

The Roma in Europe: Between diversity and social disadvantage Comparative perspectives from the Framework Convention for the Protection of National Minorities

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Abstract Deutsch

Die Roma sind in praktisch allen europäischen Ländern vertreten und umfassen etwa zehn Millionen Menschen. In den meisten dieser Länder sind die Roma-Gemeinschaften mit erheblichen Hindernissen konfrontiert, wenn sie ihre Grundrechte in vollem Umfang wahrnehmen wollen. In diesem Kapitel werden die Roma aus dem Blickwinkel des Rahmenübereinkommens des Europarats zum Schutz nationaler Minderheiten (FCNM) betrachtet, dem ersten rechtsverbindlichen multilateralen Instrument zum Schutz nationaler Minderheiten überhaupt.

Wie wird das FCNM von den Vertragsstaaten gegenüber den Roma angewandt? Welchen Status und welche Minderheitenrechte räumen die Mitgliedsstaaten des FCNM den Roma-Gemeinschaften ein? Welchen Einfluss hat der FCNM, insbesondere die Stellungnahmen des Beratenden Ausschusses des Rahmenübereinkommens (ACFC), dem Aufsichtsorgan des FCNM, auf den Schutz der Roma? Ist es möglich, positive Trends bei der Umsetzung des FCNM in Bezug auf die Roma zu erkennen?

Die oben genannten Fragen werden durch die Analyse der relevanten Dokumente des Überwachungsmechanismus des FCNM beantwortet – staatliche Berichte, Stellungnahmen des ACFC, Schattenberichte von NRO und Empfehlungen des Ministerkomitees. Der Beitrag wird sich insbesondere mit den Unterschieden zwischen den Staatenberichten und den Stellungnahmen des ACFC befassen, um Fortschritte und Rückschritte zu erkennen. Staaten wie Spanien, Italien, die Niederlande, Finnland, Rumänien und die Tschechische Republik werden als Repräsentanten für unterschiedliche Ansätze beim Schutz der Roma besonders relevant sein.

Das Kapitel folgt dem Ansatz, der in der PACE-Resolution 1740 (2010) 1 verankert ist, in der die Versammlung die Mitgliedstaaten dazu auffordert: „das Problem der Roma nicht nur aus der Perspektive einer sozial benachteiligten Gruppe zu behandeln, sondern aus dem Blickwinkel einer nationalen Minderheit, die Anspruch auf die im Rahmenübereinkommen zum Schutz nationaler Minderheiten verankerten Rechte hat“.

Darüber hinaus ist der Artikel-für-Artikel-Ansatz, den der ACFC bei der Umsetzung des Rahmenübereinkommens zum Schutz nationaler Minderheiten in Bezug auf „alte“ und „neue“ Minderheiten unterstützt, besonders geeignet, um viele Fragen im Zusammenhang mit der Eingliederung der Roma aus der Perspektive der Dichotomie Ausländer/Bürger zu behandeln, da viele Roma „neue Minderheiten“ sind, die aus der Migra-

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tion in das Land, in dem sie leben, hervorgegangen sind, während viele von ihnen Gemeinschaften angehören, die in vielen europäischen Ländern als „alte“ Minderheiten gelten.

Abstract English

The Roma are present in virtually all European countries and comprise approximately ten million people. In most of these countries the Roma communities face considerable obstacles to the full enjoyment of their fundamental rights. The present chapter will look at the Roma from the perspective of the CoE Framework Convention for the Protection of National Minorities (FCNM), the first ever legally binding multilateral instrument devoted to the protection of national minorities.

How the FCNM finds application among its Contracting States towards the Roma? What is the status and minority rights recognized to the Roma communities by Members States of the FCNM? What is the impact of the FCNM, in particular of the opinions of the Advisory Committee of the Framework Convention (ACFC), the supervisory organ of the FCNM, on the protection of Roma? Is it possible to identify positive trends in the implementation of the FCNM vis-à-vis Roma?

The questions above will be addressed by analyzing the relevant documents of the monitoring mechanism of the FCNM – state reports, ACFC’s opinions, NGO’s shadow reports and recommendations of the Committee of Ministers. The contribution will look, in particular, at the differences between state reports and opinions of the ACFC in order to detect progresses and regresses. States as Spain, Italy, The Netherlands, Finland, Rumania and the Czech Republic will be particularly relevant as representative of different approaches in the protection of Roma.

The chapter follows the approach enshrined in the PACE Resolution 1740 (2010) 1 in which the Assembly urged Member States to: “treat the Roma issue not only from the perspective of a socially disadvantaged group, but from the perspective of a national minority entitled to enjoy the rights enshrined in the Framework Convention for the Protection of National Minorities”.

Moreover, the article-by-article approach supported by the ACFC in the implementation of the FCNM towards ‘old’ and ‘new’ minorities is particularly suitable to address many issues related to the inclusion of Roma from the perspective of foreigner/citizen dichotomy as many Roma are ‘new minorities’ originated from migration in the country in which they reside, whereas many of them belong to communities considered in many European countries to be ‘old’ minorities.

1. Introduction

A decade ago the Parliamentary Assembly of the Council of Europe (PACE) adopted a resolution on Roma¹ in which member states were urged to ‘treat the Roma issue not only from the perspective of a socially disadvantaged group, but from the perspective of a *national minority* entitled to enjoy the rights enshrined in the Frame-

1 The term Roma’, though opposed by some groups that do not recognize themselves under this term, is used in this chapter as an umbrella that includes groups of people who have more or less similar cultural characteristics, such as Sinti, Travellers, Kalé, Gens du voyage, etc., whether sedentary or not.

work Convention for the Protection of National Minorities'.² In line with the PACE resolution, the present chapter will look at the Roma issue from the perspective of the Council of Europe (CoE) Framework Convention for the Protection of National Minorities (FCNM),³ the first legally binding multilateral instrument devoted to the protection of minorities:⁴ how is the FCNM applied among its contracting states in relation to the Roma? What is the impact of the FCNM, particularly of the opinions of the Advisory Committee, on the protection of the Roma? Is it possible to identify trends – positive and negative – in the implementation of the FCNM vis-à-vis the Roma? This chapter will address these questions by examining a selection of relevant documents from the FCNM monitoring mechanism, notably state reports and ACFC opinions and recommendations of the Committee of Ministers (COM), and by analysing the differences between the initial and the most recent state reports as well as the opinions of the ACFC in order to detect trends and specific country-related issues.

A number of states have been selected as relevant for this study, and although it will not be possible to consider all documents and issues related to the monitoring process of each country, the selection of these countries will provide an overview of the variety among the member states within the Council of Europe vis-à-vis the Roma: Spain and Italy as *old* member states of the Council of Europe from South-

- 2 Council of Europe, PACE Resolution 1740 (2010), *The situation of Roma in Europe and relevant activities of the Council of Europe*, 22.6.2010, para 15.1 (emphasis added). This binary approach is echoed in ECRI General Policy Recommendation no 13 on Combating Anti-Gypsyism and Discrimination against Roma, 24 June 2011, which calls for measures to combat 'Gypsyism' in the field of education, employment and health care but also for measures to aid the preservation of the Roma identity as an important instrument for fighting 'anti-Gypsyism'.
- 3 The CoE Framework Convention for the Protection of National Minorities was adopted on 1.2.1995 and entered into force on 1.2.1998, ETS No 157 (hereinafter 'FCNM' or 'Framework Convention'). Like many other supranational legal instruments on human rights, the FCNM provides for a monitoring system based on state reports that are evaluated by a committee of independent experts, the Advisory Committee on the FCNM (hereinafter 'ACFC' or 'Advisory Committee'). For an analysis of the provisions of the FCNM and the work of the Advisory Committee, see Rainer Hofmann, Tove H. Malloy and Detlev Rein (eds), *The Framework Convention for the Protection of National Minorities: A Commentary* (Brill-Nijhof 2018); Gauthier de Beco and Emma Lantschner, 'The Advisory Committee on the Framework Convention for the Protection of National Minorities (the ACFC)' in Gauthier de Beco (ed), *Human Rights Monitoring Mechanisms of the Council of Europe* (Routledge 2012) 100–126.
- 4 Minority rights have been traditionally included in contemporary standards of human rights as rights of individuals rather than collective or group rights. In the context of the FCNM, Alan Phillips, former President of the ACFC, argued: 'Most of the Convention's Articles have a collective dimension ... and, in practice, can only be enjoyed as a joint exercise by persons belonging to a national minority'. See Alan Phillips, 'The FCNM: A Policy Analysis' (Minority Rights Group, 2002) 3 <<https://www.minorityrights.org/wp-content/uploads/2021/03/FCNMPolicyPaperAug2002.pdf>>. The Explanatory Report that accompanies the FCNM clarifies, however, that the *joint exercise* of rights and freedoms is distinct from the notion of collective rights. See FCNM, Explanatory Report, para 37 <<http://conventions.coe.int/treaty/en/Reports/Html/157.htm>>.

