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Practical implementation of the Framework Convention for the Protection of National Minorities: Monitoring Reports of the Advisory Committee

I. Introduction

The European Union adopted a "Framework for national strategies to improve the situation of Roma in Europe" in the spring of 2011, mainly as a result of the events in France in the summer of 2010. It was emphasized that the responsibility for developing such strategies lies with the respective Member States; these strategies will also be oriented towards the respective particular national circumstances. The recommendations of the monitoring institutions acting under the Council of Europe's Framework Convention for the Protection of National Minorities should also be considered to identify the steps which will be taken in Germany in respect of the German Sinti and Roma.

The Framework Convention is a product of the 1990s. The Member States of the Council of Europe of that time decided to draw up a Framework Convention at the Vienna summit of 1993 as a reaction to the armed conflicts in former Yugoslavia and the serious threats to security and peace in other parts of Europe. After extremely difficult negotiations, it was adopted by the Committee of Ministers of the Council of Europe on 10th November 1994 and opened for signature by future potential Member States on 1st April 1995. It entered into effect in 12 states on 1st February 1998; it was valid for 39 of the 47 Member States[2] of the Council of Europe on 1st December 2011 and is also applicable in Kosovo on account of a special agreement between the Council of Europe and the United Nations Mission in Kosovo (UNMIK).

II. Overview of the contents of the Framework Convention

The Framework Convention[3] consists of a preamble and 32 articles which are arranged in five sections. Section I contains some basic principles, including the declaration in Article 1 that the protection of national minorities and of the rights and freedoms of persons belonging to those minorities forms an integral part of the international protection of human rights. It is emphasized in Article 3, Paragraph 1 that every person belonging to a national minority shall have the right freely to choose to be treated or not to be treated as such and no disadvantage shall result from this choice or from the exercise of the rights which are connected to that choice.

The principles which the Member States undertake to implement nationally through appropriate legislative and administrative measures can be found in Section II. They include e.g. the prohibition of discrimination in Article 4, Paragraph 1 and the requirements for the promotion of effective equality (Article 4, Paragraph 2), the maintenance and development of the essential elements of the particular identity of minorities such as religion, language and cultural heritage (Article 5) as well as of tolerance and intercultural dialogue (Article 6). Freedom of peaceful assembly, freedom of association, freedom of expression, and freedom of thought conscience and religion are guaranteed

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[2] These are: Albania, Armenia, Azerbaijan, Bosnia and Herzegovina, Bulgaria, Denmark, Germany, Estonia, Finland, Georgia, Ireland, Italy, Croatia, Latvia, Liechtenstein, Lithuania, Macedonia, Malta, Moldavia, Montenegro, Netherlands, Norway, Austria, Poland, Portugal, Romania, Russian Federation, San Marino, Sweden, Switzerland, Serbia, Slovakia, Slovenia, Spain, Czech Republic, Ukraine, Hungary, United Kingdom and Cyprus. Belgium, Greece, Iceland and Luxembourg have signed but not yet ratified the convention; Andorra, France, Monaco and Turkey have neither signed nor ratified it.

[3] Framework Convention for the Protection of National Minorities, ETS No.: 157 of 1st February 1995, http://conventions.coe.int/Treaty/ger/Treaties/Html/157.htm, last accessed: 14.12.2011.

in Articles 7 and 8 and the use of and access to the media in Article 9. Furthermore, a number of language-related rights are protected in Articles 10 and 11, such as the right to use minority languages in private or public, including in relations between persons belonging to a national minority and the administrative authorities, as well as the right to use surnames and first names, local names and topographical indications (place name signs). Educational rights are also included, in particular the right to receive instruction in the minority language (Article 12, 13 and 14) and the right to effective participation in cultural, social and economic life and in public affairs (Article 15). Measures which cause forced assimilation of persons belonging to national minorities are prohibited according to Article 5, Paragraph 2 and Article 16, whereas trans-frontier contacts and co-operation are allowed and encouraged according to Articles 17 and 18.

