

**European Union
Committee of the Regions
Commission for Constitutional Affairs and European Governance**

**Seminar
*The Contribution of Local and Regional Authorities to the Protection of Minorities and
Anti-Discrimination Policies*
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**The Role of Local and Regional Authorities in the Implementation of the Council of
Europe Framework Convention for the Protection of National Minorities
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I. Introduction

At the outset, I should like to strongly commend the Commission for Constitutional Affairs and European Governance of the EU Committee of the Regions for having convened, in cooperation with the Austrian EU Presidency, the European Monitoring Centre on Racism and Xenophobia (EUMC) and the City of Vienna, this seminar on an issue of truly pan-European relevance, namely the possible contribution of local and regional authorities to the protection of minorities and anti-discrimination policies. It is a great honour for me to have been invited to speak to you this morning and, in my capacity as former President of the Advisory Committee under the Council of Europe Framework Convention for the Protection of National Minorities (FCNM), to share with you some thoughts on the role which local and regional authorities could and should play as regards the implementation of this treaty in the respective States Parties.

In view of the very limited time available, and bearing in mind that important work of other relevant Council of Europe bodies, including ECRI and the Congress of Local and Regional Authorities, will be introduced later today, I will focus exclusively on the Framework Convention. I shall start with a short overview of the contents of the FCNM, including its monitoring mechanism, continue with some general thoughts on the role of local and regional authorities as concerns the implementation of the FCNM, address three areas with respect to which an active role of such authorities is of particular relevance: the use of minority languages in contact with administrative and other authorities, access to education, and effective participation in cultural, social and economic life and in public affairs, and conclude with some remarks concerning the situation of Roma as a most vulnerable group. Since I trust that the other speakers of this introductory session will provide some in-depth thoughts on the importance of general and specific anti-discrimination policies to be pursued by regional and local authorities, in particular with respect to the actual implementation of the domestic norms by which the Racial Equality Directive (2000/43/EC) has been - or will be – transposed into the legal order of EU Member States, I shall limit myself to emphasising in this context that the Advisory Committee has consistently stressed the essential importance of effective anti-discrimination legislation and policies as a *conditio sine qua non* for achieving the ultimate goal of the FCNM, i.e. the protection and promotion of the distinct identity of persons belonging to national minorities.

II. Overview of the FCNM and its Monitoring Mechanism

The FCNM entered into force on 1 February 1998 and will be, as from 1 April 2006, in force for 38 of the 46 Council of Europe Member States. Thus, it has become, within a very short

period of time, an increasingly pan European human rights treaty. The FCNM is the first-ever legally binding multilateral instrument devoted to the protection of persons belonging to national minorities. It covers a wide range of issues that are central to the protection of the rights of such persons such as the principle of non-discrimination; promotion of effective equality and of the conditions necessary to maintain and develop the distinct cultures of national minorities; the obligation of States Parties to encourage a spirit of tolerance and intercultural dialogue among all persons living on their territory; freedom of assembly, association, expression, thought, conscience and religion; access to, and use of, media; linguistic rights relating, *inter alia*, to the use of minority languages in public and in contacts with administrative and other authorities and the use of minority languages for topographical indications; access to education and the right to learn and to be taught in one's mother tongue; and, finally, the right to effective participation in the cultural, economic, public and social life.

The monitoring of States' obligations resulting from their membership in the FCNM is entrusted to the Council of Europe's Committee of Ministers which is assisted in this task by an Advisory Committee. Under the FCNM, States Parties are obliged to submit regular State reports on the measures taken in order to meet their obligations. Based on the information contained in this report and gathered from other sources, before and during a country visit, the Advisory Committee adopts an opinion as to the adequacy of the measures taken by the State Party concerned. This opinion is transmitted to the Committee of Ministers which, taking into account comments which the State Party concerned, and other Member States, might have submitted, takes the final decisions – *conclusions* – as to the adequacy of the measures taken and adopts *recommendations* concerning further steps to be taken by the respective State Party. At present, the first cycle of monitoring has been concluded as concerns 33 States Parties with one further country-specific opinion adopted; the second cycle of monitoring which began for some Member States in 2004, has been concluded with respect to six States Parties with nine further county-specific opinions adopted.

