

Monitoring of Linguistic Rights of Minorities under the European Charter and the Framework Convention

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Since 1945 the preservation of language and the protection of linguistic rights have been considered important elements of individual human rights, warranting specific protection.¹ Within this context, the protection of linguistic rights of minorities² presents one of the most significant aspects of international protection of minority identity. There are, indeed, a relatively large number of international provisions for protection of linguistic rights, though there is no comprehensive and coherent package of norms of relevance for linguistic rights of minorities.³ The large number of provisions has resulted in States having parallel obligations under more than one document with regard to both standard setting and monitoring mechanisms.⁴ In this regard one can be satisfied with numerous provisions binding especially upon the European states which have the strongest system of protection of linguistic rights of minorities. This system is created basically by the two Council of Europe documents: the European Charter for Regional or Minority Languages and the Framework Convention for the Protection of National Minorities. The adoption of these documents presents one of the important developments in the overall protection of minority rights in Europe. Though both documents entered into force only six years ago (in 1998) there are some obvious and positive results of their functioning. In this paper however focus will be on some of the problematic aspects of the monitoring systems of the two above-mentioned Council of Europe documents. Where appropriate certain attention will also be paid to the International Covenant on Civil and Political Rights (ICCPR). All these documents are legally binding and of relevance though in a different way and to a different extent. So, for example, the Framework Convention and ICCPR are clearly human rights treaties, whereas the European Charter focuses on the cultural dimension and function of language. Its purpose is to protect and promote “regional or minority language as a threatened aspect of Europe’s cultural heritage”,⁵ and its significance for minorities derives from an understanding that any protection of languages as part of cultural heritage has unavoidably impact on and implications for linguistic rights of minorities. The European Charter contains much more detailed provisions than the other two documents. In the Framework Convention of importance are Articles 5(1), 6, 9(1), 10, 11, 12(1) 14 and 17(1) and the ICCPR includes linguistic rights of minorities only in Article 27 which appears, however, to be the strongest norm for protection of minority rights adopted on the UN level. Common to all three documents, on

¹ Cecilia Thompson, “The Protection of Minorities within the United Nations System”, in S. Trifunovska (Ed.), *Minority Rights in Europe – European Minorities and Languages*, T.M.C. Asser Press (2001), pp. 115-137, at p. 134.

² In this paper the expression “linguistic rights of minorities” is taken to mean “linguistic rights of individuals belonging to minorities”.

³ Robert Dunbar, “Minority Languages Rights in International Law”, Vol. 50 *International and Comparative Law Quarterly* (January 2001), pp. 90-120, at p. 119.

⁴ It should be noted, however, that not all international norms of relevance for linguistic rights are internationally supervised or monitored by an established mechanism. For example, there are no special mechanisms for non-legally binding documents. The OSCE documents are an exception in this regard. Their implementation in the field of human rights protection is monitored by Vienna and Moscow mechanisms. In the context of peace and security the compliance with the norms establishing linguistic rights of minorities is supervised by the High Commissioner on National Minorities which uses the mechanisms of early warning and conflict prevention. With regard to the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities mentioning deserves the UN Working Group on Minorities which is entrusted with certain capacities of similar character. Its mandate is to find ways and means to implement the rights contained in the Declaration; to examine possible solutions to problems involving minorities; and to propose further measures which could be adopted to better promote and protect their rights (See: UN Doc. E/CN.4/Sub.2/1996/2 of 28 November 1995, para.27).

⁵ European Charter for Regional or Minority Languages, Explanatory Report, para. 10.

the other hand, is the fact that they all provide for a state-reporting system for monitoring of their implementation.

On the whole, state-reporting systems created by these documents share the basic characteristics of other monitoring mechanisms. They were established for the purpose of “active collection, verification and [...] use of information to address human rights problems”,⁶ and are aimed at controlling the implementation of norms and finding out what is wrong with a certain situation [...].⁷ This includes also activities intended to establish whether the remedies taken to correct the existing problems are working. State-reporting systems established under the above-mentioned documents focus on *situation monitoring* rather than on *case monitoring*, though ICCPR includes also inter-state and individual complaint procedures.⁸

1. The problematic aspects of standard-setting

One of the important preconditions in the efficient realization of human rights is an unambiguous formulation of norms. It is important not only for the beneficiaries of the rights but also for those having a duty to comply with the norms and for the bodies monitoring the compliance. In some cases, however, it proved not to be easy to adopt clearly formulated standards. It is true also for the norms on linguistic rights of minorities which are mostly formulated in a compromising and vague manner. This can be explained by the fact that within the field of human rights, linguistic rights make part of the protection of minorities, meaning that they share both the complexity of the problems involved in the issue of minorities and the existing political sensitivity. The Framework Convention is one of the obvious examples in this sense. Despite the fact that the programme-type provisions contained in the Convention were intentionally chosen with the purpose of allowing a measure of discretion of the State Parties in implementing its provisions by taking their own minority situation into consideration, the Convention has been criticized for its weak wording and for many escape clauses. Vaguely formulated clauses are evident in the provisions on linguistic rights as well. Formulations such as “the Parties shall, *where appropriate*, take measures”, “the Parties *shall endeavour*, in the framework of their legal system”, “the Parties *shall endeavour to ensure, as far as possible*” (emphasis added), are present in Article 10(2) – dealing with the use of minority languages in relations between the persons belonging to minorities and the administrative authorities in the areas traditionally or in substantial numbers inhabited by minorities; Article 11(3) – providing for a display of traditional local names, street names and other topographical indications in minority languages; and in Article 12(1) – on fostering knowledge of, *inter alia*, language of minorities and the majority.

