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When ethnicity is “national”: mapping ethnic minorities in Europe’s framework convention for the protection of national minorities

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ABSTRACT

Legal and policy categorizations of group belonging play an important role in analysing lived experiences of discrimination, since the scope of minority protection requires individuals to prove their belonging to a minority group. This article maps the existing classifiers of minority identification as they are used in the Framework Convention for the Protection of National Minorities, Europe’s most comprehensive treaty designed to protect the rights of national minorities. I engage with the concept of ethnicity as a “knot of distinction”, looking at which minorities qualify as “national” in different countries. When is ethnicity used as a proxy for religion, when for race, and when for language? What categories are omitted? By inductively analysing the rationales presented by different EU countries of which minorities are “national”, and based on which grounds, this article reveals a messy, historically and politically driven picture, but one that can help us understand some regional patterns.

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Introduction

Since the early 2010s, we have witnessed what has been termed an “ethnic turn” in the European framework for policy-making on Roma (Van Baar and Vermeersch 2013, 5). Within broader scholarly debates on multiculturalism, identity politics and minority rights (Collins and Binge 2016; Hobson 2003; Magazzini 2017; Phillimore, Sigona, and Tonkiss 2020; Zambory 2020), a contradictory representation of the Roma as both vulnerable and threatening has emerged (Kóczé and Rövid 2017; Yıldız and De Genova 2018). It has been argued that this idiosyncratic representation is the result of a political shift

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from redistribution to recognition, decoupling the overarching European social inclusion project aimed at the Roma by the EU from any substantial investment towards a social Europe more generally. As explained by Kóczé and van Baar: “Despite the fact that ‘Roma ethnicity’ and ‘Roma equality’ have become central principles in, for instance, the European Social Cohesion Fund’s attempts to combat social exclusion, these endeavors were doomed to fail in a context where the emphasis on welfare was diminishing and where material inequality drastically deepened.” (Kóczé and van Baar 2020, 329).

One of the consequences of a heightened attention towards minority recognition taking place at the same time as austerity policies and an increase in privatization of services is a problem of (real or perceived) scarce resources: if “access” to recognition relies on establishing a position of minoritization or marginality, how can we avoid competition among disadvantaged groups? Who gets to decide which minorities should be recognized, especially when such recognition entails some form of special protection and/or representation, and on which grounds?

Against this backdrop, the Framework Convention for the Protection of National Minorities (henceforth Framework Convention or FCNM) offers an emblematic case through which to explore some of the opportunities and challenges of minority recognition and protection on a continent, Europe, which has historically shied away from affirmative action measures. Developed after the end of Communism in Eastern Europe and the collapse of the USSR (Phillips 2013, 16), the FCNM was the first comprehensive and legally-binding international instrument designed to protect the rights of persons belonging to national minorities. A quarter of a century after it came into effect (1998), it is currently in force in 39 states, and despite all of its shortcomings and limitations, still remains the most authoritative and consequential treaty aimed at promoting and protecting minority rights in Europe.

This Special Issue puts forward the concept of ethnicity as part of a “knot of distinction” imbued with the potential to be used in the process of minoritizing and marginalizing, as well as to protect minoritized groups (Norton 2013, van der Tol and Becker 2024). As a slight departure, in this article I see ethnicity as functioning itself as a kind of “knot” of religious, racialized, linguistic, and cultural difference. I map the existing categories of minority identification in the FCNM, as they are interpreted by the EU member states that have adopted it. In so doing, I raise questions such as: which minorities qualify as “national” in different countries and what does “ethnicity” have to do with it? When is ethnicity used as a proxy for religiosity, for language, for race, or for something else? What kind of conflation of various “othering categories” (deviating from the perceived majority norm) have been included in state reports, by which states, and why? And how is ethnicity employed (if at all) in reference to majority populations in the context of the FCNM?

Legal and policy categorizations of difference and group belonging play an important role in analysing and addressing lived experiences of discrimination, since the scope of minority protection is rooted in a grounds-based approach, which requires individuals to prove their belonging to a minority group. If cultural differentiation has become the primary exclusionary mechanism of contemporary Europe (Fekete 2004; Lauwers 2024; Magazzini 2021; van der Tol and Becker 2024), the Framework Convention offers an important tool to observe what kind of protections “citizen outsiders” are granted, on which grounds, and following what rationales (Beaman 2017).

The aim of this article is to explore the entanglements between ethnicity and minority recognition and to contribute to ongoing debates within racial and ethnic studies (Eichler and Topidi 2022; Jacob-Owens 2022).

Following this introduction, in section 2, I outline the aim and scope of application of the FCNM, the (fairly loose) constraints that it sets in terms of identifying the groups that it applies to. I further present the main categorizations that states have so far employed in their interpretations of “national minorities”. Section 3 then maps the specific groups identified by each EU member state (plus the UK) and highlights the patterns and dissonances that emerge. This is done by organizing in tables all EU member states (in order of accession to the EU) and how different groups are identified as either “religious”, “ethnic/national”, or “linguistic” minorities in different countries.