ern Europe, characterized by the presence of historical Roma communities on their territories and by recent flows of *new minorities* belonging to the Roma communities coming notably from Romania and Bulgaria as a consequence of the enlargement of the European Union; Romania and the Czech Republic as countries emerging from the dissolution of former socialist regimes and, due to the EU accession process, countries that were required to fulfil the Copenhagen criteria, which include, among other things, the protection of minorities; finally, the Netherlands and Finland as Northern European countries that have not experienced a large inflow of Roma EU migrants due to the recent enlargement of the European Union, but that have a long-standing presence of autochthonous Roma communities on their territories.

2. The implementation of the FCNM vis-à-vis the Roma

Although the Roma communities living in the contracting states of the FCNM are very different from one another and experience diverse problems, this section will provide an overview of the major issues that are common to the countries selected for this study, as well as detail some of the issues that are specific to certain countries only. In this limited space, it will not be possible to provide an exhaustive and comprehensive analysis of all the issues experienced by Roma in the selected countries.

2.1 Common issues among selected member states

The first common issue identified in all FCNM contracting states under consideration in this study – from Finland to the Czech Republic, from Italy to the Netherlands – is a generalized socio-economic disparity, though to different degrees, with the mainstream, majority communities; in other words, Roma communities across this diverse group of states experience widespread marginalization and exclusion across the various fields of social life, including school, labour, housing, media and political life.

This marginalization and exclusion from mainstream society is linked to widespread forms of discrimination that most countries acknowledged in their state reports: Roma are generally more likely to be victims of discrimination than any other group.⁵ Directly linked to this issue are forms of ill treatment and other types of misconduct and misbehaviour committed by law enforcement agents and police

5 See, inter alia, ACFC, Fifth Report, Finland, ACFC/SR/V(2019)004, 1.2.2019, paras 156 and 168; ACFC, Fourth Report, Czech Republic, ACFC/SR/IV(2014)011, 29.7.2014, 12. See also EU Fundamental Rights Agency, 'Roma and Travellers in Six Countries: Roma and Travellers Survey', 2020; EU Fundamental Rights Agency, 'EU-MIDIS II: Second European Union Minorities and Discrimination Survey', 28 November 2016; EU Fundamental Rights Agency, 'EU-MIDIS: European Union Minorities and Discrimination Survey', 22.4.2009.

forces, coupled with a generalized lack of effective and serious investigations into these abuses.⁶

A further common area of marginalization can be seen in schools and education more broadly, either through *special* schools or de facto special schools,⁷ or through disproportionate numbers of Roma pupils placed in special education regimes in ordinary school classes⁸ or in home schooling transfers.⁹ Absenteeism, dropout rates and a disproportionate number of Roma pupils in vocational schools rather than the upper secondary schools in which the majority enrol their children are also common issues.¹⁰ In relation to the placement of Roma children in special and adapted education – a common experience among Roma pupils – two peculiar approaches are taken in the state reports under consideration that are worth mentioning for the different views on special education that they illustrate: the approach taken by the Czech authorities, who state that ‘some parents visibly prefer to have their children stay in the same school, which is why some children end up enrolled in elementary schools for pupils with slight mental handicaps’.¹¹ This approach seems to be motivated mainly by the attempt to share with Roma parents, or even to place completely on their shoulders, the responsibility for the decision to provide substandard education to Roma pupils.¹² A different approach to special education is represented

- 6 See COM Resolution, Romania, CM/ResCMN (2021)13, 19.5.2021, ‘Recommendations for immediate action’; ACFC, Fourth Opinion, Czech Republic, 28.6.2016, ACFC/OP/IV(2015)004, 13 and 19.
- 7 ACFC, Fourth Report, Czech Republic, ACFC/SR/IV(2014)011, 29.7.2014, 12; ACFC, Fourth Opinion, Czech Republic (note 6), 5–6.
- 8 ACFC, Second Report, Finland, ACFC/SR/II(2004)012E, 10.12.2004, 75. It has to be acknowledged that, limited only to vocational education and training, the Fifth Report by Finland noted: ‘There are no separate programmes targeted at the Roma in vocational education and training; instead, the Roma apply for and participate in vocational education within the ordinary system’. ACFC, Fifth Report, Finland (note 5), 36.
- 9 ACFC, Third Report, Finland, ACFC/SR/III(2010)001, 17.2.2010, 64.
- 10 ACFC, Third Opinion, The Netherlands, ACFC/OP/III(2019)003, 6.3.2019, 21; ACFC, Fifth Report, Finland (note 5), 36; COM Resolution, Czech Republic, CM/ResCMN (2017)8, 29.11.2017, ‘Recommendations for immediate action’.
- 11 ACFC, Third Report, Czech Republic, ACFC/SR/III(2010)008, 3.5.2010, 16. It is certainly the case that some Roma parents consent to the placement of their children in special schools, primarily because these schools provide a better level of care, such as hot meals and additional activities. See Organization for Security and Co-operation in Europe Office for Democratic Institutions and Human Rights (OSCE/ODIHR), *Implementation of the Action Plan on Improving the Situation of Roma and Sinti within the OSCE Area: Status Report 2008* (OSCE/ODIHR 2008) 41. On this point, the ACFC urged the Czech authorities to ‘ensure to Roma children equal opportunities for access to all levels of quality education; take measures to prevent children from being inappropriately placed in “practical schools”, and ensure that fully-informed consent is given as a condition for placement into “special education”’ (ACFC, Fourth Opinion, Czech Republic [note 6], 2 and 13).
- 12 This burden-sharing approach was clearly rejected by the Grand Chamber of the European Court of Human Rights in its leading case *DH and Others v the Czech Republic* App no 57325/00 (ECHR, 13.11.2007). See Roberta Medda-Windischer, ‘Dismantling Segregating Education and the European Court of Human Rights: *D.H. and Others vs.*

by the Finnish authorities, which noted the following in one of their early reports: ‘education arranged in special groups is more expensive than normal school education, and children are not placed in such education unless there are reasonable grounds for doing so. As soon as the child no longer needs special or adapted education, he or she is transferred back to a normal school class.’¹³ This approach epitomizes a view that considers special educational treatment as a tool that cannot be simply provided upon parents’ request without meticulous testing and continuous checks, as it is an extra and expensive didactic instrument that can be justified only in limited, exceptional cases.

