorities.
8. The CoM should take great care to follow the AC's Conclusions in its own Resolutions, and strongly resist pressure from governments to weaken any criticism.
9. Each year the CoM should review the situation in States where non-compliance with the FCNM has been identified. On key issues States should present program reports to the AC and the CoM.
10. As a priority, the CoM should provide more resources for the Advisory Committee, for speedy and dynamic monitoring, and to promote effective implementation of the CoM's Resolutions. This would include follow up visits and advice, and dialogue with States and civil society on problematic issues between reporting cycles.
11. The Council of Europe should establish an institution-wide strategy to link all of its work on minorities to create synergies and encouragement for the whole of the CoE to assist in implementing the CoM's Resolutions. The CoE, EU, OSCE, and UN should work together.²¹²

²¹² The Recommendations regarding the Framework Convention are produced by Alan Philips; thus the recommendation no.1, 3, 5, 6, 8, 9, 10, 11 are quoted from "Minority Rights Group International, Alan Philips, The Framework Convention for the protection of National Minorities: A Policy Paper", MRG International, September 2002.

Legislative changes in order to prevent racial and ethnic discrimination

1. States should adopt comprehensive anti-discrimination legislation in order to ensure effective protection against discrimination on all grounds.
2. When adopting anti-discrimination legislation, States should include the creation of a coherent legal framework for the implementation of the anti-discrimination law.
3. States should avoid unrealistic deadlines for adopting anti-discrimination provisions or specialised bodies for combating discrimination which later results with Governments or Parliaments delaying the adoption of such legal provisions or establishing such bodies.
4. When adopting anti-discrimination legal measures, States should respect the requirements of Race Equality Directive 43/2000/EC, "implementing the principle of equal treatment between persons irrespective of racial or ethnic origin" adopted by the Council of the European Union on June 29, 2000.
5. If States have already adopted anti-discrimination legislation, States should bring anti-discrimination legislation into conformity with international standards, especially with the Race Equality Directive 43/2000/EC and the UN International Convention on the Elimination of all Forms of Racial Discrimination. States should, in particular, provide explicit recognition that direct and indirect discrimination is illegal, as well as adopting provisions to shift the burden of proof to the respondent in prima facie cases; to include effective proportionate and dissuasive sanctions imposed for violation of national anti-discrimination norms; and a body or bodies for the promotion of equal treatment, capable of providing independent assistance to victims of discrimination in pursuing their complaints; conducting independent surveys concerning discrimination; publishing independent reports; and making recommendations.
6. States should make the declaration under Article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination, accepting the competence of the United Nations Committee on the Elimination of Racial Discrimination to receive communications from individuals or groups alleging violations of the Convention.
7. Without delay, States should ratify Protocol 12 to the European Convention on Human Rights.

Specialised bodies for combating racial discrimination

1. Specialised bodies should possess functions and responsibilities to effectively provide aid and assistance to victims, including legal aid, in order to secure their rights before institutions and the courts; to hear and consider complaints and petitions concerning specific cases and to seek settlements either through amicable conciliation or, within the limits prescribed by the law, through binding and enforceable decisions; to have appropriate powers to obtain evidence and information in pursuance of its functions to support and encourage organisations with similar objectives to those of the specialised body.

2. The composition of specialized bodies for combating discrimination should reflect society at large and its diversity. In this regard, the presence of persons belonging to national and ethnic minorities is essential.
3. Specialised bodies should ensure that they operate in a way which is clearly politically independent.
4. Specialised bodies should be provided with sufficient funds to carry out their functions and responsibilities effectively.
5. Specialised bodies should function without interference from the State and with all the guarantees necessary for their independence including the freedom to appoint their own staff, to manage their resources, and to express their views publicly.²¹³

²¹³ See Romani CRISS, Dezideriu Gergely, "Good Practices in using specialized bodies in combating discrimination: United Kingdom and Romania", Romani CRISS, December 2002.

Framework Convention for the Protection of National Minorities Treaty open for signature by the member States and up until the date of entry into force by any other State so invited by the Committee of Ministers

Opening for signature:

Place: Strasbourg

Date: 01/02/95

Entry into force :

Conditions: 12 Ratifications.