Section III contains some fundamental principles for interpreting the provisions of the Framework Convention. According to Article 21 in particular, they may not be implemented in any way which would be contrary to the substantial principles of international law, such as territorial integrity and the political independence of States. This fully complies with current international law, according to which the protection of national minorities has nothing to do with the claim of ethnic and cultural communities to self-determination protected under international law. Finally, Articles 22 and 23 emphasise that the Framework Convention may not be interpreted and applied in such a way that it would limit the standards arising from other human rights instruments under international law, such as the European Convention on Human Rights in particular.

Section IV regulates the basic principles of the monitoring system, which will be considered separately. In the concluding provisions of Section V, particular reference should be made to Article 27 which defines the character of the Framework Convention as an agreement which is basically also "open" to non-member states of the Council of Europe: that is to say, such states can accede to the Framework Convention on invitation by the Committee of Ministers of the Council of Europe. This was of significance for Armenia, Azerbaijan, Bosnia-Herzegovina and the (former) Federal Republic of Yugoslavia and later also Montenegro, which all acceded to the Framework Convention before they became members of the Council of Europe.

III. The special character as a *Framework* Convention

The special character as a *Framework* Convention can be seen in the provisions of Section II in particular: The principles which the contractual parties undertake to implement nationally through appropriate legislative and administrative measures can be found here. These are therefore primarily declaratory proclamations.[4] This in turn means that the Member States are obliged under international law to guarantee the compatibility of their national legislation and - even more important in practice – of their administrative procedures by means of the principles provided in the Framework Convention. On the other hand, it also follows from this that the Member States are not obliged to ensure the direct applicability of the provisions of the Framework Convention on their authorities and courts – however, they can do this and therefore additionally ensure compliance with the legal obligations arising from their membership of the Framework Convention.

The special character of the Framework Convention is also made clear by the wording of some provisions, which are obviously compromise formulations. Sometimes the reason for this may be because it was impossible for all concerned to agree on acceptable wording during the contractual negotiations. In some cases, however, vague wording also seems to have been selected quite

[4] The only exception is Article 3, which guarantees the right of every person belonging to a national minority freely to choose to be treated or not to be treated as such. Irrespective of the wording of Articles 7, 8 and 11, Paragraph 3, these provisions are to be designed in such a way that they also guarantee rights of persons belonging to national minorities, because they concern rights which are included in the European Convention on Human Rights, which is in force for all the contractual parties of the Framework Convention.

deliberately. In view of the fact that the respective situations of minorities in the Member States of the Council of Europe fundamentally differ to a large extent and often represent extremely sensitive questions politically, it is indeed indispensable that the wording of the provisions of the Framework Convention allows the flexible interpretation and application of these regulations, thereby enabling appropriate consideration of the complex nature of the situations of minorities. This aspect of the Framework Convention is certainly open to criticism from a strictly positivist perspective; on the other hand, this is the only possible solution from the point of view of the practitioner.

In the last analysis, the special character of the Framework Convention also determines the structure of its monitoring system: the national implementation of the obligations arising from membership of the Framework Convention cannot be the subject of legal controls which would necessarily lead to "either/or" decisions. Therefore the applicable monitoring system – described in more detail in the following – which is based on periodic State Reports and aims at a permanent constructive dialogue between the responsible state public authorities and representatives of the respective national minorities and civil society and which is facilitated by the self-perception of the monitoring institutions as "*catalysts for such a process*", is in fact the only appropriate way of reaching the actual goal of the Framework Convention, i.e. to deal with unstable relationships between the majority and minority population in a way which offers the prospect of success and therefore make a contribution to the preservation of peace and security in Europe.

IV. The procedural aspects of the monitoring system

Pursuant to Articles 24 and 26, the Committee of Ministers is entrusted with the task of monitoring the implementation of the provisions of the Framework Convention by the respective Member States; this is supported by an Advisory Committee. By virtue of Article 25, the Member States are obliged to submit a State Report prepared as far as possible with the co-operation of organizations which represent the national minorities living in the state concerned within one year of the entry into force of the Framework Convention; this should contain information on the legal situation and the respective administrative procedures as well as indicate current developments and problems. Further reports are due every five years, so that most states are currently in the third monitoring cycle.