The unequalled relevance of the FCNM as concerns the protection of minority rights in Europe is also reflected by the Agreement signed in August 2004 by UNMIK and the Council of Europe whereby UNMIK not only accepted to be bound by the substantive provisions of the FCNM, but also by its provisions on the monitoring. This is the first-ever acceptance of a UN Interim Administration to submit itself to such monitoring. The pertinent opinion of the Advisory Committee, adopted on 25 November 2005, was made public on 2 March 2006.

III. The Role of Local and Regional Authorities in the Implementation of the FCNM

At the outset, it is important to recall that all EU Member States have multi-layered state structures: either two layers (central and local authorities) or three layers (central/federal, regional/*Länder* and local authorities), with EU/EC authorities constituting an additional, supra-national layer. In all such multi-layered systems, the precise attribution of legislative, executive and judicial competences is of obvious and essential relevance.

In line with what I consider to be a most convincing understanding of the principle of democratic governance, there is a strong tendency to apply the principle of subsidiarity as a means to distribute state powers between these various layers of authorities. In the domestic field, this has resulted, in a number of countries, in the implementation of policies of decentralisation with regional and local authorities assuming increased responsibilities based on the conferment of additional legislative and executive powers.

This development is of great importance to minority protection as well, and the explanatory report of the Framework Convention rightly stresses the role of de-centralisation in ensuring the effective participation of persons belonging to national minorities in decision-making.

In general terms and as concerns the fulfilment of obligations resulting from a State's membership in an international treaty, such developments do not impact on the international responsibility of the State concerned under public international law. However, from the point of view of constitutional law, it is clear that regional and local authorities are – as much as central and federal – authorities under a constitutional law obligation fully to respect a State's international legal obligations as concerns the exercise of their legislative, executive and judicial powers.

Now, as concerns the implementation of the specific obligations flowing from the FCNM, it is clear that regional and local authorities are in a specific situation: Most often, they will execute national legislation on issues relevant for persons belonging to national minorities and apply it to individual cases; in many areas, in particular as concerns linguistic rights, education and participation, they have wide-ranging powers of their own and are, as much as the individual persons concerned, the *owners* of the FCNM. Therefore, the Advisory Committee has developed the practice to meet, during its country-visits, not only with members of central government structures, but also – and sometimes in particular – with those persons who are, in regional and local government structures, responsible for minority-related issues. These meetings have most often resulted in a very constructive and fruitful dialogue which was continued in later follow-up seminars organised to discuss the country-specific findings of the Advisory Committee. However, there have also been instances in which it became clear that regional and local authorities were not fully aware of their role and responsibilities concerning the implementation of the FCNM, and situations in which central government officials declared that they lacked, under domestic legislation, effective means to ensure the compliance by regional and local authorities with such responsibilities.

Therefore, in order to further improve – or, as it may be, to ensure - the implementation of the FCNM, it is essential that all regional and local authorities are not only fully aware of their respective responsibilities which requires, *inter alia*, pertinent information activities by central authorities but that they are also fully included in the dialogue between Member States' governments, civil society and the monitoring bodies operating under the FCNM. Therefore, I most strongly welcome the initiative taken by the Committee of the Regions to convene this seminar as a most important contribution to this process.