From these and similarly formulated provisions it seems very difficult to establish what actually presents a standard or a norm imposing an obligation on the State Parties. This can create particular problems when it comes to the monitoring of the implementation of the Convention. Unavoidably, it will set higher requirements on the designated monitoring body to go beyond a

⁶ Training Manual on Human Rights Monitoring, *Professional Training Series No. 7*, Office of the UN High Commissioner for Human Rights (2001), para. 28.

⁷ Manuel Guzman & Bert Verstappen, “What is Monitoring”, Human Rights Monitoring and Documentation Series, Volume 1 (2003), <http://www.huridocs.org/basmonen.htm>

⁸ *Situation monitoring* is based on the reports describing and analysing the implementation of and the compliance by national bodies with the international provisions on linguistic rights. It embraces an assessment in progress as well as violations which have occurred in the period covered by the report and is carried out usually by inter-governmental bodies such as various treaty-based committees, governmental bodies (it can be ombudsman or special commission(s)) and NGOs. *Case monitoring* consists of following and documenting the developments in a case of a victim or a group of victims of certain violations and is conducted by humanitarian groups and NGOs. (Manuel Guzman & Bert Verstappen, *Ibid.*).

mere interpretation of the treaty provisions, and to establish criteria under which it will be considered that the obligations under the Convention are being met. Accordingly, the Advisory Committee, while considering the implementation of Article 12(1) (which reads: “The Parties shall, where appropriate, take measures in the fields of education and research to foster knowledge of the [...] language [...] of their national minorities and of the majority”), actually looks at whether there is an adopted State policy in this respect and/or whether the attention is paid by the State Party to fostering knowledge of the minorities and the majority. These are taken to be relevant factors in the assessment of the degree to which a State Party complies with the provision.

Though somewhat different the European Charter contains also vague formulations and “escapes” which can be problematic for the monitoring body. These “escapes” are provided by a degree of discretion given to the States Parties to make a selection of the provisions of Part III of the Charter which will be binding on them. For this “a la carte” system the Charter became known as the “menu convention”. States have not only the choice of applicable provisions dependent on their internal situation but also the choice of the scope of application of those provisions with respect to certain language groups and with respect to their territorial application. There are some articles which offer even more (alternative) choices. For example, it has been noted that Article 11 dealing with media in regional or minority languages, is so formulated as to allow, on the one hand, measures to be taken in respect of programmes broadcast on TV and/or on the radio in the respective minority or regional language and, on the other hand, it gives the option to broadcast them as a full programme or as occasional programmes in that language. The various options are expressed in the verbs “to ensure”, “to facilitate”, “to make adequate provisions” and “to encourage”.⁹

In a way, similar comment can be made regarding Article 27 of the ICCPR. Apparently it is a very vaguely and extremely cautiously formulated provision which left many questions open.¹⁰ It reads as follows: “[i]n those States in which [...] linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to [...] use their own language”. This (negative) formulation evidently opened the possibility for various interpretations. In some views, the right to use the common language might be understood not to require the recognition of minority languages as official or court languages before public authorities by the Parties. At the same time States may not prohibit the common use of the language among minority members or the publication of books or magazines in their language, nor they may prevent children belonging to a minority from learning and developing further their language in schools.¹¹ The Human Rights Committee which monitors the implementation of the ICCPR had a rather difficult task to determine the obligations imposed on the States Parties by Article 27. In its view States Parties have an obligation to ensure that the existence and the exercise of the “rights” embodied in Article 27 are protected against their denial or violation and that positive measures of protection are required against the acts of the State Party itself as well as against the acts of other persons within the State Party.¹² The Committee emphasized as well that “positive measures by States may also be necessary to protect the identity of a minority and the rights of its members to enjoy and develop [*inter alia*] their culture and language”. As the protection of the rights is directed towards ensuring the survival and continued development of identity of minorities concerned, State Parties have an obligation to ensure that the exercise of these rights is fully protected.¹³ This means that in cases “when States Parties provide active protection for minorities – e.g., by recognizing minority languages before public authorities or with topographic documents, by establishing reserves or by providing financial support for minority schools or cultural

⁹ Application of the Charter in Germany, ECRML (2002)1 of 2 December 2002 (Comments by the German Authorities).

¹⁰ Manfred Nowak, U.N. Covenant on Civil and Political Rights, CCPR Commentary (1993), p. 485.

¹¹ *Ibid.*, pp. 500-501.

¹² Human Rights Committee, General Comment Nr. 23: The Rights of Minorities (Article 27), 08.04.94, para. 6.1.

