4 Divergence and Convergence in Minority Law and Policies in the Nordic Countries

4.1 Introduction

While the differences between the Nordic countries when dealing with migration, minorities, refugees and otherness are considerable, as revealed in the materials examined concerning minorities—including indigenous people, long-term minorities, and more recent immigrants and refugees—in four Nordic countries analysed in this chapter, I argue that the core scientific as well as political and legal problems today are found in a state of tension between two seemingly contradictory logics. One is the logic of the egalitarianism of generalised welfare systems and human rights created after the Second World War coupled with the pre-existing myth of homogenous Nordic societies. The other logic is that of the recent enhanced assertion of cultural diversity under the pressure of increasing migration and mobility coupled with the force of cultural identity as part of a human rights discourse.

In this article the core legal and societal identity discourses in the Nordic countries are examined focussing on minority issues in Denmark, Finland, Norway and Sweden. I argue that multiculturalism policies in any of these northern countries need to be examined not only in isolation but also in their Nordic context. Apart from the common background of strong welfare states based on egalitarianism in the access of social services we can recall the existence of cross border indigenous and minority groups, including the Sámi and Roma; the common experience of outward migration, most notably at the end of the 19th and beginning of the 20th centuries; and finally the development of centrally introduced and controlled educational systems which made education accessible for all while reinforcing the consolidation of a unified national identity in each country. The creation of Nordic identities in the 19th century coincides with the movement of literary Nordism in the 18th century and the movement of Scandinavianism in the 19th century; movements linked to a wider effort to enhance peace between former enemies in the region. So, a portion of Finnish, Swedish, Danish, or Norwegian identity, has from the outset placed an emphasis on the Nordic dimension of that identity.

The historical experiences of the Nordic countries vary considerably and that has often been underestimated in studies of Nordic comparative politics and law which generally emphasise homogeneity and similarity within and between the Nordic countries.¹ Denmark and Sweden are old nation states with a shared


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historical experience of being great powers in the North of Europe. Norway and Finland are relatively new states, with Norway breaking peacefully out of its Union with Sweden in 1905, and Finland becoming independent in 1917 at the time of the Russian revolution, after being a part of Sweden for several centuries and then an autonomous part of the Russian empire between 1809 and 1917. Norway had adopted its own constitution in 1814 during the Union period with Sweden. This event was made necessary since that the Danish-Norwegian king was forced to cede Norway to the king of Sweden with full rights of property and sovereignty as a result of the Napoleonic Wars and the Treaty of Kiel in 1814. Also in other crucial respects there are diverging historical experiences. Finland and Norway have both gone through intensive language debates, primarily in the 19th century, and Finland emerged as an officially bilingual state in 1917.

The primary material to be used in the present examination is, however, not of a historical character. The argument concerning the diversity of Nordic identities and the differences of Nordic attitudes to identity diversity is empirically based on the documentation and discussions concerning the implementation of the Framework Convention on the Protection of National Minorities (FCNM) of the Council of Europe in Denmark, Finland, Norway and Sweden in the early period of the ratification and entry into force of the Convention (i.e. approximately 1998-2003). This is then a snapshot of the situation during a particular period of time, but as it shall be shown, it reveals a great deal concerning perceptions and policies in the countries concerned. I shall not make any deeper explorations of domestic parliamentary documents and debates covering these issues during the period of concern. In the present text, emphasis is at state level and the three autonomous regions of the North, namely the Åland Islands, the Faroe Islands and Greenland are not examined in any great detail.

Iceland has not ratified the convention, but did however sign it when it was originally adopted in 1995. It is, however, interesting to note that the population of Iceland has shown great demographic change in recent decades, at a pace far higher than in the other Nordic countries. In 1980 the population of Iceland, a total

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3 Some would argue that today there is extensive self-government also for the Sámi in the North of Norway, especially since the entry into force of the Finnmarksloven in 2006. This Norwegian piece of legislation introduced a system of co-management in the Finnmark region, giving a strong role to the Sámi. There are, however, also critical assessments of the system. See e.g. comments by Vars, Laila Susanne, 2009, The Sàmi People’s Right to Self-Determination, ph.d. dissertation, Faculty of Law, Tromsø University., Basic information regarding this legislation is available at: http://finnmarksloven.web4.acos.no/artikkel.aspx?AId=181&back=1&MId1=4 (retrieved May 27, 2010).
of 228,785 people, had Icelandic citizenship at the rate of 98.6 per cent while 1.4 per cent of the population had a different citizenship. These percentages from 1980 were more or less at the same levels as in 1950. In January 2009 the percentage of inhabitants with citizenship other than Icelandic had risen to 7.6 per cent. Most of this increase originates from various European countries, in particular Poland, but there are also considerable numbers of citizens from Thailand and the Philippines. So even in the remote corners of the Nordic region and what are sometimes believed to be the most homogenous countries and regions in the North, demographics are undergoing considerable change.