In order to understand these categorizations, I turn to the justifications and rationales given by states in their official state reports and the follow-up discussions with the Framework Convention’s Advisory Committee. In section 4, I look at some of the silences and omissions that emerge, as well as to broader regional trends. Finally, the conclusions reflect on what the “classifications struggles” that are apparent in the FCNM tell us about how the concept of ethnicity is being framed, challenged and how it has been (and is) changing in the European context.

The emergence, aim and scope of the framework convention for the protection of national minorities

The FCNM was born in the late 1990s to protect the rights of minorities: minorities that were very much viewed as “diasporic communities” in terms of what Brubaker identified as communities characterized by dispersion in space, orientation to a “homeland”, and boundary-maintenance (Brubaker 2005, 5–6). The Framework Convention stemmed largely from the same concerns tied to ethnic cleansing and human right abuses perpetuated by majorities against minorities viewed as marginal or “disloyal” to the nation-state following the end of the Cold War, especially in former Yugoslavia (Phillips 2013; Ringelheim 2010). In this sense, while the FCNM was the first

binding international treaty of such reach, it built upon, and was strongly embedded in, the political and legal concern for minority rights that emerged from a specific historical context.

In 1990, the Organization for Security and Cooperation in Europe (OSCE)'s Copenhagen Document included a section on "the rights of persons belonging to national minorities"; two years later, the OSCE created the position of a High Commissioner on National Minorities as a means of conflict prevention, and in the same year the United Nations General Assembly adopted the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities (United Nations 1992) and the Council of Europe launched the European Charter for Regional and Minority Languages.

These measures did not, however, represent the first system of protection of minorities in international law, and they largely drew from a conceptualization of minority protection that "can be regarded as a by-product of the spread of nationalism in the nineteenth century" (Ringelheim 2010, 102). Following the First World War, the idea of minorities representing "an international problem" had led the Allies to include minority protection clauses in the post-war treaties. Such treaties, however, only applied to Central and Eastern European states, which were required to respect the national minorities residing in their territories. The League of Nations was in charge of supervising the implementation of this clause (Ringelheim 2010, 103). It is noteworthy that at the time the idea of minorities was strongly tied to ethno-nationalism—in practice, minorities were seen as populations that belonged culturally to a "kin state" but found themselves in the "wrong" state—and that the respect of minority rights was not framed in terms of universal human rights, but rather as a geographically specific, political necessity that only applied to certain countries (especially those in Central and Eastern Europe).

Following World War II and the collapse of the League of Nations, despite the legacy of the Holocaust, the period between 1945 and 1989 largely ignored the issue of minority rights altogether. The Universal Declaration of Human Rights (1948) and the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950) focused instead on a conception of antidiscrimination that centered on equal rights among citizens, rather than cultural diversity or pluralism. The reference to the "universality" of human rights in the Universal Declaration was also not a European proposition: it was put forward by Egyptian delegate Omar Lutfi, stating that such rights should also be applicable to those colonized "nations and people that were not autonomous" (Shaheed and Parris Richter 2018).

The period following the fall of the Berlin wall, the collapse of the Soviet Union and the breakup of the former Yugoslavia saw a revival in the interest around the protection and promotion of minority rights, which relied to some extent on the old interwar conception of "minorities"—framed and

understood mainly as “national” populations of the same culture, different from that of the majority population in the state where they resided. At the same time, this conception broadened the scope of minority protection to assume a universal dimension seen as part and parcel of human rights. The reasoning for the need of such protections, as put forward by the Framework Convention, still draws on well-rehearsed matters of international security and stability, but also adopts the idea that minority rights are a “core value” of plural democratic states. This conception shifts the right of (national) minorities to a certain degree of recognition of their cultural identity not only in “non-discrimination” terms –meaning the right to not be excluded or discriminated against because of their belonging to a racial, religious or linguistic minority– but also to be proactively acknowledged, protected and *promoted* by States –i.e. supported with positive actions. The idea of cultural diversity constituting a European value gained such momentum that in 1993 the respect of minority rights was explicitly stated to be an accession criterion to EU membership (EU Council Meeting 1993). In line with this conception, the 1995 Explanatory Report of the Framework Convention, in articulating the need for the treaty, explained that the member states agreed to the convention:

“Being resolved to protect within their respective territories the existence of national minorities;

Considering that the upheavals of European history have shown that the protection of national minorities is essential to stability, democratic security and peace in this continent; Considering that a pluralistic and genuinely democratic society should not only *respect the ethnic, cultural, linguistic and religious identity of each person belonging to a national minority, but also create appropriate conditions enabling them to express, preserve and develop this identity [...].*” (3).