The State Reports[5] represent a very important source of information for the members of the Advisory Committee. The members of the working group formed for the respective member country gain an initial impression based on the information included and information which can be found in documents of international organizations such as the United Nations and of non-governmental organizations; this is then supplemented by discussions with representatives of the government and other authorities and organizations which represent the national minorities and civil society during an "on the spot" visit to the capital and regions in which national minorities live. The draft of an Opinion is then prepared on this basis, which is then adopted with the changes agreed upon in discussions in a plenary session - usually unanimously. The Advisory Committee had adopted 97 Opinions by the 1st of December 2011.[6]

These Opinions are then passed on to the Committee of Ministers and the governments of all the Member States of the Council of Europe. The discussion of the Opinions, on which all governments can submit Comments[7] (taking into account the views of the organizations which represent the national minorities as far as possible), i.e. not only the government of the member state concerned,

[5] All State Reports can be accessed at http://www.coe.int/t/dghl/monitoring/minorities/3_fcnmdocs/table_EN.asp
[6] All Comments can be accessed at http://www.coe.int/t/dghl/monitoring/minorities/3_fcnmdocs/table_EN.asp
[7] All Opinions can be accessed at http://www.coe.int/t/dghl/monitoring/minorities/3_fcnmdocs/table_EN.asp

ends with the passing of Resolutions of the Committee of Ministers. A total of 80 Resolutions had been adopted by the 1st of December 2011.[8] All these Resolutions reflect the most important findings of the Advisory Committee and include recommendations to the Member States to take specific measures and to continue the dialogue with the Advisory Committee. Ideally, a *follow-up seminar* takes place approximately one year after the adoption of the respective Resolution, in which representatives of authorities and national minorities discuss in the presence of members of the Advisory Committee whether and how these recommendations can be or have been implemented.

V. The content-related aspects of the monitoring system

Some questions of a general nature are touched upon here to begin with, before a short overview of the material standards under the Framework Convention developed from the work of the Advisory Committee is provided.

1. Questions of a general nature

These include the extremely controversial question about the personal scope of application of the Framework Convention, the problem of its territorial applicability, which, if anything, has so far been easier to solve, as well as its character as a *living instrument*.

a) The personal scope of application of the Framework Convention

The origin of the problematic nature is the fact that there is still no definition of the term "national minority" which is recognized by all sides. Most suggestions include objective and subjective elements, i.e. objective differences with regard to history, culture, religion, language and a lower number of people as well as a subjective element, the common will of the members of the group to maintain their independent identity. The state representatives could also not agree on a definition of the term "national minority" in the formulation of the Framework Convention. This caused several contractual parties to add statements to their instruments of ratification, in which the applicability of the Framework Convention is usually restricted to such groups which are generally referred to as "old" or "traditional" minorities, i.e. groups, which have strong ties with the region in which they live, and whose members are citizens of the state, to whose territory these regions belong. These Member States mainly seek to exclude the "new minorities" from the personal scope of application of the Framework Convention in this manner. Other Member States, which only considered "old" minorities in their State Reports under the Framework Convention, chose a comparable approach. On the other hand, there were also contractual parties which opted for a broad and comprehensive approach and also applied the Framework Convention to "new" minorities.
The Advisory Committee decided to make use of the flexibility characteristic for the text of the Framework Convention in this situation, especially with regard to the extremely complicated legal problems which are associated with such statements and developed the following practice: the starting point in controversial cases is always the declaration that, in the absence of a definition of the term "national minority" in the Framework Convention, it is the primary task of the Member States to determine their personal scope of application. In this respect, states have a certain room for manoeuvre. However, this has to be exercised in accordance with the basic principles of international law, and may not result in arbitrary unequal treatment; in this respect, the states are subject to scrutiny by the Advisory Committee. In most cases, the Advisory Committee calls the states and groups of people concerned for consultations.

[8] All Resolutions can be accessed at http://www.coe.int/t/dghl/monitoring/minorities/3_fcnmdocs/table_EN.asp

With regard to the question of the legal status of the "new" minorities, the Advisory Committee has consistently stated that it is clear from the wording of some provisions, such as Article 11, Paragraph 3, that they only apply to members of old minorities, whereas it equally is clear that anyone, i.e. also persons belonging to new minorities, can invoke Article 6.