Date : 01/02/98

Member States of the Council of Europe:

States	Date of signature	Date of ratification	Date of entry into force	Notes	R.	D.	A.	T.	C.	O.
Albania	29/06/95	28/09/99	01/01/00							
Andorra										
Armenia	25/07/97	20/07/98	01/11/98							
Austria	01/02/95	31/03/98	01/07/98			X				
Azerbaijan		26/06/00 a	01/10/00			X				
Belgium	31/07/01				X					
Bosnia and Herzegovina		24/02/00 a	01/06/00							
Bulgaria	09/10/97	07/05/99	01/09/99			X				
Croatia	06/11/96	11/10/97	01/02/98							
Cyprus	01/02/95	04/06/96	01/02/98							
Czech Republic	28/04/95	18/12/97	01/04/98							
Denmark	01/02/95	22/09/97	01/02/98			X				
Estonia	02/02/95	06/01/97	01/02/98			X				
Finland	01/02/95	03/10/97	01/02/98							
France										
Georgia	21/01/00									
Germany	11/05/95	10/09/97	01/02/98			X				

Greece	22/09/97									
Hungary	01/02/95	25/09/95	01/02/98							
Iceland	01/02/95									
Ireland	01/02/95	07/05/99	01/09/99							
Italy	01/02/95	03/11/97	01/03/98							
Latvia	11/05/95									
Liechtenstein	01/02/95	18/11/97	01/03/98			X				
Lithuania	01/02/95	23/03/00	01/07/00							
Luxembourg	20/07/95					X				
Malta	11/05/95	10/02/98	01/06/98		X	X				
Moldova	13/07/95	20/11/96	01/02/98							
Netherlands	01/02/95									
Norway	01/02/95	17/03/99	01/07/99							
Poland	01/02/95	20/12/00	01/04/01			X				
Portugal	01/02/95	07/05/02	01/09/02							
Romania	01/02/95	11/05/95	01/02/98							
Russia	28/02/96	21/08/98	01/12/98			X				
San Marino	11/05/95	05/12/96	01/02/98							
Slovakia	01/02/95	14/09/95	01/02/98							
Slovenia	01/02/95	25/03/98	01/07/98			X				
Spain	01/02/95	01/09/95	01/02/98							
Sweden	01/02/95	09/02/00	01/06/00			X				
Switzerland	01/02/95	21/10/98	01/02/99			X				
The former Yugoslav Republic of Macedonia	25/07/96	10/04/97	01/02/98			X				
Turkey										
Ukraine	15/09/95	26/01/98	01/05/98							
United Kingdom	01/02/95	15/01/98	01/05/98							

Non-member States of the Council of Europe:

States	Date of signature	Date of ratification	Date of entry into force	Notes	R.	D.	A.	T.	C.	O.	
Yugoslavia		11/05/01 a	01/09/01								
Total number of signatures not followed by ratifications :							7				
Total number of ratifications/accessions :							35				

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FRAMEWORK CONVENTION FOR THE PROTECTION OF NATIONAL MINORITIES
(CHART OF SUBMISSION OF STATE REPORTS AND STATUS OF MONITORING WORK) Updated 09 July 2002

MEMBER STATES	First report due	First report received *	First Advisory Committee opinion adopted	Committee of Ministers Résolution
ARMENIA	01/11/1999	11/06/2001	16/05/2002	
AUSTRIA	01/07/1999	15/11/2000	16/05/2002	
AZERBAIJAN	01/10/2001	04/06/2002		
BELGIUM				
BOSNIA AND HERZEGOVINA	01/06/2001			
BULGARIA	01/09/2000			
CROATIA	01/02/1999	16/03/1999	06/04/2001 (published on 06/02/2002)	06/02/2002
CYPRUS	01/02/1999	01/03/1999	06/04/2001 (published on 21/02/2002)	21/02/2002
CZECH REPUBLIC	01/04/1999	01/04/1999	06/04/2001(published on 25/01/2002)**)	06/02/2002
DENMARK	01/02/1999	06/05/1999	22/09/2000 (published on 31/10/2001)	
ESTONIA	01/02/1999	22/12/1999	14/09/2001 (published on 12/04/02)	13/06/2002
FINLAND	01/02/1999	16/02/1999	22/09/2000 (published on 06/07/2001)**	
FRANCE				
GEORGIA				