The same document, however, declares that while its aim is “to specify the legal principles which States undertake to respect in order to ensure the protection of national minorities”, it leaves the States “a measure of discretion in the implementation of the objectives which they have undertaken to achieve” and, importantly, “the Framework Convention contains no definition of the notion of ‘national minority’.” (13).

Such decision was the result of a pragmatic approach, based on the recognition of the impossibility of reaching a definition that all Council of Europe member States would support. It is also noteworthy that the Framework Convention explicitly denies any recognition of collective rights, out of fears of secession demands (Heintze 2008): “The emphasis is placed on the protection of persons belonging to national minorities, who may exercise their rights individually and in community with others.” (Council of Europe 1995, 13).

Who, then, are these “national minorities” to be protected? While the definition is left quite open-ended for each country to determine, the preamble to the Framework Convention cited above explicitly refers to *the ethnic, cultural, linguistic and religious identity of each person belonging to a national minority*. While shying away from a definition, article 1 of the Additional protocol on the rights of minorities to the European Convention on Human Rights (Recommendation 1201, 1993) mentions that “national minorities”, for the purposes of the Convention, refers to groups who:

- a. reside on the territory of that state and are citizens thereof;
- b. maintain longstanding, firm and lasting ties with that state;
- c. display distinctive ethnic, cultural, religious or linguistic characteristics;
- d. are sufficiently representative, although smaller in number than the rest of the population of that state or of a region of that state;
- e. are motivated by a concern to preserve together that which constitutes their common identity, including their culture, their traditions, their religion or their language.

In such description, “ethnicity” is expressly mentioned at point c., but it is replaced by “traditions” a point e.

Can the two be used interchangeably in this context? What qualifies as ethnic (or cultural, or traditional) identity, and what role can ethnicity play, given that such ethno-cultural specific legislation was adopted in what are mostly color-blind political settings?

A rich literature exists around the principles, interpretation and implementation of specific aspects of the Framework Convention. Some authors have focused on the place of religious identity in the scope of protection of the FCNM (Hofhansel 2015; Kurban 2008; Topidi 2021; 2022), while others have looked at the minority languages dimension (Doliwa-Klepacka 2019), the territoriality principle (Clement 2008), or whether persons with an immigrant background can in some instances be included in the concept of “national minority” (Jacob-Owens 2022; Ringelheim 2010).

What is clear is that the persistent “knotted distinction”, or the collapsing of religious, racialized and/or other dimensions of minorities does not play out in the same way in different contexts. Nor is it always easy to disentangle each feature (ethnicity, religiosity, language etc.) from what tend to be multi-layered, complex identities, in which individuals do not necessarily subscribe to one codified culture or religion of reference.

The following section maps how EU Member States have chosen to interpret the FCNM, looking at which categories of diversity have been privileged, which groups they have recognized, and according to which “typology” or category they have done so.

The choice of mapping such categories across the 28 EU Member States (the UK is included as a former EU Member State), as opposed to all the States that are signatories of the Framework Convention is twofold. On the one hand, a practical consideration has to do with the need to limit what would otherwise be an excessively large number of cases to assess, even superficially, in a single article. On the other hand, and most importantly, limiting the overview to the EU allows us to compare the different EU Member States according to their accession date, since from the very adoption of the Framework Convention “the EU considered States’ implementation of the Framework Convention as an important factor in its accession criteria on minority rights” (EU Council Meeting 1993; Phillips 2013, 27).

Since the adoption of the FCNM by aspiring Member States has become a *de facto* prerequisite for EU accession, it carries a notable political, as well as symbolic, weight. Looking at which countries adopted the FCNM, which did not, and why, allows us to explore whether there is a double standard between different EU members. In particular, a comparative approach shows that the founding members and early joiners of the EU did not have to commit to any kind of minority protection treaty (Heintze 2008; Weller, Blacklock, and Nobbs 2008). Conversely, States that joined the EU following the entry into force of the FCNM, in 1998, particularly Central and Eastern European States, tend to have much more detailed provisions and protections regarding those minorities that are recognized as “national”.

Cultural traits of minorities: the religious, the ethnic and the linguistic

Looking at how national minorities are identified and classified by EU Member States, on their own terms in the Framework Convention, the below scheme aims at providing an overview of which minorities are recognized as “national” by each EU Member State (plus the UK, as a former EU MS).