In conclusion, it should be pointed out that the European minority rights legislation has made clear that persons belonging to religious minorities or indigenous ethnic and cultural communities are also entitled to the rights of persons belonging to national minorities - if they wish to invoke them.

b) The geographical scope of application of the Framework Convention

Some Member States were (and are) confronted by extremely complex problems which mean that the respective governments cannot exercise effective sovereignty over certain parts of their state territory. For instance, this concerns Moldavia with regard to the region generally referred to as Transnistria and Cyprus with regard to the north of the island which is under Turkish occupation.

In all these cases, the Advisory Committee emphasized that it would restrict itself to the area under the actual control of the government when examining the adequacy of the measures taken to implement the obligations arising from the Framework Convention. This is also the only practical solution which adequately considers (a) the territorial integrity of the state concerned and (b) the actual restrictions on the exercise of sovereignty.

c) The Framework Convention as a *living instrument*

As in the case for every human rights instrument under international law, the question of whether and to what extent the provisions of the Framework Convention can be or should be dynamically interpreted also arises. i.e. whether it represents a *living instrument* or whether the interpretation of the provisions envisaged by the contractual parties at a given moment in history should prevail.

The Advisory Committee consistently believes that the Framework Convention and every human rights instrument should be interpreted and applied in the light of the actual situation. This means that the Member States should constantly examine whether measures which have been taken are still appropriate - conversely it also means that it may be necessary to enact regulations which did not previously seem to be required to protect the independent identity of a national minority as a result of altered circumstances.

2. The individual rights

Needless to say, all the individual statements of the Advisory Committee cannot be considered in this overview. The discussion in the following will therefore be restricted to problems which have arisen in a large number of Member States and were consequently discussed in the respective Opinions, so that a development of standards can be legitimately spoken of.

a) Free choice of affiliation to a national minority

The right freely to choose affiliation to a national minority and the associated prohibition of forced assimilation can be found in Article 3, Paragraph 1 and Article 5, Paragraph 2. In practice, it has so far mainly played a role in connection with the collection of personal data in censuses. In this respect, the Advisory Committee has emphasized several times that obligatory questions about the national, i.e. also ethnic, religious or linguistic identity of an individual are impermissible; instead the *explicit and informed consent* of those concerned is always required in such surveys. It should also be

emphasized that the Advisory Committee has referred to statistical data on several occasions, in order to examine accusations of indirect discrimination.

With respect to the obligation of the state to protect and promote the independent identity of national minorities set out in Article 4, Paragraph 2 and Article 5, Paragraph 1, the Advisory Committee has criticised the inadequacy - or even the lack of - appropriate state measures on a number of occasions, for the most part concerning the traditional way of life of the Roma (particularly the lack of a sufficient number of suitably equipped stopping places).

b) Prohibition of discrimination and the principle of equality

Both rights are of considerable practical importance for persons belonging to national minorities and can be found in Article 4. The Advisory Committee has consistently called upon the states not only to take comprehensive legislative measures against discrimination both for the state and private sector but also to ensure their implementation. Roma were and still are the victims of such discrimination in a very large number of states.

The Advisory Committee also discovered that there are considerable differences between official statistics and estimates regarding the size of national minorities in many Member States. Since the lack of relevant accurate information can adversely affect the success of supporting measures implemented by the state, the Advisory Committee called upon governments to search for ways, in which they can collect reliable data - also and particularly in states such as Germany, in which national minorities are extremely hostile towards the collection of ethnically disaggregated data on account of the historical experience of the Holocaust.

c) Intercultural dialogue and tolerance

The state obligation to promote intercultural dialogue and inter-ethnic tolerance is one of the generally recognised standards of international law in times which are characterised by the dangerous revival of xenophobic, racist and anti-Semitic actions. It is enshrined in Article 6. The Advisory Committee almost consistently found that - irrespective of all efforts made by the state - Roma in particular are still victims of such actions; in addition to this, their situation is exacerbated by the fact that strong resentments were widespread, especially in members of the police and security forces. Negative stereotypes of persons belonging to national minorities, especially Roma, but also of asylum seekers and migrant workers, are also commonly encountered in many reports in the mass media. In particular, the Advisory Committee has recently expressed its concern about the significant increase in xenophobic and racist statements and contents in the Internet and called upon the Member States to take resolute action, also through the application of criminal law.

d) Freedom of religion and political rights (freedom of peaceful assembly, association, opinion, thought and conscience)

It is a truism that freedom of religion and the stated political rights form part of the indispensable requirements of any democratic society and are absolutely essential for persons belonging to national minorities on account of their special situation. It is therefore right and important that these rights are not only laid down in the European Convention on Human Rights but also protected in Article 7 and 8.