GERMANY	01/02/1999	24/02/2000	01/03/2002 (not yet public)	
GREECE				
HUNGARY	01/02/1999	21/05/1999	22/09/2000 (published on 14/09/2001)**	21/11/2001
ICELAND				
IRELAND	01/09/2000	13/11/2001		
ITALY	01/03/1999	03/05/1999	14/09/2001 (published on 03/07/2002)	03/07/2002
LATVIA				
LIECHTENSTEIN	01/03/1999	03/03/1999	30/11/2000 (published on 04/09/2001)**	27/11/2001
LITHUANIA	01/07/2001	31/10/2001		
LUXEMBOURG				
MALTA	01/06/1999	27/07/1999	30/11/2000 (published on 27/11/2001)**	27/11/2001
MOLDOVA	01/02/1999	29/06/2000	01/03/2002 (not yet public)	
NETHERLANDS				
NORWAY	01/07/2000	02/03/2001		
POLAND	01/04/2002	10/07/2002		
PORTUGAL	01/09/2003			
ROMANIA	01/02/1999	24/06/1999	06/04/2001 (published on 10/01/2002)**	13/03/2002

RUSSIAN FEDERATION	01/12/1999	08/03/2000		
SAN MARINO	01/02/1999	03/02/1999	30/11/2000 (published on 27/11/2001)**	27/11/2001
SLOVAK REPUBLIC	01/02/1999	04/05/1999	22/09/2000 (published on 06/07/2001)**	21/11/2001
SLOVENIA	01/07/1999	29/11/2000		
SPAIN	01/02/1999	19/12/2000		
SWEDEN	01/06/2001	05/06/2001		
SWITZERLAND	01/02/2000	16/05/2001		
"THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA"	01/02/1999			
TURKEY				
UKRAINE	01/05/1999	02/11/1999	01/03/2002 (not yet public)	
UNITED KINGDOM	01/05/1999	26/07/1999	30/11/2001(published on 22/05/2002)**	13/06/2002
NON-MEMBER STATES				
FEDERAL REPUBLIC OF YUGOSLAVIA	01/09/2002			

* The dates below refer to the submission of reports in one of the official languages of the Council of Europe. This is without prejudice to a possible earlier submission in the original language. ** Date on which the Council of Europe received the country's communication relating to the publication of the opinion before the adoption of the Committee of Ministers Conclusions and Recommendations.

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Romani CRISS **Roma Center for Social** **Intervention and Studies**

Roma Centre for Social Intervention and Studies is a Non-profit organisation established on 4th of April 1993. The founding members of the organisation are Roma Ethnic Federation (FER), Research Centre of Roma/Gypsies from the Rene Descartes University, Paris and Institute of Sociology from Romanian Academy.

Our organisation combines civic militantism with the designing and the implementation of public policy programs for the benefit of local Roma community in order to respect Roma rights as human being and minority.

CRISS activates in the multy-ethnical communities with Roma population from Romania in order to consolidate the local democratic institutions based on the non- discriminatory respect of the civil, political, economical and cultural rights. CRISS promotes the politic concept of Roma as people in the world Diaspora and as European minority to whom the national states and the intergovernmental institutions have a special responsibility.

On the Summit-ul EU/US from London, 18th of May 1998, Romani CRISS was awarded the award for Democracy and Civil Society, from the European Union and the United States of America.

At the present, Romani CRISS implements its activities in specialised departments such as Human Rights, Media, Social, education, Health, International – the Stability Pact. All these departments are directly related to the Administrative and Executive department of organization.

The Romani CRISS funds came from project implemented by the organization's staff or in collaboration with external experts. In implementing its programs, Romani CRISS cooperates with governmental and non-governmental organizations, from the country and abroad, with Roma organizations and non-Roma specialists.

Along the years, Romani CRISS and Human Right Department have collaborated and still collaborates with the institutions of Romanian State, as well as with international organizations such as Council of Europe, The Organization for Security and Cooperation in Europe – the Office for Democratic Institutions and Human Rights (OSCE/ODIHR), the OSCE/ODIHR Contact Point for Roma and Sinti Issues, the United Nations Organization (ONU). It also cooperated and cooperates with the representatives of the Governments and Embassies of European Union states from Center and South – Eastern Europe, as well as Scandinavian states or United States of America.

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