By taking at face value the definitions that each country gives of the “national minorities” present in their territories, three broad classifiers emerge as the main cultural trait that determine this belonging. These are “ethnicity” (minorities identified in “ethnic” terms, even though the term might be employed differently by various States), “language”, and “religion”. Notably, not all States have chosen to explicitly identify the minorities that they consider to fall under the scope of the FCNM in unequivocal ways. Some countries have broadened their scope over time, and some country reports also refer to additional elements or classifiers such as tradition, indigeneity or race. All countries, however, include at least one of the three elements (ethnic, linguistic, religious) —and often more than one— as their main criteria for affording recognition and protection to their national minorities, and the rationales of such choices have generally not changed

over time. The table below is therefore organized according to the three “religious” “ethnic/national” and “linguistic” categories, following the official categorizations as they appear in the first State reports (and complemented by the rare instances in which adjustments in definitions have taken place over the years). In those cases in which a minority is identified by a country as both, for instance, a religious and an ethnic minority, it is accordingly filed under both columns (Table 1).

Patterns and trends in minority recognition

Some patterns, as well as peculiarities, stand out in the table above. On the one hand, looking at the minority recognition of EU Member States in chronological order of their joining the European Union, it is apparent how the requirement of acknowledging, protecting and promoting minority rights has expanded since the 1957 Treaty of Rome. While the “respect for and protection of minorities” became in 1993 one of the Copenhagen criteria for EU membership accession, three of the six EU Founding Members (Belgium, France, and Luxemburg) never ratified the Framework Convention (France never even signed it), and the other three Founding Members (Germany, Italy and the Netherlands) have been extremely narrow in their interpretation of the Convention’s scope.

There are different reasons for this. The French government has consistently offered the same response to requests that minorities be addressed through a direct approach, such as the 2021 recommendation by the Council of the European Union for Roma equality, inclusion and participation: “French republican tradition, which is reflected in an uncompromising conception of the principle of equality, does not allow for measures that would specifically target an ethnic group” (French government 2022, 3). In Belgium, the ratification process was instead stalled by political disagreements on whether the Walloons (French-speaking Belgians) deserved protection under the Framework Convention, beyond the rights tied to their status as one of the three official linguistic communities -the Flemish, the French and the German speaking- under the Belgian Constitution and relevant legislation (Granata-Menghini 2002, 357). Luxemburg, the EU Member State with the highest proportion (in relative terms) of non-national citizens, signed the FCNM in 1995, but never ratified it, and in 2002 it approved a law on the protection of individuals with regard to the processing of personal data which forbids any “processing which reveals racial or ethnic origin, political opinions, religious or philosophical beliefs, trade union membership, as well as processing of data relating to health and sex life, including the processing of genetic data” (Luxemburg government, Law 91/2002, art. 6).

Italy and Germany, while they have been parties to the Framework Convention for over two decades, have repeatedly pushed back against requests

Table 1. Groups identified by each country in their FCNM state reports by cultural traits (in order of accession to the EU)^a.

Country (1st state report)	Joined the EU	Religious groups	Ethnic / national groups	Linguistic groups	Comments
Belgium	1957				FCNM NOT RATIFIED
France	1957				FCNM NOT SIGNED
Germany (2000)	1957		Danes, Sorbian people, German Sinti and Roma , Frisians		*According to state reports the Jewish Community do not consider themselves a "minority", but a religious community
Italy (1999)	1957			German, Albanian, Greek, Slovenian and Croat, Franco-Provençal, French, Occitan, Catalan, Ladin, Sardinian and Friulian	* Roma, Sinti and Travellers were added from 2004 onwards in reports at the request of the CoE, but have not been recognized as a "national minority"
Luxembourg	1957				FCNM NOT RATIFIED
Netherlands (2008)	1957		Frisians	Frisians, Low Saxon, Limburgish, Yiddish and Romany*	*Yiddish and Romany are considered "non-territorial languages", only Frisians are seen as national minority
UK (1971)	1973–2020	Muslim and Jewish communities mentioned in the working group to Tackle Antisemitism and Anti-Muslim Hatred	Gypsy, Roma and Traveller Communities were added upon request of the Advisory Committee	Welsh, Gaelic, Irish and Cornish (the last two added upon request of the Advisory Committee)	Based on the Race Relations Act (1976). Definition of racial group: "a group of persons defined by color, race, nationality (including citizenship) or ethnic or national origins" applied inclusively
Ireland (1999)	1973		Travellers	Irish language	*Travellers are recognized as an indigenous minority, while Roma have been added to reports from 2006 onwards
Denmark (1999)	1973		Germans*	German	*Reservation that limits to the German minority in South Jutland
Greece	1981				FCNM NOT RATIFIED
Portugal (1999)	1986			Mirandês mentioned as "dialect"	