In addition to the above common problems, a further issue that emerges from the state reports under consideration is the need to balance respect for the identity and culture of Roma communities with the battle against marginalization from mainstream societies – in other words, the difficult balance that must be drawn between protection of diversity and integration into mainstream societies.¹⁴ In this difficult balancing process, two distinctive approaches surface in the state reports. The first is based on the idea that, as a consequence of their cultural way of life and socio-economic circumstances, Roma are ‘special’ and must therefore be treated ‘differently’ via special measures that are unique or ad hoc for this group of communities.¹⁵ This approach, although not negative per se, clearly contains the risk of confining minority groups into ethnic enclaves or self-contained ghettos that are alienated from the mainstream, i.e. of reinforcing socio-economic marginalization. Moreover, the labelling of Roma communities as ‘special’ and ‘complex’ can, and actually has been, (mis-)used as a pretext to legitimize endless delays in the adoption of measures and policies to facilitate access to basic services, as in the case of Italy, where the authorities argued that the failure to adopt specific legislation for Roma was due to ‘the extremely complicated nature of the issue’.¹⁶ The second approach that emerges from state reports and government comments, especially in the initial FCNM monitoring cycles, is, at best, a paternalistic attitude towards Roma, and, at worst, a prejudiced attitude. In their comments on the second ACFC Opinion, for instance, the Italian authorities stated that, ‘although schools are quite willing to receive nomads, they [the Roma] actually display a low inclination for integration (including in the school community) resulting in the *inborn* tendency to refuse reg-

Czech Republic: Towards an Inclusive Education? in *European Yearbook of Minority Issues*, vol 7, 2007/08, 19–55.

13 ACFC, Comments by Finland, GVT/COM/INF/OP/I(2001)002, 3 July 2001, 15.

14 See, for instance, ACFC, Second Opinion, Italy, ACFC/INF/OP/II(2005)003, 25.10.2005, 11.

15 See, among those who have commented on this approach, Annabel Tremlett, ‘Trying to solve a European problem: a comprehensive strategy for Roma minorities (*open Democracy*, 1.1.2011) <www.opendemocracy.net/annabel-tremlett/trying-to-solve-european-problem-comprehensive-strategy-for-roma-minorities>.

16 ACFC, Second Report, Italy, ACFC/SR/II(2004)006, 14.5.2004, 20 (emphasis added). A national legislative framework for the protection of Roma and Sinti is still lacking in Italy despite the fact that many proposals and bills have been presented to the Italian Parliament. See ACFC, Fourth Report, Italy, ACFC/SR/IV(2014)005, 12.3.2014, 9–10.

ular attendance [at] schools in the places where they [are] temporarily [staying]’.¹⁷ Similarly, in discussing education for Roma adults, the Czech authorities noted: ‘The students will acquire knowledge and skills that are quite common in the majority society, but quite uncommon in the Roma community’,¹⁸ with no further details given to explain exactly what these ‘uncommon knowledge and skills’ are. Likewise, in presenting measures to promote employment among Roma, the Finnish authorities declared that ‘the completion of comprehensive school and professional education are still *not self-evident* for the Roma’.¹⁹ And again the Finnish authorities, commenting on housing and the traditional Roma lifestyle, noted: ‘It is also important to continue the work on changes within the Roma community in a way that they could *give up certain cultural customs* that may complicate the housing and living of the Roma’.²⁰ This type of attitude, especially in terms of the terminology and language used, although less prominent in the most recent FCNM monitoring cycles, is clearly still present in the reports of the countries under consideration.

2.2. Specific country-related issues

In addition to the issues common to all the reports and opinions concerning the states analysed in this study, a number of country-specific problems can also be identified.

One issue identified by the ACFC, particularly in the Italian reports, is the terminology used to refer to Roma communities, namely *Zingari* (Gypsies) and *Nomadi* (Nomads). For the ACFC, the term *Zingari* has a pejorative connotation, whereas the term *Nomad* is simply misleading, since only some Roma retain an itinerant lifestyle.²¹ Despite the commitment by the Italian authorities to comply with the recommendation of the ACFC to use more accurate and sensitive terms, the second state report by Italy continued to use terms such as *Gypsies* and *Nomads*.²² It has to be acknowledged that these terms were almost absent in the subsequent Italian reports. In contrast, the Finnish authorities, for instance, have referred correctly to Roma/Sinti since their first reports and governmental replies. The terminological issue is obviously not necessarily symptomatic of substantive problems in minority protection and thus does not mean that a simple adjustment in the terminology used by the authorities is sufficient to correct a flawed and inefficient

17 ACFC, Comments, Italy, GCT/COM/INF/OP/II(2005)003, 25 October 2005, 11 (emphasis added).

18 ACFC, Second Report, Czech Republic, ACFC/SR/II(2004)007, 2 July 2004, 10.

19 ACFC, Second Report, Finland (note 8), 35 (emphasis added).

20 ACFC, Fifth Report, Finland, ACFC/SR/V(2019)004, 1.2.2019, 31 (emphasis added).

21 ACFC, First Opinion, Italy, ACFC/INF/OP/I(2002)007, 14.9.2001, 11.

22 ACFC, Second Report, Italy (note 16), 23, 26 and 27. See also ACFC, Fourth Report, Italy (note 16), 17. On this point, the ACFC noted, ‘the majority population and representatives of various public bodies both at central and municipal level continue, including in the State Report, to refer to these communities as “nomads” perpetuating an outdated and discriminatory reference, which has little to do with reality today’. ACFC, Fourth Opinion, Italy, ACFC/OP/IV(2015), 12.7.2016, 6.

policy for Roma. However, it cannot be denied that the terms used to refer to any minority groups provide evidence of the majority population's awareness of and sensitivity to certain issues that may be considered by some as merely symbolic, but that are in fact extremely relevant for the minorities.²³

A second country-specific problem emerges from the ACFC opinions on the reports of the Czech Republic, and concerns allegations of the sterilization of Roma women without their prior, free and informed consent.²⁴ The Czech authorities have acknowledged that many complaints have been submitted to the Ministry of Health, through the Office of the Public Defender of Rights, regarding cases of sterilization without informed consent.²⁵ In their Third Report, the authorities gave an account of the legislative measures introduced to counteract this hideous practice, including a new model for collecting informed consent for sterilization, compensation for victims and awareness measures among health workers.²⁶ However, while acknowledging that the Czech authorities made a public apology to the victims in 2009, the Advisory Committee noted in its 2015 Opinion that a number of victims of sterilization had not been compensated and were still pressing their cases in the courts, and the Advisory Committee thus urged the Czech authorities to adopt a law on compensation for victims of coerced sterilization who have been unable to seek compensation through the courts or by any other means.²⁷

A further country-specific issue that the ACFC has consistently criticized in the strongest terms is the situation of Roma 'assembled' – to use the ACFC's term – in camps in Italy, in which living conditions and standards of hygiene are appalling. As the ACFC notes: '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 nega-

23 In this regard, the proposal made in Romania by the Liberal-Democrat Silviu Prigoană to change the official name of the Roma to 'Gypsy' is emblematic. Prigoană argued that the term *Roma* 'creates confusion at an international level', and his proposal was also supported by then-President of Romania Traian Băsescu, who affirmed that 'Europeans may confuse Roma and Romanians' (Stefano Piemontese, Zsuzsa Plainier, Laura Bianconi, Desislava Stefanova, Michael Förschner, '“Roma migrants” in five European Countries: Policy Contexts and National Integration Strategies' (REDHNET project, December 2013) 15–16 <<https://immigrazione.it/docs/2014/rapp-redhnet-rom.pdf>>).

24 ACFC, Fourth Opinion, Czech Republic (note 6), 14; ACFC, Third Opinion, Czech Republic, 19.3.2012, ACFC/OP/III(2011)008, 12 and 28.

25 ACFC, Comments, Czech Republic, GVT/COM/INF/OP/II(2005)002, 26.10.2005, 14.

26 ACFC, Third Report, Czech Republic (note 11), 29. Note that a group of NGOs (the European Roma Rights Centre, Life Together, the League of Human Rights and the Group of Women Harmed by Forced Sterilization) have publicly denounced the fact that, two years since the Czech Government expressed regret for individual sterilizations of Roma women, no effective steps have been taken to provide victims with adequate redress for the irreparable injuries suffered. To facilitate access to the justice system for Roma, the Council of Europe launched specific and targeted training to empower lawyers and Roma NGOs to access human rights at the national level. See CoE, *Follow-up to the Strasbourg Declaration on Roma: First Progress Report (Nov. 2010–Apr. 2011)* by the Secretary General to the Council of Europe, SG/Inf(2011) 11 rev, 20.4.2011.