¹³ *Ibid.*, paras. 6.2. & 9.

associations or performances – then derivative claims for performance against State may result from Article 27 in conjunction with the prohibition of discrimination in Article 2(1).¹⁴

Also the lack of a definition of the very concept of minorities in international law presents in some views a problem for monitoring.¹⁵ Article 27 of the ICCPR as well as the whole Framework Convention were adopted without such a definition though, as it was emphasized for the latter it was of a crucial importance for the realization of the Convention's objective to answer the question to whom it applies.¹⁶ Such an omission is seen to be a real problem in the implementation of the Convention. Certain authors wonder how, if the subject of protection is not defined the Framework Convention is to meet its purpose of providing "the effective protection of national minorities" and how, in the absence of a definition, the monitoring body will be able to fulfil its task of correctly evaluating the adequacy of protective measures undertaken on national level.¹⁷ Obviously, the monitoring body will have an enlarged responsibility in providing necessary explanations in order to be able to proceed with its monitoring work. Contrary to some expectations, the Advisory Committee of the Framework Convention has taken a position that the inclusion of a definition of the term "national minority" in the Convention would likely have an unfavourable impact on its implementation. It emphasized that, bearing in mind reservations and declarations formulated by State Parties, "there is a risk that such a definition would reflect only the lowest common denominator, which could have implications on the scope of application of the Framework Convention and have the effect of depriving certain minorities of the protection that [it] offers."¹⁸ However, as pointed out by the Advisory Committee, the Framework Convention is not an instrument that operates on an "all-or-nothing" basis. Even if a group has been covered by the Convention, it does not necessarily follow that all of its articles apply to the persons belonging to that minority. Similarly, if a minority is not covered by the majority of the Convention's provisions that does not necessarily mean that there are no provisions of relevance for the members of that group. A nuanced article-by-article approach to the "definition" question is not only fully in line with the text of the Framework Convention but is actually dictated by it.¹⁹ For all these reasons the inclusion of a definition could make the implementation of the Convention more difficult.²⁰

Such a position of the Advisory Committee has created the possibility for individual States Parties to solve the problem of the lack of a definition by themselves examining the personal scope of application to be given to the Framework Convention within their country.²¹ Consequently, a number of States have provided their own definition of the concept.²² This has resulted in some States adopting a very inclusive approach, whereas some of them, like Denmark, Estonia, Germany or the Former Yugoslav Republic of Macedonia, have adopted rather restrictive approach by listing the groups to which the Convention applies and implicitly excluding other groups from the protection.

¹⁴ Quoted from Manfred Nowak, *ibid.* p. 504.

¹⁵ See, for example, Maria Fernanda Perese Solla, "What is wrong with Minority Rights?" <http://www.eumap.org/article/content/91/916>

¹⁶ "The Council of Europe's Framework Convention for the Protection of National Minorities, Analysis and Observations on the Monitoring Mechanism", prepared by the Minority Rights Group International (1998) http://www.minelres.lv/coe/FC_MRG1998.htm

¹⁷ Maria Fernanda Perese Solla, *ibid.*

¹⁸ Opinion of the Advisory Committee on the Framework Convention for the Protection of National Minorities, adopted on 14 September 2001 on Parliamentary Assembly Recommendation 1492 (2001) on the rights of national minorities, para. 16.

¹⁹ *Ibid.*, para. 17.

²⁰ *Idem.*

²¹ Opinion of the Advisory Committee on Denmark of 22 September 2000, ACFC/INF/OP/I (2001)005, para. 13.

²² For example, following its Minority Act (Section 2, para. 2) Austria defined in its Initial Report as national minorities those "groups of Austrian nationals living and residing in parts of the federal territory whose mother tongue is not German and who have their own traditions and folklore". As such the following groups are listed: the Croat minority in Burgenland, the Slovene minority, the Hungarian minority, the Czech minority, the Slovak minority and the Roma minority (ACFC/SR (2003) 003 of 20 June 2000).

The position of the Advisory Committee is quite similar to the one taken on the UN level. In the past some participants in the UN Working Group on Minorities have insisted on the need to find and adopt a working definition of minorities in order to “facilitate the practical realization of [the mandate of the Working Group] and thus contribute to the promotion and protection of the rights of persons belonging to minorities”.²³ However, this was refused as it appeared that the term “minorities” could not be defined and that attempting to arrive at a definition would prove not only extremely time-consuming but also counter-productive for the advancement of the activities of the Working Group.²⁴