There is not very much minority-related practice of the Advisory Committee with regard to the freedom of religion. The already mentioned fact that it classifies religious minorities as national minorities– if they wish – is possibly the most important of all. Only a few general statements can be drawn from the practice of the Advisory Committee, which mostly concerns disputes about the ownership rights to churches and buildings with religious significance; however, its statements that

blasphemy laws should not only protect specific religions and that state measures for financing religious activities must be compatible with the principle of equality should be referred to.

Of the stated political rights, freedom of peaceful association and assembly have so far been of some importance: it can be generally noted that actions of political organizations for promoting the independent identity of a national minority do not compromise national security *per se* and can therefore only be prohibited if additional circumstances - e.g. the assertion of objectives through non-democratic measures - supervene. Otherwise the Advisory Committee has emphasized that the banning of political parties of national minorities is scarcely compatible with Article 7.

e) Media-related rights

Media-related rights, in particular the right to reasonable access to public audio-visual media and the right to establish and maintain private audio-visual and print media, are obviously of prime importance for the preservation and promotion of the independent identity of national minorities. In a time, in which social developments are influenced by the media to a considerable extent, information from and about national minorities is indispensable to enable persons belonging to the minority and the majority population to understand this independent identity. Furthermore, since most of the national minorities in Europe have their own language as one of the most important criteria for defining their independent identity, media are of vital importance for the learning and survival of such languages. The absolutely fundamental importance of media-related rights is also expressly recognized in Article 9.

The media-related rights of persons belonging to national minorities play an important role in the practice of the Advisory Committee; however, it mostly concerns situations "of inadequate" access of persons belonging to national minorities to public service radio and TV programmes as well as accusations of unequal financial support for such broadcasts by private radio and television broadcasters.

f) Language rights

As national minorities in Europe usually define themselves through their independent language, language-related rights are of absolutely fundamental importance for the preservation and promotion of the independent identity of national minorities. Articles 10 and 11 include guarantees for such language rights in recognition of this circumstance.

These include the right to use one's minority language in private and in public as well as, to a certain extent, in dealings with the administrative authorities and the legal system; the right to use one's surname and first names in the minority language; and the right to display information of a private nature and, under certain conditions, also topographical information in a minority language.

It is important to underline that the Advisory Committee has repeatedly emphasized that the Framework Convention does not preclude the existence of official languages. It has repeatedly recognized that the Member States are entitled to take measures to promote the official language, provided that the rights of the persons belonging to national minorities are not affected thereby. In respect of several states, it arrived at the conclusion that considerable problems occur in the actual implementation of the relevant national laws for regulating the use of minority languages in dealings with public authorities. It is also interesting that it has repeatedly emphasized that national legislation which allows this possibility in regions with a proportion of speakers of the minority language of 10% or 20% is to be welcomed, whereas it declared quotas of 50% to be too high. It also emphasized the fact that persons belonging to national minorities have sufficient knowledge of the official language is not significant, since the actual possibility of using a minority language is necessary for its survival.

With regard to the right to use one's name in the form of the minority language, the Advisory Committee criticized cases, in which spelling variations in the official language were forced and welcomed legislative reforms which enable the reinstatement of the original form of names. With regard to the right to attach signs of a private nature visible to the public in a minority language, the Advisory Committee repeatedly opposed very restrictive regulations, e.g. in the Baltic States. With regard to topographical signs in minority languages, the Advisory Committee welcomed the possibilities offered in principle in several states but criticized the legal position, which is sometimes unclear. The Advisory Committee thought it was permissible to make the erection of bilingual signs dependent on a specified proportion of persons belonging to national minorities in the total population of a community, provided that this quota does not exceed 20%.