Spain (2000)	1986	Roma added in 2007 in response to the AC's request (but not recognized as national) Roma* (not legally but de facto recognized as an ethnic minority)		No policy on "national minorities" as the concept is unknown in the legal system *While the Constitution does not formally recognize or define ethnic minorities, it acknowledges that Roma see themselves as one
Austria (2000)	1995	Croats, Slovenians, Hungarians, Czechs, Slovaks, Roma		Adopts its Law on Ethnic Groups 396/1976 to identify nat. min.
Finland (1999)	1995	Sami people, Roma , Jews , Tatars	Old Russians, Swedish-speaking Finns	
Sweden (2001)	1995	Sami*, Swedish Finns, Tornedalers, Roma , Jews		*Sami are also recognized as an indigenous people. A number of religious minorities are acknowledged but do not constitute "national minorities"
Cyprus (1999)	2004	Greek Cypriots, Turkish Cypriote, Armenians, Maronites, Latins, others (foreign nationals)		
Czech Republic (1999)	2004	Belarusian, Bulgarian, Croatian, Hungarian, German, Polish, Roma , Rusyn, Russian, Greek, Slovak, Serbian, Ukrainian and Vietnamese + Czechs, Jewish		14 national minorities recognized by Law 273/2001, but the census on "National Identity and Mother Tongues" also includes Jews. It is the only MS to include a minority of migrant origin (Vietnamese)
Estonia (1999)	2004	Estonians, Russians, Ukrainians, Finns, Jews , Tartars, Germans, Latvians, Poles, Lithuanians, others		Persons with undetermined citizenship went from 32% in 1992–5% in 2018. Roma were added from 2004 at request by AC
Hungary (1998)	2004	Bulgarians, Roma (Gypsies) , Greeks, Croatians, Poles, Germans, Armenians, Romanians, Ruthenians, Serbians, Slovaks, Slovenians, and Ukrainians		*The terms in reference to the Roma minority has slowly shifted away from the use of the term "Gypsies"
Latvia (2006)	2004			

(Continued)

Table 1. Continued.

Country (1st state report)	Joined the EU	Religious groups	Ethnic / national groups	Linguistic groups	Comments
		32 religions recognized among which Jewish and Muslim	Latvians, Russians, Polish, German, Ukrainian, Jewish, Roma (Gypsies is the first reports), Lithuanian, Estonian, Belarusian, others	Russian, Polish, Belarusian, Ukrainian, Estonian, Lithuanian and Hebrew	Latvia's population by ethnicity is divided in "citizens", "non-citizens" and "foreigners/ stateless"
Lithuania (2001)	2004		Lithuanians, Russians, Polish, Jewish , Belarussians, Karaites, Tartar, Roma* , German, Ukrainians, other		*Roma were labeled "Gypsies" in the first reports
Malta (1999)	2004				No groups are recognized as national minorities
Poland (1999)	2004		Karaites, Roma (Gypsies) , Lemks, Tatars, Ukrainians, Jewish (divided in Yiddish and Hebrew) Belarussians, Czechs, Lithuanians Germans, Armenians, Russians, Slovaks, Polish diaspora	Kashubians	13 "national and ethnic minorities" + 1 linguistic minority. Territoriality element (Jews and Roma mainly dispersed). Poland recognizes Poles abroad as a national minority
Slovak Republic (1999)	2004		Slovak, Hungarian, Romany , Bohemian, Ruthenian, Ukrainian, German, Moravian, Silesian, Croatian, Jewish , Polish, Bulgarian ("nationalities")		
Slovenia (2000)	2004		Italians, Hungarians, Roma , Austrians, Germans, Jews , Croats, Serbs, Albanians, Montenegrins, Macedonians, Muslims* , Yugoslavs		*The ethnic category of "Muslims", introduced by the Yugoslav censuses after the second world war, comprises people from the territory of Bosnia and Herzegovina, who now usually declare themselves as Bosnians.
Bulgaria (2003)	2007	Eastern-Orthodox, Catholic, Protestant, Sunni Muslim, Shiite Muslim (Alawites), Judaism , Armenian-Gregorian	Bulgarian, Turkish, Roma , Tatar, Jewish , Armenian, Circassian, Gagaouz, others	Bulgarian, Turkish, Roma , others	

Romania (1999)	2007	Orthodox, Catholic, Reformed, Greek Orthodox, Pentecostal, Baptist, Adventist, Unitarian, Moslem , Evangelical, Old-Rite Christian, Old-Style Orthodox, Synodal Presbyterian Evangelical	Magyar & Szekei, German, Swabian and Saxon, Ukrainian, Russian – Lipoveni, Roma (Gypsy)* , Turkish, Serbian, Tatar, Slovakian, Bulgarian, Croatian, Czech, Polish, Greek, Armenian, Jewish	*1856 abolition of slavery of Roma. Special section dedicated to Roma inclusion policies	
Croatia (1999)	2013		Italians, Czechs, Slovaks, Hungarians, Ruthenians and Ukrainians, Serbs, Germans and Austrians, Jews , Slovenes, Albanians, Moslems , Romanies , Montenegrins, Macedonians, Others	Croatian, Serbian, Macedonian, Slovenian, Albanian, Czech, Hungarian, Romany , Ruthenian, Slovakian, Italian, Ukrainian	*The state report emphasizes that many Romanies stated “nationality other than Romany”. Muslims are identified in ethnic terms, not religious