It is obvious that with the absence of clearly defined standards and with the lack of a definition of minorities, both the role and the responsibility of the monitoring body in providing an authoritative interpretation of international norms increases. This is even more so if taken into consideration that minority rights are not considered only a matter of internal but also of international concern. For this reason the monitoring bodies will be inclined to give a far-reaching interpretation to various provisions. It means, for example, that in case of exclusion by the States Parties of certain minority groups which should enjoy the Convention’s protection, the Advisory Committee may simply review these reservations against the object and the purpose of the Convention or the principle of non-discrimination.²⁵ This, however, does not mean that there are no certain limitations posed on the scope of interpretation given by the monitoring bodies. These limitations are posed mainly by the general rules of the law of the treaties. Articles 31 and 32 of the 1968 Vienna Convention on the Law of Treaties, stipulate that a provision of a treaty should be interpreted in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose. In order to confirm this meaning or to determine that such an interpretation leaves the meaning ambiguous or obscure or that it leads to a result which is manifestly absurd or unreasonable, recourse may be made to the preparatory work of the treaty and the circumstances of its conclusion. Accordingly, one may think that the Human Rights Committee which is otherwise cherished for its work in the monitoring of the implementation of the ICCPR, had to take into account the fact that some proposals to create an obligation for the States Parties to take positive measures under Article 27, were refused and that the negative formulation was intentionally chosen in order to avoid that “minority consciousness could be artificially awakened or stimulated.”²⁶

Finally, one should note somehow a paradoxical situation that has developed in the field of minority protection and the protection of linguistic rights. By deliberately choosing for vague formulations of the treaty provisions in order to escape strict legal obligations, States have given the monitoring bodies – probably unintentionally – a more substantial and important role in determining the content of their obligations. Obviously, if the concepts and standards were more clearly and precisely defined the requirements posed on the monitoring bodies would be lower and so would be their discretion in establishing the criteria for the implementation of certain obligations in the field of linguistic rights of minorities.

2. Overlapping obligations

Certain problems may also be created by the existence of overlapping obligations of States which are Party to two or more treaties containing provisions on linguistic rights of minorities. Out of the total number of forty-five Members States of the Council of Europe, fifteen are bound

²³ E/CN.4/Sub.2/1996/2 (28 November 1995), para. 76

²⁴ E/CN.4/Sub.2/1996/2, para. 76

²⁵ The Council of Europe’s Framework Convention for the Protection of National Minorities, Analysis and Observations on the Monitoring Mechanism, prepared by the Minority Rights Group International, 1998. http://www.minelres.lv/coe/FC_MRG1998.htm

²⁶ Manfred Nowak, op. cit., p. 500.

by at least four different treaties of relevance.²⁷ It means that these States are subject to supervision by four different monitoring mechanisms. While these treaties cannot be identical in their scope and in the context in which they are taken, there are certain similarities and overlaps between the provisions on linguistic rights. For example, Articles 6, 9, 10, 11 and 14 of the Framework Convention deal with the same or similar matters as some of the provisions embodied in Articles 7 to 14 of the European Charter. These overlapping provisions are binding upon sixteen States Parties to both the Framework Convention and the European Charter.

As a matter of principle, the existence of overlapping standards under two different documents requires an effort of the monitoring bodies to provide for their consistent interpretation. In practice, however, some inconsistency in this respect can be noted. As one of such examples can be taken the conclusions to which the Committee of Experts and the Advisory Committee came while considering the implementation of Article 10(2g) of the European Charter respectively Article 11(3) of the Framework Convention by German local and regional authorities. Both these provisions deal with the bilingual topographic indications in minority languages. With regard to the Lower Sorbian area the Committee of Experts drew its conclusions proceeding from the fact that municipalities which fall under the category of “municipality within the traditional settlement area” are obliged to use bilingual signs to identify places, streets, bridges, public buildings and institutions. However, there is a possibility for these municipalities to avoid being included in this particular category, and because of the extra-costs which municipalities must bear for placing bilingual signs they are not encouraged to become a part of the Sorbian area as defined by section 3, para. 2 of the Sorben (Wenden)-Gesetz. Underlying that the implementation of this undertaking might be hampered by the mentioned obstacles, the Committee of Experts considered this undertaking fulfilled, but encouraged the authorities to take positive steps to facilitate the implementation of this provision.²⁸

The Advisory Committee took a different position with respect to the corresponding obligation under Article 11(3) of the Framework Convention. It also noted the reluctance of certain municipalities to adopt bilingual signposting because of the financial reasons since it is up to each of the public authorities concerned to cover the costs of replacing signposts. However, the Committee did not accept the financial argument as appropriate and considered that the German authorities should ensure the full implementation of the legal provisions on bilingual signposting in areas traditionally inhabited by Sorbians.²⁹

A similar situation of inconsistency between the conclusions adopted by the two monitoring bodies occurred also in the case of Hungary with regard to the implementation of the above-mentioned provisions on bilingual signs. While the Committee of Experts observed that there was a common practice of placing bilingual (or multilingual) public signs and that Hungary fulfilled its obligation under Article 10(2g) of the European Charter,³⁰ the Advisory Committee took a quite different position concerning. In its view the implementation of the provision on bilingual signs by Hungarian authorities seemed rather limited. For this reason the Advisory Committee suggested that the Committee of Ministers of the Council of Europe recommends Hungary to review the situation in order to ascertain whether this practical state of affairs is the result of the exercise of a free choice or whether there are other impediments.³¹

Certain discrepancy between the two bodies can also be noted with regard to Croatia's implementation of the provisions regulating the issue of media in minority languages, i.e. Article 9 of the Framework Convention and Article 11 of the European Charter. While considering its implementation of Article 11 of the European Charter, the Committee of Experts was satisfied

²⁷ These treaties are: on the UN level – the International Covenant on Civil and Political Rights (Article 27), the Convention on the Rights of the Child (Article 30 is almost identical to Article 27 of the International Covenant), and on the European level – the Framework Convention and the European Charter.