IV. Linguistic Rights, Education, and Political Participation as Areas of Particular Relevance for Minority-Related Activities of Regional and Local Authorities

In view of the limited time available, I shall only briefly address three areas in which I think, based on my experiences as former President of the Advisory Committee, that regional and local authorities could and should play a central and sometimes even more active role in the implementation of the provisions of the FCNM.

a) Articles 10 and 11 FCNM provide for linguistic rights including, *inter alia*, the right to use, under specific conditions, minority languages in contact with administrative authorities or to display, again under specific conditions, topographical indications in a minority language. In most FCNM Member States, the pertinent legislation is enacted by legislative bodies acting on the central level; however, in those Member States with a federal structure or powerful regions, this competence is usually conferred upon regional or *Länder* legislative bodies. In

order to implement their obligations flowing from the FCNM, such bodies should, therefore, not only enact such legislation but, if doing so, consult the relevant findings of the Advisory Committee in order to be inspired by good practices in other countries. Irrespective of the actual attribution of pertinent legislative powers, it is clear that the actual implementation of such legislation depends mainly on the local authorities. In this context, it is important to note that the Advisory Committee has consistently held that such authorities should, in their employment strategies make sure that the administration concerned has the necessary capacity in the state *and* in the relevant minority languages.

Furthermore, as regards the display of topographical indications also in the relevant minority languages, the competent regional and local authorities should make generous use of any margin of discretion which the pertinent legislation might offer to them in order to ensure the implementation of such legislation to the widest possible degree.

b) As concerns access to instruction in, or instruction of, minority languages, regional and local authorities should again show a proactive role, both as regards the exercise of pertinent legislative powers attributed to them and as regards the actual implementation of pertinent norms. So, e.g., when deciding on the minimum number of pupils required to establish classes in which part of the instruction is given in a minority language, the competent authorities should take into due account the essential relevance of such instruction for the preservation of the distinct identity of persons belonging to national minorities. Moreover, when setting the actual time-tables of schools with such instruction, the competent authorities should avoid situations in which participation in such classes would involve long and time-consuming transports of pupils so that parents are not discouraged from sending their children to such classes.

If regional or local authorities have the competence to determine *curricula* and to choose textbooks, they should ensure that the legitimate needs of pupils belonging to a national minority are adequately accommodated so they are sufficiently familiarized with their own culture and history. Moreover, such authorities should equally ensure that pupils belonging to the majority population are also informed, in an objective way, about the culture and history of national minorities and given the possibility to learn any minority language if they so wish.

c) Effective participation, of persons belonging to national minorities, in the cultural, economic, political and social life is of truly essential importance for their successful integration into the society of the state in which they live. To achieve this goal, States Parties should consider different steps, such as policies of decentralisation and the establishment of autonomy, which might take different forms ranging from personal to territorial autonomy taking due account of the demographic situation and historic and other traditions of the State concerned. If States opt for the introduction of forms of territorial autonomy, they should also ensure that the rights of persons belonging to a “minority-in-a-minority” are adequately protected.

Measures aiming at the effective participation of persons belonging to national minorities in the political decision-making process, both on the regional and local level, should, as a minimum, include the establishment of consultative bodies. It is essential that the personal composition of such bodies adequately reflects the wishes of the population concerned and that the opinion of such bodies is appropriately taken into account in the actual decision-making. Other means to ensure such effective participation might include a guaranteed representation of national minorities in regional or local parliaments or the non-applicability

of electoral norms requiring a minimum threshold of votes for parties representing national minorities in such legislative bodies.

V. Roma and Travellers: A Most Vulnerable Group

A review of the opinions so far adopted by the Advisory Committee clearly shows the high vulnerability of Roma and Travellers, in particular of women and children. With regard to many States Parties, the Advisory Committee had to conclude that such persons still face wide-spread discrimination in many societal settings, in particular as concerns their access to education, employment, health services and housing.

It is, therefore, essential that activities aiming at a fundamental improvement of the specific situation of Roma and Travellers are vigorously continued and, in many cases, substantially increased. In this context, regional and, in particular, local authorities should play a most proactive role and ensure that pertinent initiatives are fully implemented on the local level.

VI. Conclusion

Let me conclude with the following statement: I think that we all agree that democracy begins with and depends on the situation at the local level. The same assessment, I think, is true with respect to minority protection.