Finally, it should be noted that the Advisory Committee is currently working on its Comment on language rights; it is planned to have this ready by May 2012 and then publish it.

g) Educational and education-related rights

The structure of the education system is obviously of crucial importance for effective preservation and promotion of the independent identity of national minorities. In particular, the right to learn the mother tongue is *conditio sine qua non* for its survival for such minorities who primarily define themselves linguistically. However, a state policy whose objective is precisely the preservation and promotion of the independent identity of national minorities may not be reduced to enable schoolchildren to learn their mother tongue; they must also be familiarized with their history and culture - in the same way as with the language, history and culture of the majority population. Finally, it is equally important that persons belonging to the majority population, particularly schoolchildren, are informed about the history and culture of the national minorities established in the respective country and, if they so wish, are given the opportunity to learn the respective languages. The undisputed importance of these educational and education-related rights is also reflected in the fact that they are expressly recognized in Articles 12, 13 and 14.

In the context of its findings on Article 12, the Advisory Committee had to repeatedly concern itself with the highly problematic situation of Roma children. It not only discovered an alarming proportion of truants but had to express its deep concern on a number of occasions about practices which placed such children in special schools or in special classes for mentally handicapped children on account of poor knowledge of the language of instruction. In this respect, it should be seen in a very positive light that such practices have been abandoned almost everywhere in Europe in recent years. Furthermore, it deplored the fact that, in spite of appropriate efforts, there were still not enough sufficiently qualified teachers in some states; the quality of the textbooks also frequently gave cause for concern.

With regard to the right to be taught the minority language or receive instruction in this language guaranteed in Article 14, the Advisory Committee emphasized that, when making decisions about the closure of schools with teaching in a minority language, particular importance must be attached to the fact that such schools are of absolutely crucial importance for the preservation and promotion of the independent identity of national minorities. It also emphasized that states which plan a fundamental reform of their school system with the objective of increasing the amount of instruction in the official language at the expense of instruction in minority languages, should provide suitable guarantees for a sufficient amount of instruction in the latter languages and discuss such reforms with the people concerned. Finally, it is emphasized that the Advisory Committee has made clear that it regards true bilingual education as the best way of implementing the obligations arising from Article 14.

Lastly, it should be pointed out that the Advisory Committee adopted its Comment on education-related rights on 2nd March 2006.[9]

h) Effective participation in public affairs

The right to effective participation in cultural, social and economic life and in public affairs is indispensable for any democratic society. This particularly applies to persons belonging to national minorities. It is only therefore only to be expected that it is guaranteed in Article 15. The great importance of this right to effective participation results from the correct assessment that only such national minorities whose members have the feeling that the state in which they live is also "their" state, are prepared to integrate completely, which in turn considerably contributes to the stability of peaceful relations between the majority and minority population.

The Advisory Committee noted that there is a lack of adequate representation of national minorities in legislative bodies at local and regional and central government level in some states, and requested the governments concerned take appropriate measures. In this respect, it must be particularly ensured that bodies with an advisory function also actually represent national minorities in a suitable manner. On the whole, it underlined the role of structures of territorial autonomy for the preservation and promotion of the independent identity of national minorities; from this it follows in particular that changes to the administrative structure of a state which would have adverse effects on national minorities should be avoided.

The Advisory Committee also determined that persons belonging to national minorities were considerably underrepresented in the public sector in some states and were disproportionately affected by high unemployment. Lastly, it was emphasized that examinations in the private sector to furnish proof of language skills were only permissible where they were necessary for the protection of a clear public interest. The same applied to persons who wished to participate as candidates in elections.

On the other hand, the Advisory Committee was deeply concerned about the inadequate participation of Roma in public life in many states. Their socio-economic situation, especially that of the women, also gave cause for concern. In this respect, it mainly concerns equal access to public institutions for training and education and health as well as to the world of work.

The Advisory Committee stated its opinion on the various aspects of this right of effective participation in public affairs in its Comment of the 5th May 2008.[10]

i) Unobstructed trans-frontier contacts

With regard to the settlement structure of many national minorities, unobstructed trans-frontier contacts with persons who belong to the same group are of quite considerable importance for the preservation and development of the independent identity of such national minorities. This also explains the incorporation of this right in Article 17. In spite of some problems, which are and were connected with the politics of some states, the support of respective neighbouring countries (*kin-states*) can definitely make a contribution to improving the situation of national minorities, especially in the area of education.