^aThe terminology used in the table is the literal one used in the English version of the state reports. Inconsistencies regarding a same minority appearing as “Moslem” in the case of Romania and as “Muslim” in the case of Bulgaria, for example, should therefore be attributed to the choice to represent the categorizations of each minority as they appear in the original documents.

by the Advisory Committee to adopt a more inclusive interpretation of who might be considered a “national minority”. Italy chose to interpret “national minorities” as “linguistic minorities”, insisting that Roma and Sinti do not fall under Law No 482/1999, which is aimed at protecting the 12 historical linguistic minorities recognized in the national territory (Magazzini 2018). In the case of Germany, there are some minorities that have officially requested to be recognized as “national” (such as the Polish minority and the Turkish minority), but whose requests have been declined. The rationale that the German state has provided for these refusals is that it has chosen to adopt a strict requirement of five criteria in order to “qualify” as a national minority: German nationality; a distinctive language, culture and history; the desire to maintain this identity; traditional residence in Germany (“in most cases, for centuries”); and traditional settlement areas within Germany. The result of this is that the only national minorities recognized are the Danes; Sorbian people; German Sinti and Roma; and Frisians.

An even narrower approach was adopted by the Netherlands, which joined the FCNM in 2008. Even though it recognizes Frisians, Low Saxon, Limburgish, Yiddish and Romany as minority languages in the Charter for Regional and Minority Languages, it is adamant that Roma, Sinti and Travelers do not fall within the scope of the Framework Convention, nor do Jews, but only Frisians. In the Fourth Report¹ submitted (May 2021), it claimed that

The government has not changed its views on this point. [...] When the bill to ratify the Framework Convention was approved, the government and parliament agreed that it would only apply to the Frisians. While the government devotes attention to other groups, such as Roma and Sinti for example, in does so in different ways. (11).

The Southern European countries that joined the EU in the 1980s (Greece, Portugal and Spain) also have either not ratified the FCNM (Greece) or claim that they do not have any “national” minorities, limiting the Framework’s scope, in practice, to the Roma (in the case of Portugal and Spain), following pressure from the Advisory Committee, albeit without recognizing them as a national minority. Spain clarified in its reservation of 2016 that “The Framework Convention applies to the Spanish citizens of the ‘comunidad gitana’ (roma, gypsies) although these citizens do not constitute a national minority.” It also chose to completely ignore its linguistic minorities (such as Catalans, Basques and Galicians) which could arguably be regarded as “national”, in that they have a distinct identity that they are motivated to preserve.

On the whole, based on the FCNM, it can be argued that Western European countries that joined the EU before the 1990s have approached the issue of minority rights with diffidence and caution, if not outright hostility.

Among the early EU joiners, the United Kingdom has represented an inclusive exception in its interpretation of the FCNM as covering any

group of persons defined by colour, race, nationality (including citizenship) or ethnic or national origins. This includes our ethnic minority communities (or visible minorities) and the Scots, Irish and Welsh, who are defined as a racial group by virtue of their national origins. Gypsies (and Travellers in Northern Ireland) are also considered a racial group under the Act (UK's First State Report 1999).

It has been noted that the choice of such an inclusive approach to the Framework Convention on behalf of the UK might have been influenced by national events taking place around the timing in which the ratification happened, which fostered a desire to show a commitment to anti-discrimination measures at a tense moment for racial relations in Britain (Jacob-Owens 2022, 180). Even in the case of the UK, however, and despite its definition of "national minority" encompassing a number of groups of immigrant origin, the historical trajectories resulting from slavery and colonialism go unmentioned. Those who were considered "British subjects" under the British Empire qualify for the protections offered by the FCNM by virtue of being racialized individuals, but not because of a historical legacy that renders them "national". In this regard, the UK's interpretation of the FCNM is inclusive, yet it doesn't engage with postcolonial, diasporic "new ethnicities" in their empirical complexity (Becker 2024; Hall 1996).

When compared to the majority of Western EU countries, most of the EU 2004 accession countries have tended to be more inclusive in their definitions of "national minorities", with a broadening of the scope of which minorities they recognize as national. For instance, Latvia declared that non-citizens, even though they do not belong to a national minority according to its definition, can still benefit of the same protections if they self-identify as a national minority. Such provision was clearly aimed at the large Russian-speaking population that does not hold Latvian citizenship (as detailed below), yet it can potentially apply to other minorities.