²⁸ ECRML (2002)1 of 4 December 2002, para. 451.

²⁹ ACFC/INF/OP/I(2002)008 of 1 March 2002, paras. 52-53.

³⁰ ECRML (2001)4 of 4 October 2001, para. 59.

³¹ ACFC/INF/OP/I(2001)004 of 22 September 2000, para. 37.

with the fact that the legal obligation to make adequate provision for broadcasters to offer programmes in a regional or minority language existed in Croatia, as well as with the fact that the use of regional or minority languages in the field of media and culture was on the whole supported and well organized.³² Whereas the authorities offered many programmes that promote the culture linked to the various languages, the major drawback to the application of the Charter in the fields of media and culture was the lack of participation by the users or representatives of the regional or minority languages in the organization, planning and funding of activities.³³

This was, indeed, considerably different from the observations of the Advisory Committee with regard to the corresponding Article 9 under the Framework Convention. The Advisory Committee noted that there was a positive, but very general obligation established by Article 5 of the Law on Croatian Radio-Television (HRT) adopted on 8 February 2001, which obliges HRT to produce and broadcast programmes intended for the provision of information to the members of the national minorities in the Republic of Croatia. However, apart from that, there were no detailed legislative provisions on broadcasting on/for persons belonging to national minorities within the public service broadcasting.³⁴ The Advisory Committee agreed with the comments made by some representatives of national minorities that, taking into account the number of persons belonging to national minorities in Croatia, the time devoted to the programming on minorities and/or programming in minority languages in the public service television was much too limited both in time and substance and should be reviewed soon.³⁵ For this reason it was proposed to the Committee of Ministers to conclude with respect to Article 9 that the general obligation to produce and/or broadcast programmes intended for persons belonging to national minorities has only resulted in very limited programming in the public service broadcasting (HRT); to recommend a review of the situation with a view to having additional time allocated for such programming, and to implement without any unnecessary delay the related initiative of appointing a representative of national minorities to the HRT Council.³⁶ As concerns private broadcasting it was proposed to the Committee of Ministers to conclude that the legal status of minority language has improved but the relevant norms still restrict the introduction of minority language programming after the granting of a concession and to recommend that the latter issue and other factors related to broadcasting in a minority language be given full attention including in the context of the on-going revision of the applicable norms and in the implementation of these norms.³⁷

For the two Committees there is no legal obligation to cooperate in order to prevent inconsistencies such as above-mentioned from occurring and in a strict legal sense the output of each treaty body is directly applicable only in connection with the performance of the specific tasks accorded to it in the relevant treaty.³⁸ However, the lack of cooperation is not without any dangers. On the long term the existing inconsistencies can include the emergence of significant confusion as to the “correct” interpretation of a given right and can result in the undermining credibility of one or more of the treaty bodies which can eventually result in a threat to the integrity of the treaty system.³⁹ Because of that it has been generally accepted on the UN level that the interpretation accorded to a given norm by a human rights body should be, as far as possible, consistent with that adopted by another body, though a complete consistency is neither possible nor appropriate for reasons inherent in the relevant treaty provisions.⁴⁰ In this sense it was suggested that the Human Rights Committee and the Inter-American Commission on Human Rights hold regular meetings and that their secretariats should increase contacts

³² ECRML (2001)2 of 20 September 2001, para. 93.

³³ *Ibid.*, (at Findings of the Committee of Experts, at E).

³⁴ ACFC/INF/OP/I (2002) 003 of 6 April 2001, para. 40.

³⁵ *Ibid.*, para. 41.

³⁶ *Ibid.* Part V.

³⁷ *Idem.*

³⁸ UN Doc. A/44/668, para. 26.

³⁹ *Ibid.*, para. 128.

⁴⁰ *Ibid.*, para. 127.

with a view to improving the coordination of their work.⁴¹ The same approach and establishment of cooperation seems to be desirable also between the two Council of Europe monitoring bodies with regard to the European Charter and the Framework Convention as far as the overlapping obligations of the States Parties are concerned. Obviously the inconsistencies mentioned above do not yet raise any serious concerns. Notwithstanding this, the establishment of cooperation between the Advisory Committee and the Committee of Experts with a view of eliminating the possibility of taking different or inconsistent positions might prove necessary in the future. The Advisory Committee has already noted that there is a scope for intensifying further contacts and developing synergies with the relevant bodies of the Council of Europe.⁴² However, it did not mention the need for cooperation with the Committee of Experts for this specific purpose. Neither there have been concrete initiatives to increase cooperation between the two bodies with a view of finding solutions to these kinds of issues or reducing, where appropriate, duplication of work done with regard to the overlapping provisions. For some countries, like Germany, the identical objectives regarding the languages of national minorities pursued by both the European Charter and the Framework Convention and the authorship of the Council of Europe in both cases have been the reasons for a concordant interpretation of the two documents. This, as pointed out, can also be of significance in evaluating whether the competent legislative or administrative bodies consider themselves to have met the obligations ensuing from the Conventions. Accordingly Germany suggested re-activation of the Committee of Experts on Issues Relating to the Protection of National Minorities (DH-MIN) to discuss this matter in depth.⁴³