27 ACFC, Fourth Opinion, Czech Republic (2015) (note 6), 14.

tive stereotypes concerning them'.²⁸ Consequently, the AC recommended abandoning the 'model of separation in camps' and the adoption of a comprehensive and coherent national strategy for Roma that also includes housing.²⁹ The most recent state report by Italy provides a detailed account of many local initiatives aimed at dismantling informal settlements and finding alternative housing solutions while acknowledging, at the same time, that this issue is still prominent and urgent in many parts of Italian territory.³⁰

The ACFC has identified the lack of coherent and consistent legislation at the national level as a major problem in Italy: in fact, although numerous laws exist at the regional level,³¹ and various attempts have been made to adopt national legislation in relation to the Roma – including the proposal to extend, with some adaptations, the scope of application of the existing national legislation on the protection of linguistic minorities (Law no 482/99) to include Roma and Sinti³² – no legislation on Roma and Sinti has been adopted thus far at the national level. Consequently, the Italian legal framework is extremely fragmented and occasionally even incoherent, and according to the ACFC, the manifold documents adopted at the regional and local level focus too much 'on social and immigration issues [to] the detriment of the promotion of their [Roma, Sinti and Travellers] identity, including their language and culture'.³³ Accordingly, the Committee of Ministers also urged the Italian authorities to adopt 'a comprehensive strategy of integration at [the] national level'.³⁴

In this regard, as the example of Spain suggests, the Committee of Ministers sees the 'high degree of decentralization and broad powers exercised by the Autonomous

28 ACFC, First Opinion, Italy, 14 September 2001, ACFC/INF/OP/I(2002)007, 8.

29 Ibid. A turning point in the perception of this issue can be identified in the deadly incident that occurred in 2011 at a Roma camp in Italy when four Roma children aged between 4 and 11 were killed in a fire as they slept at their makeshift camp on the edge of Rome. See 'Rom, I bimbi erano stati identificati' *Corriere della sera* (Milan, 14.2.2011).

30 ACFC, Fifth Report, Italy, ACFC/SR/V(2019)009, 8.4.2019.

31 See ACFC, Comments, Italy, GVT/COM/III(2011)004, 30.5.2011, 27.

32 Law no 482 on the Protection of Linguistic and Historic Minorities of 15.12.1999, which entered into force in January 2000, aims to promote the linguistic and cultural heritage of groups other than Italian, according to general principles set by European and international bodies. It recognizes the existence of and guarantees the language and culture of a list of minority groups that does *not* include the Roma and Sinti. This protection applies only within the territory of the regions or provinces concerned and provided specific requirements are met. Individuals belonging to these linguistic minorities do not benefit from this protection outside these zones. The failure of the Italian authorities to adopt specific legislation for Roma for Roma is due, according to the national authorities, to the 'extremely complicated nature of the issue'; ACFC, Second Report, Italy (note 16), 20. The ACFC commented in response that 'there appears to be no real will amongst [the] main political forces in Italy to carry forward the project of developing a specific piece of legislation to protect the language, culture and identity of these persons'; ACFC, Second Opinion, Italy, ACFC/INF/OP/II(2005)003, 25.10.2005, 10. For an overview of the many proposals discussed by the Italian Parliament, see ACFC, Fourth Report, Italy (note 16), 10.

33 ACFC, Second Opinion, Italy, ACFC/INF/OP/II(2005)003, 25.10.2005, 5.

34 COM, Resolution, Italy, ResCMN(2006)5, 14.6.2006, para 2.

Communities' as a crucial factor in the promotion of cultural identities and diversity also vis-à-vis the Roma.³⁵ In order to develop an efficient strategy for the inclusion of Roma, it is thus not necessary to have a centralized, top-down set of powers: a nationwide framework coupled with strong decentralization of competencies is considered to be the most efficient and most valuable strategy for Roma inclusion.

Finally, although Italy still lacks comprehensive legislation on the protection of Roma at the national level today, it did adopt, in 2011, a national strategy for the inclusion of Roma, Sinti and *Caminanti* for the period 2012–2020 with a focus on housing, work, health and education.³⁶ However, the ACFC considered the implementation of the National Strategy to be inefficient and slow, as no dedicated funding was earmarked for its implementation.³⁷

Another country-specific issue, but one that feeds off a problem shared by many countries, concerns data collection in relation to minorities, particularly Roma. Data collection everywhere raises complex issues of ethics and privacy, and is prohibited in many countries of the European Union.³⁸

However, data collection has raised serious human rights concerns particularly in Italy. In 2008, in camps located on the outskirts of Rome and Milan, identification procedures, carried out in cooperation with the Italian Red Cross, involved the fingerprinting of all Roma inhabitants of the camps, including children, recalling dreadful memories of the past when databases were created to exterminate minorities, including Roma.³⁹ These actions were heavily criticized by various international bodies,⁴⁰ including the representative of the Government (*Prefetto*) in Rome, who publicly disagreed with the identification initiative, particularly as regarded the collection of fingerprints from minors.⁴¹

35 COM, Resolution, Spain, ResCMN(2004)11, 20.9.2004, para 1.

36 ACFC, Fourth Report, Italy (note 16), 10.

37 ACFC, Fourth Opinion, Italy (note 22), 1.

38 See Oliver De Schutter and Julie Ringelheim, *Ethnic Monitoring – The Processing of Racial and Ethnic Data in Anti-Discrimination Policies: Reconciling the Promotion of Equality with Privacy Rights* (Bruylant 2010).

39 See Decreto del Presidente del Consiglio dei ministri, 'Dichiarazione dello stato di emergenza in relazione agli insediamenti di comunità nomadi nel territorio delle regioni Campania, Lazio e Lombardia' (*Declaration of a state of emergency in relation to the settlements of nomadic communities in the territory of the regions of Campania, Lazio and Lombardy*) 21.5.2008. The decree declaring the state of emergency and authorizing the procedures to identify the Roma living in the camps was declared illegitimate by the Council of State in a decision of 16.11.2011.

40 See EU, European Parliament, Resolution on the Census of the Roma on the Basis of Ethnicity in Italy, 10.7.2008; CoE, Commissioner for Human Rights of the Council of Europe, Thomas Hammarberg, Memorandum following his visit to Italy on 19–20.6.2008 (Issues reviewed: Roma and Sinti; Immigration), CommDH(2008)18, 28.7.2008; for the ACFC, in particular, it was difficult to accept that this procedure could help improve the living conditions of the persons concerned or assist in ensuring full and effective equality in their respect (ACFC, Third Opinion, Italy, ACFC/OP/III[2010]008, 30.5.2011, 13).

41 See 'Impronte ai bimbi rom, stop della Ue' *Corriere della sera* (Milan, 27 June 2008). See also ACFC, Third Report, Italy, ACFC/SRIII (2009)011, 21.12.2009, 24; and ACFC, Second Opinion, Italy (note 33), para 54.