In general, "new" member-states tend to have more detailed regulations regarding minority rights compared to EU "old" member-states. This can be seen as both a product of the time (since the attention given to minority recognition and representation has increased in recent years) and of the legal and political requirements that have been imposed on Central and Eastern European countries in order to access the EU. The way in which the Copenhagen criteria were applied to "new" member states with respect to minority rights left little margin for manoeuvre, as acknowledged by Bulgaria:

Confirming its adherence to the values of the Council of Europe and *the desire for the integration of Bulgaria into the European structures*, committed to the policy of protection of human rights and tolerance to persons belonging to minorities, and their full integration into Bulgarian society, the National Assembly of the Republic of Bulgaria declares that the ratification and implementation of the Framework Convention for the Protection of National Minorities do not

imply any right to engage in any activity violating the territorial integrity and sovereignty of the unitary Bulgarian State, its internal and international security (Council of Europe 2023, 66).

Other countries, such as Poland, have made explicit their interest in the protection of its nationals abroad, which are therefore seen as a national minority in terms of a diaspora:

Taking into consideration the fact, that the Framework Convention for the Protection of National Minorities contains no definition of the national minorities notion, the Republic of Poland declares, that it understands this term as national minorities residing within the territory of the Republic of Poland at the same time whose members are Polish citizens. The Republic of Poland shall also implement the Framework Convention under Article 18 of the Convention by conclusion of international agreements mentioned in this Article, the aim of which is to protect national minorities in Poland and minorities or groups of Poles in other States (Council of Europe 2023, 70).

In practice, the perception that Western liberal democracy had triumphed while the authoritarian regimes in Central and Eastern Europe had collapsed fostered a certain developmentalist approach that saw a clear (albeit unspoken) hierarchy between the “old” and the “new” EU member states. In addition to this, the worry that Roma minorities from Central and Eastern European countries could migrate Westward also functioned as a drive to push for minority rights-related changes (Magazzini and Piemontese 2019).

It would, however, be a gross misrepresentation to conflate the approaches of all the Central and Eastern European countries which became EU members in the 2000s. Latvia, for instance, chose to distinguish its (minority) populations by “ethnicity”, but also by dividing them between “citizens”, “non-citizens” and “foreigners/stateless”, due to its historical context. In practice, following its regained independence in 1991, Latvia only restored citizenship to those who held Latvian citizenship and their descendants prior to the 1940 invasion of the Soviet Union, resulting in a significant part of the population finding itself with only the citizenship of the USSR, a state that no longer existed. In its ratification of the Convention, the Latvian government therefore added a provision clarifying that

Considering such Persons who are not citizens of Latvia or another State but who permanently and legally reside in the Republic of Latvia, who do not belong to a national minority within the meaning of the Framework Convention for the Protection of National Minorities as defined in this declaration, but who identify themselves with a national minority that meets the definition contained in this declaration, shall enjoy the rights prescribed in the Framework Convention, unless specific exceptions are prescribed by law. (Council of Europe 2023, 68).

Within not only the CEE countries, but all the signatories of the FCNM, the Czech Republic constitutes somewhat of an outlier, because it has chosen to recognize the Vietnamese as a national minority. One interesting aspect

of this kind of “multicultural citizenship” approach which acknowledges a migrant minority as historical (Jacob-Owens 2022) is that, in its latest census and state report, the Czech Republic has also started including data on its national minorities, differentiating the cases in which a minority can be identified as belonging to only one nationality, or when it is in combination with a second nationality.

On the whole, and despite their differences, the reports of the Czech Republic, Hungary, Latvia, Lithuania, Poland, the Slovak Republic, Slovenia, Bulgaria, Romania and Croatia all present data that are significantly more rich, detailed and accurate regarding the minorities that reside on their territory compared to those of older EU Member States, which is only natural given that these countries include ethnicity (and in some cases religion) in the census of their population. The collection of such data is, on the other hand, prohibited in most Western European countries, despite studies showing that ethnic classification-phobia is legally unfounded (Messing and Pap 2024).

Conclusive remarks

Majorities are all alike; every minority is a minority in its own way?

As the abovementioned cases show, beyond the broad patterns in terms of regional approaches to minority rights and of general shifts in the inclusiveness of minority rights over time, the issue of what makes minorities “national” according to each country also reveals some cleavages in the understanding of what the most significant and legitimate cultural traits of a group—and thus of a society—are.

In the FCNM, the concept of “race” is virtually absent, with the notable exception of the UK. This absence is arguably intimately related with a European project that sees racialized minorities as foreign, “of migrant origin”, and therefore inherently ineligible to be “national” (Kundani 2021).

While “language” and “religion” are categories to which specific identifiable characteristics can be attributed in relatively uncontroversial terms (even though, as we have seen, whether they are recognized as “significant” enough to deserve protection is ultimately up to each State), “ethnicity” is by far the term that is employed the most by States in relation to the FCNM, as it is used to refer to a broad cultural sphere which can include elements of shared geography, history, phenotypic traits, lifestyles, food and traditions (Calhoun 1993; Ruiz Vieyetz 2016).