It seems that the expected exacerbation of problems of organizational and financial nature due to the increase of the number of State Parties will probably also have a direct impact on the future developments in this respect. In the period until May 2004, the Advisory Committee received 34 reports in the first cycle and 6 in the second and adopted 28 opinions which is obviously an enormous amount of work for this 18-member body. The experience until now reveals that the production of opinions, comments and resolutions under the Framework Convention takes on average 31 months. The Advisory Committee takes on average 20 months to formulate its opinion.⁴⁴ Obviously this is considerably longer than the one-year period after the submission of the State report which is preferred. It has already been noted that a set of measures are needed to make improvements in this respect, for example by reducing the time it takes for the Committee of Ministers to receive a comment from the State Parties.⁴⁵ Similar situation exists in the reporting system under the European Charter,⁴⁶ though one could say that in some respect the lesser number of State Parties puts qua quantity of work less burden on the Committee of Experts than the Advisory Committee has. On the other hand, a relatively short three-yearly period for reporting under the European Charter might create real problems for the Committee of Experts which already started receiving reports in the second monitoring cycle, while for some Parties the first cycle has not yet been completed. These statistics indicate that the time and work can be saved if there is cooperation and exchange of views between the monitoring bodies regarding the implementation of the overlapping provisions by the States Parties. At the same time it can help in preventing some inconsistencies which might occur between them.

⁴¹ Pilot Workshop for Dialogue on the Concluding Observations of the Human Rights Committee, Office of the UN High Commissioner for Human Rights, Quito, Ecuador, 27, 28 and 29 August 2002.

⁴² Third Activity Report of the Advisory Committee of the Framework Convention for the Protection of National Minorities of 31 May 2002 (ACFC/INF(2002)001), para. 41.

⁴³ Application of the Charter in Germany, ECRML (2002)1 of 2 December 2002 (Comments by the German Authorities), Preliminary Remarks addressed to the Committee of Experts by the German Ministry of the Interior.

⁴⁴ Alan Phillips, Policy Paper: "The Framework Convention for the Protection of National Minorities: A Policy Analysis", Minority Rights Group International (2002), http://www.minelres.lv/publicat/FCNM_MRGPolicyPaper2002.htm

⁴⁵ Alan Phillips, idem.

⁴⁶ Under the Charter's provisions there have been so far 12 initial reports submitted by the following State Parties: Croatia, Norway, Switzerland, Germany, Sweden, Slovenia, United Kingdom, Spain, Denmark, Austria, Netherlands, Armenia and Slovak Republic.

3. (In)consistency between bodies involved in one monitoring process

The main body which monitors the implementation of the European Charter is the Committee of Experts established by Articles 15-17. It considers the State reports and submits its own report together with proposals on the recommendations to be issued to the Committee of Ministers. The situation is slightly different with the Framework Convention. According to Articles 24-26 the main monitoring body is the Committee of Ministers, while the Advisory Committee only assists the Committee of Ministers in carrying out its supervisory function. In practice, however, there is no substantial difference in the tasks between the Committee of Experts and the Advisory Committee. Both bodies evaluate State reports submitted under the respective treaties, prepare their own reports and provide the Committee of Ministers with suggestions on the recommendations and/or conclusions which the Committee of Ministers should address to the States Parties. Because of the fact that the expert committees carry out a very thorough analysis of the degree to which States Parties comply with the treaty provisions, it should be expected that, without a specific reason, there will be no difference between their findings and the conclusions of the Committee of Ministers. In a brief analysis which was done for this paper, such differences were also not found in the documents issued under the European Charter. The Committee of Ministers follows the opinions and proposals of the Committee of Experts closely and consistently. However, this is not always the case with the monitoring of the Framework Convention.

While considering the report of Croatia, for instance, the Advisory Committee underlined that under Article 10 of the Framework Convention, Croatia should eliminate uncertainties existing with regard to the scope of certain key aspects of the Law on the Use of Language and Script of National Minorities (of May 2000) and should take measures for obtaining a maximum level of implementation of the Law. In respect to Article 11 it proposed recommendation that Croatia also takes measures aimed at obtaining a maximum level of implementation of those aspects of the Law which are of relevance for implementation of Article 11. The Advisory Committee also advised the Committee of Ministers to conclude that no school in Croatia offers instruction in the Roma language pursuant to Article 14 of the Framework Convention and that the effort to ensure adequate teaching in, and instruction of, minority languages is at times hampered by a lack of qualified teachers in minority languages. Therefore it should be recommended to Croatian Government to take measures aimed at obtaining a maximum level of implementation of the Law on Education in Languages and Scripts of National Minorities of May 2000, to address any existing obstacles as well as to examine to what extent the current status of the Roma language in the education system of Croatia meets the demands of the persons belonging to this minority.⁴⁷ However, the Committee of Ministers made no concrete recommendation in the sense of any above mentioned proposals. Instead, it adopted a conclusion of a more general nature by saying that a number of inadequacies in the legal framework will need to be addressed in the context of the on-going legislative reform; that the practice related to the implementation of the Convention had improved regrettably slowly and that Croatia should take appropriate account of its conclusions “together with the various comments in the Advisory Committee’s opinion.”⁴⁸