A further country-specific aspect concerning the protection of Roma as minorities is linked to the personal scope of application of the FCNM. When accepting the FCNM, the Dutch authorities, for example, declared that they would interpret the scope of application of the Convention by using a territorial criterion: as Roma communities are not specifically attached to any specific parts of Dutch territory, according to this means of interpretation, the FCNM does not apply to them.⁴² The ACFC has criticized this approach precisely because it excludes Roma communities – many of which ‘have long ties with the Netherlands’⁴³ – from the protection of the FCNM’s provisions, which largely ‘do not imply that the minorities concerned live in their traditional or ancestral settlement areas’.⁴⁴ The Dutch approach is particularly awkward given that the government accepts that Roma communities are covered by the scope of application of another relevant CoE legal instrument protecting regional and minority languages, namely the European Charter for Regional or Minority Languages, which expressly excludes migrants’ languages from its scope of application, and where the Dutch authorities have described the Roma languages spoken in the Netherlands as ‘expressions of the cultural wealth of the Netherlands’.⁴⁵ In their most recent state report, the Dutch authorities continued to follow their ‘territorial interpretation’, stressing that most Roma and Sinti in the Netherlands originate ‘from a large number of different countries’.⁴⁶ It is also interesting to note that the Dutch authorities apply this approach to collect data concerning Roma and Sinti through ad hoc surveys conducted by – and estimates produced by – researchers and professionals working with Roma, and not as it does for the rest of the population, through the central registry (Personal Records Data).⁴⁷

2.3. Specific country-related positive trends

In addition to the problems identified in the previous section as specific to some of the countries under consideration, there are also country-specific trends or developments that are positive in relation to the Roma, some of which are described here. For example, Finland has managed to achieve a significant level of involvement of Roma associations and individuals in decision-making processes at the national and local level. In a country where there are approximately 10,000 Roma, equiva-

42 FCNM, List of Declarations, Status as of 30.6.2008, Declaration by the Netherlands, 16.2.2005, <<http://conventions.coe.int>>. This approach means that, for the Netherlands, only the Frisians, a minority traditionally living in the north of the country, are covered by the scope of the FCNM. See <<https://www.coe.int/en/web/conventions/full-list/conventions/treaty/157?module=declarations-by-treaty&numSte=157&codeNature=0>>.

43 ACFC, Third Opinion, The Netherlands (note 10), 3.

44 Ibid 9.

45 European Charter for Regional or Minority Languages, Third Periodical Report by the Netherlands, MIN-LANG/PR(2007)7, 4.9.2007, 60.

46 ACFC, Fourth Report, The Netherlands, ACFC/SR/IV(2021)001, 31.5.2021, 15.

47 According to the Dutch authorities, objective data on an individual’s origin (country of birth and parents’ country of birth) ‘cannot be used to identify Roma and Sinti, because they come from a large number of different countries and data on origin does not indicate whether a person belongs to the Roma or Sinti communities’; *ibid* 15.

lent to 0.1 per cent of the total population,⁴⁸ it is remarkable that Finland has been setting up, since 2003, permanent regional advisory boards for Roma Affairs and, in 2004, was a driving force behind the creation of the European Roma and Travellers Forum, an NGO founded by Roma and affiliated with the Council of Europe through a cooperation agreement.⁴⁹

Moreover, Finland is setting positive trends in the context of housing: there are no camps or slums for Roma in Finland, where Roma live in mainstream housing, though they are mainly dependent on public housing support. As a result of this large dependency on public housing, the Finnish authorities have developed a series of guidelines on housing in the Roma culture to assist public officers and social workers in better understanding the needs and requests of Roma – for example, in relation to the allocation or switching of apartments.⁵⁰

In addition to Finland, the Czech and Romanian authorities should also be acknowledged for their number and variety of initiatives for Roma, as illustrated by their state reports. These initiatives range from mediators to the publication of textbooks, from training to affirmative action, and in different fields, from education to health, from housing to policing.⁵¹ Clearly, this is not evidence per se of effective protection of Roma. It seems more likely, in fact, that, especially under pressure from EU accession procedures and the Copenhagen criteria, both countries multiplied their initiatives on Roma by developing projects, consultative boards, cultural initiatives, etc. However, as has emerged from the ACFC opinions and COM recommendations, these initiatives, though commendable, are generally insufficient for the full realization of human rights for Roma, particularly where the resources allocated for their implementation are limited, coordination is insufficient and the monitoring system to assess the targets achieved and obstacles encountered is inefficient. Therefore, despite the generally positive nature of these initiatives, it is possible to see this range of initiatives as little more than window dressing.⁵²

Specifically on education, positive measures have been introduced in Romania to promote access to university and upper secondary school for Roma.⁵³ This is part

48 ACFC, Fifth Report, Finland (note 20), 7.

49 See Partnership Agreement between the Council of Europe and the European Roma and Travellers Forum, 15.12.2004, <<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016804592e7>>; COM, Resolution, Finland, CM/ResCMN(2007)1, 31 January 2007, para 1(a); ACFC, Second Report, Finland, ACFC/SR/II(2004)012, 10.12.2004, 13 and 16.

50 Ibid 35. On housing, see also ACFC, Fifth Report, Finland (note 20), 31.

51 See, for instance, ACFC, Second Report, Romania, ACFC/SR/II(2005)004, 6.6.2005; ACFC, Fifth Report, Romania, ACFC/SR/V(2019)013, 8.11.2019, 8, 21–22, 27; ACFC, Third Report, Czech Republic (note 11); ACFC, Fifth Report, Czech Republic, ACFC/SR/V(2019)012, 10.7.2019, 7–9.

52 See, for instance, the Strategy to Improve the Situation of the Roma adopted by the Romanian Government in 2001 and the revised version in 2015 and the comments by the AC. ACFC, Second Opinion, Romania, ACFC/OP/II(2005)007, 23.2.2006, 12–13; ACFC, Fourth Opinion, Romania, ACFC/OP/IV(2017)005, 16.2.2018, 1 and 5.

53 Ibid; ACFC, Second Opinion, Romania, 29. See also Roma Education Fund and Gallup Organization Romania, ‘Analysis of the Impact of the Affirmative Action for Roma in

of an attempt to form an educated elite among Romanian Roma communities, and it is coupled with various initiatives to protect and promote Roma cultural identity, such as the Roma language and literature studies section at the University of Bucharest, the courses set up to train teachers on Roma history and traditions and to train inspectors to monitor the quality of education given to Roma pupils.⁵⁴ While broadly positive, these initiatives are, however, somewhat limited in scope. As the ACFC has noted, while there has been, as a result of the above measures, an increase in the number of Roma pupils studying their mother tongue and heightened interest in studying the language among the Roma community, the opportunity to benefit from these programmes remains restricted to a limited proportion of the Roma population that might potentially be interested in participating.⁵⁵

In protecting and promoting Roma culture and language, the work of cultural institutes and consultative bodies is crucial. Spain and the Netherlands, among others, have developed positive practices in this regard. Spain has set up an Institute of Roma Culture specifically in charge of protecting and promoting the distinct culture and identity of Roma nationwide,⁵⁶ as well as a State Council of the Roma People that is an inter-ministerial consultative and advisory body institutionalizing cooperation between Roma associations and the Spanish General State Administration in relation to the development of social welfare policies based on the full promotion of the Roma population.⁵⁷ Similarly, the Netherlands Institute for Sinti and Roma has been working as a centre of expertise for Roma and Sinti since 2009.⁵⁸ However, this initiative has not spared the Dutch authorities from strong criticism from both the ACFC and the Committee of Ministers for the ‘overall tone of the public discourse in the Netherlands and the new integration policy, with its particular focus on the preservation of the Dutch identity, [which has] had negative consequences on the preservation of a climate of mutual understanding between the majority population and the ethnic minorities’.⁵⁹

High Schools, Vocational Trainings and Universities’ (2009) <<https://www.romaeducationfund.org/analysis-of-the-impact-of-affirmative-action-for-roma-in-high-schools-vocational-schools-and-universities/>>.

54 Ibid; ACFC, Second Opinion, Romania, 31. See also ACFC, Fifth Report, Romania (note 51), 12, in which the Romanian authorities reported on the initiatives adopted by the Ministry of National Education to prevent further segregation of Roma children in school, and other forms of discrimination against Roma children in schools; in particular, reference is made to Order no 6134/2016 on the prohibition of school segregation in secondary schools and Order no 6158/2016 regarding the approval of the Action Plan for School Desegregation and improvement of the quality of education in secondary schools in Romania.