Finally, it should be mentioned that the Advisory Committee has repeatedly demanded that the concerns of persons belonging to national minorities for trans-frontier contacts which are

[9] Can be accessed at http://www.coe.int/t/dghl/monitoring/minorities/3_fcnmdocs/table_EN.asp
[10] Can be accessed at http://www.coe.int/t/dghl/monitoring/minorities/3_fcnmdocs/table_EN.asp

unobstructed as far as possible must be taken into account in the introduction of new provisions concerning the issuing of visas, mainly as a result of the expansion of the European Union to the east.

VI. The practice in Germany and the demands of the Central Council of German Sinti and Roma

The practice in Germany can generally be considered as positive: so far Germany has submitted the three State Reports relatively on time and cooperated well with the monitoring bodies (support during visits to the state, punctual submission of the Comments on the Opinions, organisation of follow-up seminars). In particular, it should be noted that the points of view of the representatives of minorities were enclosed with the State Reports and Comments as official documents. This is exemplary practice. The most important point of conflict between the Advisory Committee and the Federal Government consists in the fact that the latter insists that the Framework Convention only applies to the minorities (so far) recognised by Germany for the purposes of this agreement (Danes, Frisians, Sorbs and German Sinti and Roma), whereas the opinion of the former is the fact that the wording of Article 6 ("everyone" and not "persons belonging to a national minority") also allows the application of this provision to other groups (e.g. migrants and asylum seekers, possibly also Roma from southeast Europe).
Specific points of criticism on the situation of Sinti and Roma can be found in all three Opinions on Germany (1st March 2002, 1st March 2006 and 27th May 2010). In the first Opinion, this concerned e.g. the ethnic profiling of persons suspected of crimes by some criminal prosecution authorities, which had not yet been completely abandoned at that time (known as "Landfahrerkartei" (vagrant files)); the negative attitude of some sections of the population towards Sinti and Roma; discriminatory reporting by some sections of the media and problems in accessing education. These points were essentially reiterated in the second opinion with the addition of the demand for the development of a strategy for improving the situation of Sinti and Roma, not least through increased participation in decision-making processes concerning questions which are of particular importance to them as well as through intensification of efforts for the promotion and preservation of the independent identity of Sinti and Roma, including instilling knowledge of their history and culture in the general public in Germany. Amongst other things, in the third Opinion of 27.05.2010, Germany is called upon to:

"Take measures to bring about a significant increase in participation in public life by the Roma and Sinti, with due regard for the cultural diversity found within these groups; promote and support projects and initiatives which will contribute to improving their participation in social and political life, and take resolute action without delay to end the unjustified placing of Roma and Sinti pupils in ‘special’ schools."

This demand can be found in the Resolution of the Committee of Ministers of 15.06.2011 with the same wording.

Against this background, the demands made by the Central Council of German Sinti and Roma are perfectly in keeping with the recommendations of the Advisory Committee and the Committee of Ministers. In this regard, they include the demand for:

- effective participation of representatives of Sinti and Roma in state and social bodies which are relevant to their concerns, e.g. broadcasting councils and State Media Authorities, or in planning commissions at the municipal or Federal State level;

- a fundamental improvement in the situation under social law of the survivors of the Holocaust or state funding for the preservation of the graves of victims of the National Socialist period, since these graves represent an important aspect of the cultural identity of the Sinti and Roma as provided for in Article 5 of the Framework Convention;

- for improvements in the legislation and its implementation in the area of anti-discrimination, including the inclusion of the Sinti and Roma in the groups covered by Article 5 of the state constitution of Schleswig-Holstein, which has been demanded for a long time;

and finally

- for intensification of the measures in the education sector with the goal of improving the education and training of young Sinti and Roma on the one hand and to raise public awareness of the history and culture of Sinti and Roma on the other.

By implementing these demands, Germany would also satisfy the legal obligations arising from its membership of the Framework Convention. Since implementing at least the first three demands would not require any large increases in public funding, it is to be hoped that the respective steps are carried out as soon as possible. In this respect, care must be taken to ensure that all the relevant measures are taken with adequate input from the representatives of Sinti and Roma, which is obvious and applies all the more so to the implementation of the fourth demand: this not only increases the likelihood that such measures are successful but also complies with Germany's obligation arising from Article 15 of the Framework Convention.