Also in the case of Hungary there were differences between the two bodies. The Advisory Committee made suggestions to the Committee of Ministers to conclude that there was, under Article 9, a disproportionate broadcasting time given to Roma which is less than a quarter of the time given to some other minorities in the areas where the Roma is the largest minority and to recommend Hungary to review this situation in order to achieve a more equitable result. Concerning the implementation of Article 10 the Committee of Ministers was advised to conclude that the legal framework for the use of minority languages in public bodies and administrative procedures at local level had not in practice led to a significant use of minority

⁴⁷ Opinion of the Advisory Committee on Croatia adopted on 6 April 2001 (ACFC/INF/OP/I(2002)003.

⁴⁸ Resolution ResCMN (2002)1 on the implementation of the Framework Convention for the Protection of National Minorities by Croatia, Adopted by the Committee of Ministers on 6 February 2002 at the 782nd meeting of the Ministers’ Deputies.

languages and to recommend that Hungary ascertain that persons belonging to national minorities are not unduly inhibited to exercise their right. The Advisory Committee gave suggestions also with regard to Articles 11 and 12. So was the Committee of Ministers advised to conclude that, concerning (already above-discussed) Article 11 on the use and the official recognition of the patronym and first names in the minority language, for bilingual signs with the names of settlements, streets, public offices and companies undertaking services, the actual application of legal possibilities was rather limited and to recommend that Hungary reviews this situation in order to ascertain whether this practical state of affairs was the result of the exercise of free choice or whether there were other impediments. On the implementation of Article 12 the Committee of Ministers should conclude that there was still for a number of minorities a shortage of available textbooks in the minority language and in some cases shortage of qualified teachers. Therefore, it should recommend Hungary to investigate this matter as a matter of urgency and to take action to remedy any undesirable effects.⁴⁹ Here too the Committee of Ministers made no concrete conclusions on the basis of the Opinion of the Advisory Committee. Similarly to the resolution on Croatia the Committee of Ministers only recommended that Hungary “takes account of the conclusions set out [...] above together with the various comments in the Advisory Committee’s opinion.”⁵⁰

The Advisory Committee offered rather detailed proposals to the Committee of Ministers concerning Slovakia, as well. In respect to Article 9 it proposed several recommendations. For example, that Slovakia should continue with commendable practices of giving increasing support for electronic and print media of national minorities and that minority language programmes is available on the public television and radio; that it should consider whether more detailed legislative provisions on broadcasting in the languages of national minorities could be helpful in ensuring the consistent implementation of these practices in the future, and that it should address those provisions of the State Language Law that could lead to undue limitations on the freedom to receive and impart information and ideas in minority languages through proposals for amending the Law is necessary. Suggestion was also made in respect to Article 10 to recommend Slovakia to inform the public and officials concerned that the Law on the Use of National Minority Languages, as *lex specialis*, should take precedence and as such should also be implemented. On the use of names in minority languages in accordance with Article 11 it should be recommended Slovakia to review the situation and, where necessary, to take measures against the imposition of the Slovak form of surnames. Taking into consideration very limited legislative provisions concerning the implementation of the constitutional right of Slovak citizens belonging to national minorities to receive education in their mother tongue it should be recommended to Slovakia in implementation of Article 14, to pursue the Government’s plans to provide more detailed legislative guarantees in the sphere of education and to strengthen its efforts in the field of teacher training in minority languages. The Advisory Committee also proposed to the Committee of Ministers to conclude that Roma language is not covered by the School Act and that no school in Slovakia offers instruction in Roma language. Accordingly, it was proposed to the Committee of Ministers to recommend that Slovakia firstly examines to what extent the current situation of the status of the Roma language in law and practice in the education system of Slovakia meets the demands of the Roma and to consider further measures for ensuring adequate opportunities for being taught the Roma language or receiving instruction in this language.⁵¹

In this case too the Committee of Ministers made no substantial recommendations. It only referred in its conclusions to the fact that, despite improvements in the legal status of minority

⁴⁹ Opinion of the Advisory Committee on Hungary, adopted on 22 September 2000, ACFC/INF/OP/I(2001)004.

⁵⁰ Resolution ResCMN (2001)4 on the Implementation of the Framework Convention for the Protection of National Minorities by Hungary, Adopted by the Committee of Ministers on 21 November 2001 at the 773rd meeting of the Ministers’ Deputies.