55 Ibid; ACFC, Second Opinion, Romania, 32.

56 COM, Resolution, Spain, CM/ResCMN(2008)1, 2 April 2008, para 1(a).

57 ACFC, Third Report, Spain, ACFC/SR/III(2010)011, 23.8.2010, 24.

58 ACFC, Comments, The Netherlands, GVT/COM/I(2010)001, 17.2.2010, 4.

59 ACFC, First Opinion, The Netherlands, ACFC/OP/I(2009)002, 25.6.2009, 3. See also COM, Resolution, The Netherlands, CM/ResCMN(2010)3, 12.1.2011, para 1; ACFC, Third Opinion, The Netherlands (note 10), 1 and 7; COM, Resolution, The Netherlands, CM/ResCMN(2020)2, 12.2.2020.

Finally, in this short overview of country – specific positive actions, it is worth mentioning a unique action of support for housing created by the then – Italian Ministry of Labour, Health and Social Policies, and which involves self-recovery and self-build housing projects involving Roma and Sinti communities.⁶⁰ Under this project, the beneficiaries receive specific training in construction and bricklaying and a salary to construct their own dwellings, for which they then pay a monthly rent fixed by the authorities.⁶¹

3. Advisory Committee's general comments on the Roma

The most important relevant comment in relation to the Roma that recurs in the opinions of the Advisory Committee is perhaps the need for state parties to adopt coherent national strategies on different aspects of Roma living conditions complemented by adequate budgets, clear targets and monitoring procedures for evaluating progress.⁶² The central element of these strategies must be a combination of respect for the identity and culture of Roma communities and their integration into mainstream societies without assimilation.⁶³ The holistic approach advocated by the ACFC is best summarized by the ACFC's own comment: 'preservation and affirmation of Roma cultural identity will succeed only if the authorities' efforts to effectively improve the social and economic position of Roma, and limit their marginalization and social exclusion, are also successful'.⁶⁴

60 See ACFC, Third Report, Italy, ACFC/SR/III(2009)011, 21.12.2009, 22. See also ACFC, First Opinion, Italy (note 28), 16.

61 For details, see Udo C. Enwereuzor and Laura Di Pasquale, *Thematic Study: Housing Conditions of Roma and Travellers in Italy*, COSPE/RAXEN National Focal Point, Italy, paras 100–101 (March 2009).

62 See ACFC, Fourth Opinion, Italy (note 37), 6; ACFC, Fifth Opinion, Finland, ACFC/OP/V(2019)001, 31.10.2019, 25; ACFC, Fourth Opinion, Finland, ACFC/OP/IV(2016)002, 6.10.2016, 4, 17, 25 and 28; ACFC, Fourth Opinion, Czech Republic (note 6), 12–14; ACFC, Fourth Opinion, Romania (note 52), 5, 7 and 14; ACFC, Fifth Opinion, Spain, ACFC/OP/V(2020)002, 15.10.2020, 4; ACFC, Third Opinion, The Netherlands (note 10), 22–23. See also EU, *Framework for National Roma Integration Strategies up to 2020*, COM (2011) 173 final, 5.4.2011.

63 Along with other state parties, the Czech Republic has claimed the combination of identity and integration as the ambitious goal of its 'Concept of Government Policy towards Members of the Romany Community'. ACFC, Comments, Czech Republic, GVT/COM/INF/OP/II(2005)002, 26.10.2005, 26. See also CoE, *The Strasbourg Declaration on Roma* (CM(2010)133 final), 20 October 2010; EU, 'Common Basic Principles for Roma Inclusion' in Commission Staff Working Document, 'Roma in Europe: The Implementation of EU Instruments and Policies for Roma Inclusion: Progress Report 2008–2010', SEC(2010)400 final, 7.4.2010; CoE, PACE Resolution 1740 (2010), *The situation of Roma in Europe and relevant activities of the Council of Europe* (note 2), 2; ECRI General Policy Recommendation no 13 on Combating Anti-Gypsyism and Discrimination against Roma (24.6.2011).

64 See ACFC, Second Opinion, Czech Republic, ACFC/INF/OP/II(2005)002, 26.10.2005, 19.

The difficult task of combining in practice these two apparently conflicting principles – respect for identity and integration into mainstream society – is well illustrated by one of the early reports of the Czech Republic, in which the authorities noted that, as housing is a social problem rather than a minority issue, it does not fall under the office in charge of ethnic minorities – the National Minority Committee – which ‘should not end up doing the work of the local social services department without proper expertise’.⁶⁵ Yet, the ACFC has consistently argued that housing and other forms of social and economic participation for Roma cannot be separated from the protection and promotion of their culture and identity, as minority rights are not only a matter of folkloristic events, but economic, social and political participation are also substantial and pivotal elements of minority protection.⁶⁶ Strong cooperation and coordination among the ministries and authorities at the local level that are responsible for various aspects of Roma protection and integration are thus urgently required.

Schooling and education is an area in which most countries examined under the FCNM find it particularly difficult to create a balance between identity and integration. The ACFC consistently refers to the COM’s recommendations on the education of Roma pupils,⁶⁷ in which the Committee underlined the importance of state parties developing comprehensive policies in the field of education ‘based on the acknowledgment that the issue of schooling for Roma/Gypsy children is linked with a wide range of other factors and pre-conditions, namely the economic, social and cultural aspects, and the fight against racism and discrimination’.⁶⁸ More precisely, the Committee has indicated as guiding principles for an education policy for Roma children preschool education schemes, better communication with parents, the use of mediators where necessary,⁶⁹ broader intercultural policies, culturally specific training for teachers, involvement of Roma at all levels of the design, implementation and monitoring of education policies for Roma pupils.⁷⁰

Indeed, the Advisory Committee considers the involvement of minorities, at the individual and group level and at various policymaking levels and across all fields

65 ACFC, Third Report, Czech Republic, ACFC/SR/III(2010)008, 3.5.2010, 27. It has to be noted that, in their Fifth Report, the Czech authorities reported the adoption of a grant programme to support Roma affairs coordinators with the aim of, among other things, ensuring ‘the stability of the institutional network through which the state communicates and promotes central integration policy at the regional level and which contributes significantly to the coherent and coordinated creation and implementation of Roma integration policies in the Czech Republic’. ACFC, Fifth Report, Czech Republic (note 51), 8. It has to be seen whether this grant programme will effectively foster coordination among public bodies and policies.

66 See Article 15 FCNM on effective participation in cultural, economic and social life and in public affairs.

67 CoE, Committee of Ministers, Recommendation no R(2000)4 on the Education of Roma/Gypsy children in Europe, 3.2.2000.

68 Ibid, para 7.

69 On mediators, see the reference to the European Roma Mediators Training Programme (ROMED), in CoE, *Follow-up to the Strasbourg Declaration on Roma* (note 26).

70 CoE, Committee of Ministers, Recommendation no R(2000)4 (note 67), Appendix.

of social and economic life, to be a crucial element in achieving positive integration of minorities more generally and of the Roma in particular. It is clear, however, that only authentic forms of involvement in decision-making, policy design, implementation and monitoring, in other words, forms of effective participation and institutionalized dialogue at all levels, can lead to improvements in the integration and inclusion of Roma communities.⁷¹

Finally, on strategies and policies, it is clear that an extensive range of policies on and for Roma is a positive factor for the protection of any minority group; however, the existence of such policies, as suggested previously, is obviously not sufficient per se. Indeed, states that the FCNM treaty bodies have praised for their number and variety of policies are also those that often have significant problems in implementing those policies. A recurrent problem identified in this respect is that most of these initiatives are conceived at the national level through a top-down process. Such initiatives, however, are always necessarily implemented at the local level, where, partly as a result of this top-down approach, there is often a lack of political will to implement them effectively. At the same time, reforms involving the decentralization of administrative competencies to the local level may be detrimental to the protection of the Roma, as the discretion of the local authorities then acquires an even more significant role. The ACFC has thus suggested that strategies and legislative frameworks should be coordinated and overseen at the national level but designed and discussed with the local authorities and specifically tailored for communities on the basis of the local context and needs.⁷²

4. The impact of the FCNM on the protection of Roma

As mentioned at the beginning of this chapter, the FCNM system is the only pan-European supranational mechanism in which state parties are required to give account of their policies on minorities, including on the Roma. Following the completion of the most recent EU accession period (2004–2007), the only mechanism existing at the European level specifically devoted to minority protection is the

71 See, for instance, ACFC, First Opinion, Netherlands (note 59), 27–28, and more recently, ACFC, Fourth Opinion, Romania (note 52), 7 and 14. See ACFC, *Commentary on the Effective Participation of Persons Belonging to National Minorities in Cultural, Social and Economic Life and in Public Affairs*, ACFC/31DOC(2008)001, 5.5.2008. The Commentary gives a broad definition of the ‘effectiveness’ of participation, essentially based on the ‘impact on the situation of the persons concerned and on the society as a whole’ (para 18). Thus, the participation is effective when it ‘has a substantial influence on decisions which are taken’ and if ‘there is, as far as possible, a shared ownership of the decision taken’ (para 19). See also Francesco Palermo, ‘The Dual Meaning of Participation: The Advisory Committee’s Commentary to Article 15 of the FCNM’, *European Yearbook of Minority Issues*, vol 7, 2007/8, 409–24.