Commenting on Andreas Wimmer’s *Ethnic Boundary Making* (Wimmer 2012), which adopts a broad interpretation of ethnicity inclusive of race and nationhood, Brubaker challenged the idea that nationhood can be fully subsumed under ethnicity, as some kind of sub-typology, with the

argument that “in a world of nation states, the category of the nation is *intrinsically* bound up with the workings – and the legitimation – of an actual perspective state in a way that is not true for ethnicity or race” (Brubaker 2014, 805). If ethnicity is not a synonym of nationhood (because to claim nationhood goes beyond claiming recognition) nor a concept that necessarily implies the idea of “country of origin” (which is how the term is often used in European policymaking, beyond the FCNM), what remains is then a cultural difference that is perceived as “thick enough” to give rise to a distinctive identity.

What constitutes such cultural difference is often found at the intersection of various elements, a “knot of distinction” of sorts: two minorities in particular, the Roma and the Jews, emerge as being more often identified as an “ethnic minority” than others. Their ethnicity is one that at times is framed and officially recognized also as a linguistic trait (often for the Roma and, less often, for the Jews when they are identified with Yiddish or Hebrew) or a religious one (the Jews).

These two minorities both defy the element of territoriality and dispersion, which plays an important role for many governments, obliging a positive response to the question of whether an individual can be ethnically identified without a reference to territorial community. This conception is at odds with the old interwar idea on national minorities as “foreign” national groups that somehow ended up on the “wrong” side of the border, and in this sense, they too hold the potential to serve as a litmus test for the kind of interpretation that different states choose to make regarding what ethnicity means, and the consequences it has. As argued elsewhere in this Special Issue, the lack of consistency in the conceptualization of what kind of minorities the Roma (and Jews) are risks leading to the “Murphy law” of data protection: “where discriminators have no difficulties identifying their victims, but when it comes to remedial action or social inclusion measures, action is paralysed” (Messing and Pap 2024).

On the whole, despite the fact that enforcement instruments are weak, the FCNM has so far proved to be an important instrument for minorities to make claims in ways that don’t rely on litigation, and the reporting has been taken seriously by States (Phillips 2013, 40). Furthermore, in a context in which the Advisory Committee has been pushing governments to broaden their scope of protection, ethnicity within the Framework Convention seems to hold knotted forms of difference, including race, religion, and language as a “knot of distinction”. In this sense it can be seen as not only a “part” of knottedness, but as a “knot” itself, and has the potential to be used as a positive marker, even though one that has so far shied away from engaging with Europe’s colonial aphasia (Kundani 2023; van der Tol and Becker 2024).

What remains as the largest question mark for how the FCNM will continue to promote minority rights in the future is the position that it will adopt with

respect to the migrant minority populations that are evermore present but not recognized as minorities in any form. As demographic realities and social and cultural claims continue to change rapidly, and as a wave of xenophobic politics raises to governments across Europe, it remains to be seen whether the FCNM as an instrument will be able to remain flexible enough and sufficiently engage signatory States to remain relevant. The issues of legal citizenship and of migration status have become especially salient as we see mobility (especially from outside the border-free Schengen area) turning into an increasingly politicized and polarized topic. Poland, for instance, recognizes Lemks and Ukrainians as two of its traditional, national minorities, acknowledging that, as a result of the 1947 Wisła action carried out by the communist government, both the Lemks and the Ukrainians traditionally inhabiting the area of south-western Poland were displaced (Poland's FCNM State Report 2002). But what does the recognition of the traditional Ukrainian community in Poland mean for the recognition of the over one million Ukrainian refugees who fled to Poland in 2022 because of Russia's invasion?

What one can hope for is that the future of minority protection will be understood, and enacted, not as a zero-sum game that requires the exclusion of some minorities in order to protect other, "more deserving" ones, but rather as a space in which cultural diversity is indeed treated as "a source and a factor, not of division, but of enrichment for each society", as the 1995 text of the Framework Convention for the Protection of National Minorities suggests.

Notes

1. Since the adoption of the FCNM, there have so far been six cycles of reporting. Each cycle tends to last between four and five years, and it is structured in the following way. Each country first submits a state report in which it describes the status of minorities in its territory and how it addresses them, including the status of each and which policies it has in place to protect and promote their rights. The Advisory Committee of the CoE then typically organizes a delegation visit to assess whether the state report is an accurate description of the reality on the ground, and issues an Opinion. The country's government then has the possibility to comment on the Opinion of the Advisory Committee, and finally the Advisory Committee issues a Resolution, in which it provides recommendations. A new cycle then begins, following the same structure. "The Fourth Report" therefore refers to the State report submitted by the Netherlands at the beginning of its fourth cycle in 2021.

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