⁵¹ Opinion of the Advisory Committee on Slovakia, adopted on 22 September 2000, ACFC/INF/OP/I(2001)001.

languages in official contacts, “the legislative framework touching upon languages still contains shortcomings”.⁵²

As pointed out above, the Advisory Committee composed of recognized experts in the field of protection of national minorities, only *assists* the Committee of Ministers (Article 26(1) of the Convention). According to Article 24(1) of the Framework Convention it is the Committee of Ministers which is the main monitoring body. It takes final decisions (conclusions) concerning the adequacy of the measures taken by the State Party after “having received” the opinion of the Advisory Committee⁵³. Legally speaking, it is not bound or obliged to accept any proposals made by the Advisory Committee. Notwithstanding this, some notable “omissions” present “small yet disturbing trend”, though they can be explained by a desire of the Committee of Ministers to accommodate representations from the State and to reach a consensus.⁵⁴

One should not forget, however, also the fact that the Committee of Ministers made a clear decision not to follow the proposal of the Advisory Committee to adopt detailed conclusions and recommendations but has chosen to formulate more general and shorter resolutions.⁵⁵ This obviously diminishes in a sense the effort of the Advisory Committee in its monitoring activities. Moreover, it affects the results of the whole monitoring mechanism and undermines the significance of the Convention, notwithstanding the fact that this is in a way mitigated by the specific reference which the Committee of Ministers makes in its resolutions to the opinion of the Advisory Committee. In order to avoid potentially ungrounded accusations of political decision-making the Minority Rights Group has proposed that in cases in which the Committee of Ministers does not follow the opinions of the Advisory Committee it explains the reasons why.⁵⁶

4. Conclusion

By the adoption of the European Charter and the Framework Convention an important step forward has been made in the protection of linguistic rights of minorities. The significance of these documents rests mainly on their legally binding character and on the existence of the system enabling a continuing monitoring of the implementation of the State obligations. It seems that for the time being the State reporting system is the most efficient system for *situation monitoring*. On the whole it has not been seen by the States as involving much risk for their freedom of action.⁵⁷ “It should be emphasized, however, that the assumption that the reporting requirement is ‘harmless’ is not necessarily valid.”⁵⁸ In this paper attention was limited to three aspects which might have impact on the results of the monitoring process of linguistic rights under the European Charter and the Framework Convention. A clear formulation of standards to be met by the States Parties is obviously a basic requirement for the work of the monitoring bodies. In many cases vaguely formulated provisions are not only due to the complexity of the problems involved in the protection of minorities and impossibility to formulate norms which would be applicable to all situations, but also to the will of the States Parties which perceive certain danger in having clearly formulated standards. This does not and should not prevent the supervisory bodies in fulfilling their monitoring tasks. However, if taken into consideration the

⁵² Resolution ResCMN (2001)5 on the Implementation of the Framework Convention for the Protection of National Minorities by Slovakia, Adopted by the Committee of Ministers on 21 November 2001 at the 773rd meeting of the Ministers’ Deputies.

⁵³ CoE doc. H(1998)005 rev.11

⁵⁴ Alan Phillips, *The Framework Convention for the Protection of National Minorities: A Policy Analysis*, Minority Rights Group International (2002)

⁵⁵ Third Activity Report of the Advisory Committee of the Framework Convention for the Protection of National Minorities covering the period from 1 November 2000 to 31 May 2002, ACFC/INF(2002)001, para. 26.

⁵⁶ “The Council of Europe’s Framework Convention for the Protection of National Minorities, Analysis and Observations on the Monitoring Mechanism”, Minority Rights Group International, March 1998.

⁵⁷ Thomas Buergenthal, “The Human Rights Committee”, quoted from Henry J. Steiner & Philip Alston, *International Human Rights in Context – Law, Politics, Morals*, Oxford University Press (2000), p. 711.

⁵⁸ Thomas Buergenthal, *Idem*.

significance which is given on the international level to the protection of human rights, minority rights and in this framework to the protection of linguistic rights of minorities, the absence of clear-cut standards increases the role of the monitoring bodies in providing a far-reaching interpretation of the treaty provisions. If it is accepted that their conclusions can be seen as a body of “soft law” imposing an obligation on States Parties to comply, monitoring bodies have also considerable responsibility in preserving consistency on all levels. The obstacles and inconsistencies which were briefly discussed above have not substantially undermined the results achieved until now, but they carry a potential of becoming problematic on the long run. Dialogue and cooperation between the bodies involved in the monitoring process under the European Charter and the Framework Convention with a view of avoiding any possible inconsistencies seem to be in the future necessary.

Of course, all these measures will not be sufficient to achieve full efficiency of the State reporting system. One should keep in mind that the reporting system as such does not provide for any enforcement mechanisms in case of non-compliance by the State Parties. It means that the monitoring bodies can only adopt conclusions and make observations and/or recommendations for the measures to be taken in order to correct the existing situation and to bring the behaviour in compliance with the legal requirements. For this reason the success of the monitoring strongly depends of several other factors. Transparency and dissemination of information facilitate a broad involvement of various entities such as NGOs and other non-governmental bodies and associations. This is instrumental in putting public pressure on the States Parties in case of their non-compliance. The importance of a continuing dialogue between (the working groups of) the monitoring bodies and various official and unofficial bodies of the State Parties, should also be emphasized. All these (working) methods which were developed by the supervisory bodies prompt the Parties to continuously make efforts for improvements and substantially contribute to the efficient protection of linguistic rights of minorities.