72 See, in particular, ACFC, First Opinion, Czech Republic, 14 September 2001, ACFC/INF/OP/I(2002)007, 38; see also note 62 for various state reports’ references on this point.

monitoring system established under the FCNM.⁷³ The FCNM therefore represents a useful tool for the protection of minorities by keeping attention focused on minority issues at the national and European level, especially through the pressure exerted by NGOs, the media and civil society more generally. The importance placed on the Roma in the work of the FCNM organs – the Advisory Committee and the Council of Ministers – is evident from the number of recommendations and comments elaborated by these organs in the context of the state reports analysed in this paper.⁷⁴

Moreover, it is possible to identify a number of, albeit limited, improvements, as a result of the FCNM mechanism,⁷⁵ especially in those countries that have structured their documents for the Framework Convention by providing specific replies to the comments and recommendations of the Advisory Committee and the Council of Ministers⁷⁶ – for instance, the decision by the Italian authorities to comply with the ACFC’s invitation to include Roma and Sinti within the scope of application of the FCNM,⁷⁷ the Czech authorities’ increased awareness concerning the problem of sterilization of Roma women without their free consent⁷⁸ or the Dutch authorities’ decision to enter into consultation with the Roma community at least twice a year from 2010 onwards following the specific ACFC comment in this regard.⁷⁹

73 Another pan-European body focusing on minority issues is the OSCE High Commissioner on National Minorities (HCNM), which, however, has a specific mandate to prevent conflicts at the earliest possible stage. This involves containing and de-escalating tensions involving national minorities within the OSCE area and alerting the OSCE to risks by providing early warning and early action where a situation has the potential to turn into a conflict. On the HCNM’s mandate, see <<https://www.osce.org/hcnm/107878>>. On the HCNM and conflict prevention, see Jennifer Jackson-Preece, ‘Rearticulating the friend – enemy distinction within states: the HCNM’s “new diplomacy” of desecuritization’ [2018] 13(4) HJD 523–44.

74 See, for instance, COM, Resolution, Italy, CM/ResCMN(2012)10, 4.7.2012, in which two of five *issues for immediate action* are specifically devoted to Roma and Sinti; COM, Resolution, Spain, CM/ResCMN(2021)6, 3.2.2021, in which four of five *recommendations for immediate action* specifically address Roma; COM, Resolution, Czech Republic, CM/ResCMN (2017)8, 29.11.2017, in which two of four *recommendations for immediate action* focus specifically on Roma.

75 Eurac Research developed, at the request of the FCNM Secretariat, a complex set of political, legal and judicial indicators to measure the impact of the FCNM. See Tove Malloy, Roberta Medda-Windischer, Emma Lantschner and Joseph Marko, *Indicators for Assessing the Impact of the FCNM in its State Parties* (Eurac Research 2008). For an analysis of indicators and minorities with a specific focus on integration, see Roberta Medda-Windischer, Sia Spiliopoulou Åkermark, Felix Schulte and Stéphanie Cramer Marsal (eds), *Mapping Integration Indicators: A Reference Tool for Evaluating the Implementation of Ljubljana Guidelines-based Policy* (OSCE/HCNM 2020) <<https://www.osce.org/hcnm/107886>>.

76 See, for instance, ACFC, Comments, Czech Republic (note 25); ACFC, Comments, Finland, GVT/COM/II(2006)004, 22.8.2006.

77 ACFC, Second Report, Italy, ACFC/SR/II(2004)006, 14.5.2004.

78 See ACFC, Comments, Czech Republic (note 25), paras 48–54.

79 See ACFC, First Opinion, The Netherlands (note 59), 24; ACFC, Comments, The Netherlands, 17.2.2010 (note 58), 4. Note, however, the 2011 recommendation of the COM,

More broadly, the impact of the FCNM on the protection of minorities, and notably on the Roma, has resulted in a general increase in the awareness among national authorities of the cultural diversity of the Roma, which deserves attention and respect, and pressure on different actors within the public administration to monitor and assess the results and progress of projects and initiatives with clear targets; further, the FCNM has been successful in pushing the adoption of comprehensive national strategies for the overall improvement of the lives of Roma in combination with the protection and promotion of Roma culture and identities. In this regard, the ACFC's comment on the 2004 Italian report is paradigmatic when it notes: 'The existing statutory provisions on the Roma, Sinti and Travellers adopted by several regions are clearly inadequate in that they are disparate, lack coherence and focus too much on social questions and immigration issues [to] the detriment of the promotion of their identity including their language and culture'.⁸⁰ The approach of the Finnish authorities regarding the teaching of Romanes and Roma culture is another good example in this respect, even though the authorities acknowledge that the arrangements for teaching Romanes are available in only 5 per cent of Finnish schools with Roma pupils – an unsatisfactory situation that is mainly due to the difficulty in meeting the group size requirement, a lack of teachers and an inadequate supply of textbooks:

On account of the social integration of the Roma population ..., issues pertaining to their education and the maintenance of their unique linguistic and cultural heritage shall be paid attention to in basic education too. ... The instruction must provide Roma pupils a natural medium for expressing their own personal minority identity also at school. Roma education must lead to improved knowledge of the history and language of the Roma people among Roma pupils and contribute to their awareness of the Roma as one of the most important minorities in Europe and in the entire world.⁸¹

Despite these achievements, the FCNM system suffers from similar flaws to almost all international treaty monitoring bodies that are based on state reports: firstly, the lack of a specific mechanism to impose implementation, and, secondly, the length of the monitoring process – from the state report until the COM recommendation – which often ends with no immediate and concrete results. As mentioned earlier, the FCNM mechanism is characterized by the involvement of two different bodies: the Advisory Committee, composed of experts who sit on the Committee in their personal capacity, and the Committee of Ministers, a political organ composed of

which stated that, 'since Roma policy in the Netherlands is largely delegated to local authorities ..., dialogue between the Roma and Sinti and the national authorities is limited and should be further developed'. COM, Resolution, The Netherlands (note 59), para 1.

80 ACFC, Second Opinion, Italy (note 33), 5.

81 ACFC, Second Report, Finland (note 8), 79. In their Fifth Report, the Finnish authorities confirm that the status of the Roma language is highly endangered in Finland, especially among young adults, teenagers and children, and identify as the main challenges to correcting this situation the need to encourage the Roma community to use its language and the shortage of Roma language teachers. ACFC, Fifth Report, Finland (note 5) (paras 153–154).

ministers (or their substitutes) from contracting states, whose decisions are often influenced by geopolitical expediency. In lacking a system of sanctions, the FCNM machinery is mainly based on the tenet *pacta sunt servanda*, which signatory countries undertake to respect upon ratification of the Framework Convention. It is thus clear that one of the major factors influencing the implementation of the FCNM is represented by the political pressure exerted on the member states by the Council of Europe, mainly through the Committee of Ministers and other European and Euro-Atlantic institutions, notably the European Union and the Organization for Security and Co-operation in Europe (OSCE).

With this in mind, in terms of improvements to and changes in minority protection, the impact of the FCNM can thus be measured as long-term and (though limited) short-term, immediate results and through the combined pressure exerted by the European system, composed of the Council of Europe,⁸² the European Union⁸³ and the OSCE and its HCNM, in particular.⁸⁴ In this regard, a valuable and constructive part of this combined European system is the interplay between the FCNM and the European Court of Human Rights. The latter refers increasingly in its judgments to the FCNM and, specifically, to the opinions of the Advisory Committee in order to provide evidence of specific obligations or, more generally, of trends particularly in the field of linguistic, cultural and religious diversity that are discernible in the practice of members states as regards their increasing obligations towards their Roma, Sinti and Traveller communities.⁸⁵

82 See, inter alia, within the Council of Europe: the adoption of the *Strasbourg Declaration on Roma* (note 63), which includes guiding principles and priorities; the creation in 2011 of a Committee of Experts (CAHROM), with the aim of upgrading the intergovernmental work on Roma issues, to be answerable directly to the Committee of Ministers; the position, starting from 2010, of a Special Representative of the Secretary General for Roma Issues, held currently by Valeriu Nicolae.

83 See, inter alia, within the European Union: the setting up of the Platform for Roma Inclusion, which is a mechanism of governance in which key actors – EU institutions, national governments, international organizations, NGOs and experts – can interact with a view to exchanging experience and good practice; the adoption of the ‘Common Basic Principles for Roma Inclusion’ (note 63) and of the *Framework for National Roma Integration Strategies up to 2020* (note 62).

84 For the OSCE, see the work of the Office of the High Commissioner on National Minorities (HCNM) and its early-warning and early-action mechanisms, at <www.osce.org/hcnm>.

85 On the linkage between the judgments of the European Court of Human Rights and other legal instruments on the protection of minority rights, see *Sidiropoulos v Greece* (ECHR, 10.7.1998), DR 98. See also the so-called *UK Gypsy cases*: *Chapman v the UK* App no 27238/95 (ECHR); *Beard v the UK* App no 24882/94 (ECHR); *Coster v the UK* App no 24876/94 (ECHR); *Lee v the UK* App no 25289/94 (ECHR); *Jane Smith v the UK* App no 25154/94 (ECHR), judgments of 18.1.2001, in which the Strasbourg Court, by referring to the Framework Convention, acknowledged that ‘there may be said to be an emerging international consensus amongst the contracting states of the Council of Europe recognising the special needs of minorities and an obligation to protect their security, identity and lifestyle, not only for the purpose of safeguarding the interests of the minorities themselves but to preserve a cultural diversity of value to the whole community’. See *Chapman v the UK* (ECHR) *ibid*, para 92. See also *Sejdović and Finči v*

5. Concluding remarks: balancing diversity and inclusion

It has been suggested in this chapter that the most significant policy recommendation that emerged from the FCNM monitoring mechanism is that strategies, policies and measures for minority protection should be guided by two general principles, namely respect for diversity and inclusion. Combining these two, apparently conflicting, principles presents major difficulties for European societies in conceptual, practical and policy terms. Where states focus only and primarily on inclusion, there is a risk of alienating minorities and provoking resistance while, at the same time, diminishing the relevance of cultural diversity, which represents the wealth of contemporary societies. If these societies privilege diversity, however, they risk increasing marginalization and the exclusion of minorities.

It has been argued that the logic of policies focusing on diversity may encourage the ‘fragmentation of the national community into a quarrelsome spatter of enclaves, ghettos, tribes ... encouraging and exalting cultural and linguistic apartheid’.⁸⁶ Schlesinger, for instance, has claimed that diversity policies rest upon a ‘cult of ethnicity’ that ‘exaggerates differences, intensifies resentments and antagonisms, drives even deeper the awful wedges between races and nationalities. The endgame is self-pity and self-ghettoization.’⁸⁷ In this view, while policies fostering diversity may have noble and sincere intentions – to create a more inclusive and just society – they are likely to have dire consequences in practice, encouraging ethnic separatism and ethnic ghettos, resulting in individual societies becoming increasingly unstable. Yet, the failure to adopt policies that protect and promote identities and diversity may also create the serious risk of marginalization. For example, without some forms of affirmative action, fewer Roma would be likely to feel that they have a realistic chance of succeeding within mainstream institutions: only such policies can realistically be seen as helping to fight the potential sources of marginalization. Accordingly, it is perhaps more correct to argue, based on the historical experience of discrimination against minorities, that it is not diversity policies as such that lead to conflict in society but the suppression of the identity of minorities and their social, political and economic exclusion on the basis of belonging to an ethnic, religious, linguistic or religious minority that can spark violence and tensions.⁸⁸ People may

BiH App nos 27996/06 and 34836/06 (ECHR, 22 December 2009) on the ineligibility of Roma and Jews to stand for election to the House of Peoples and the Presidency of Bosnia and Herzegovina.

86 Arthur M. Schlesinger, *The Disuniting of America: Reflections on a Multicultural Society* (W.W. Norton 1992) 137.

87 *Ibid.*

88 See United Nations Development Programme (UNDP), Human Development Report 2004: Cultural Liberty in Today’s Diverse World (UNDP 2004); OSCE High Commissioner for National Minorities, The Ljubljana Guidelines on Integration of Diverse Societies (OSCE/HCNM 2012); Fernand de Varennes, Minority rights and the prevention of ethnic conflicts (E/CN.4/Sub.2/AC.5/2000/CRP.3, 10 May 2000); Iryna Ulasiuk, Laurențiu Hadîrcă and William Romans (eds), *Language Policy and Conflict Prevention* (Koninklijke Brill – Martinus Nijhoff Publishers 2018); Roberta Medda-Windischer and

be fearful of diversity and its consequences, but it is more likely that it is the opposition to diversity that polarizes societies and fuels social tensions, rather than the adoption of diversity policies.⁸⁹

The impoverishment and marginalization of the Roma is clearly more complicated than a question of respect for their diversity, not least because their socio-economic conditions are also deeply entwined with discrimination and the lack of equal-opportunity policies. Policies and strategies designed to redress the inequitable position of Roma and to combat formal and substantial forms of discrimination are indeed just as essential. Obviously, this is not only a matter of just adopting anti-discrimination measures but also of implementing them effectively, particularly by respecting both the spirit and the letter of the law.

In addition to the long- and short-term impact and the pressure exerted by the FCNM monitoring through the pan-European system (CoE, EU and OSCE) on all European states vis-à-vis the protection of the Roma, the role that the FCNM can play by combining cultural identity and socio-economic dimensions has not yet been fully explored. An important factor in using the Framework Convention to enhance the cultural and socio-economic protection of Roma concerns the increased involvement in the work of the FCNM of Roma themselves, as well as minority associations, researchers, academics, social workers and others, who, at different levels and in different ways, work on and for the Roma.⁹⁰ Such involvement is already possible through the so-called shadow reports that third parties can submit to the Advisory Committee regarding a country and/or specific aspects of minority protection. In this way, it is possible not only to provide additional information to the ACFC but also to exert pressure on and increase the visibility of Roma issues at the European, national and local level. Strengthening the involvement of civil society by, for instance, encouraging and supporting the submission of shadow reports – so far, such reports have been rather few and unevenly submitted – will assure that this important legal mechanism devoted to the protection of minorities maintains its instrumental role for the emancipation, protection and advocacy of Roma rights in Europe.

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89 On this point, see, among others, Will Kymlicka, *Multicultural Odysseys: Navigating the New International Politics of Diversity* (OUP 2007).

90 Note that, for drafting the ACFC thematic commentaries on participation (note 71) and on language rights (ACFC, *Commentary on the Language Rights of Persons Belonging to National Minorities under the Framework Convention*, ACFC/44DOC(2012)001 rev, 5.7.2012), the FCNM Secretariat organized consultation processes involving civil society and NGOs.

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