The core issue to be examined in the present inquiry is that of the conceptualisation of the notion of ‘minority’ in the four Nordic countries. This permits us to also indirectly address the issue of so called ‘new minorities’.

### 4.2 The Framework Convention for the Protection of National Minorities and its ratification by the Nordic countries

The Framework Convention on the Protection of Persons belonging to National Minorities was adopted by the Council of Europe in 1995 after several decades of debates concerning whether or not there was a need for a specific minority instrument at the Council of Europe. It can be noted that at an early stage Danish representatives were most active in the preparatory work and negotiations on minority issues, in particular the lawyer and politician Hermod Lannung since the 1950s who has been critical of the neglect of minority issues in the context of the European Convention for Human Rights. The other Danish representative in the Consultative Assembly of the Council of Europe at that time, the conservative Ole Bjørn Kraft, supported Lannung but was focussing his attention entirely on the Schleswig situation rather than on a generalised, human rights oriented system. As we shall see later on, this bipolarity in Danish understandings on minorities still exists.

As of 2011, the Framework Convention has been ratified by a total of 39 states, out of the 47 member states of the Council of Europe. It is therefore seen by doctrine as well as by practitioners very much as a pan-European instrument serving as a baseline for minority protection, even though countries such as Belgium, France,

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7 Spiliopoulou Åkermark, Athanasia, 1997, Justifications of Minority Protection in International Law, p. 201.
Greece and Turkey have yet to ratify the Convention. Since it is a framework convention of a human rights character, the convention introduces the minimum level standards of protection for persons belonging to minorities; it does not represent any ideal vision of minority protection. Examining the formal documents and the products of examination and commenting upon State reports under the convention does not reveal the full spectrum of societal understandings concerning minority issues, nor can it unravel the full impact of a particular international instrument on domestic political debates and legal outcomes. Examining the discourse around the Framework Convention is one way of capturing in a comparable manner, the positions, interpretations, and shifts in such positions and understandings, within the countries concerned.

The Council of Europe and its Committee of Ministers have developed a comprehensive system to monitor the implementation of the Framework Convention. The Convention itself (Articles 24-26) and its complementary Resolution (97) of the Committee of Ministers, specify the core modalities of this work. A crucial element in this regime is the work done by the Advisory Committee of the Framework Convention, an expert body of eighteen independent experts, nominated by the states’ parties, and elected following a system of rotation among the 39 ratifying countries. The details of this system have been worked out in the interplay of practice of individual states parties, the Advisory Committee and its secretariat and the Committee of Ministers of the Council of Europe. States have to submit regular comprehensive reports under all provisions of the Convention. The Advisory Committee has the potential to not only visit the country and meet with the government and state institutions, but also to meet with minority representatives, academics and non-governmental organisations. After the visit it issues an Opinion, which becomes public usually together with the comments and response of the country concerned. The final word is formally in the hands of the Committee of Ministers, which issues a legally binding resolution: a document highlighting the core concerns of the Council of Europe with regard to the implementation of the state’s obligations under the FCNM. However, the importance of the monitoring procedure of the FCNM, in the Nordic countries as in all other states parties, lies primarily in the influence it has on domestic societal debates, as well as in the redefining of the minority issue from a security issue of domestic concern only, to a human rights issue of an internationalised character.

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8 Several contributions in Verstichel, Annelies et al. (eds.), 2008, The Framework Convention for the Protection of National Minorities: A Useful Pan-European Instrument, Antwerpen: Intersentia. France is the only of these countries that has not even signed the convention. The normal procedure for the implementation of an international treaty is a two step-procedure whereby a preliminary signature of the treaty is followed by its ratification. Usually there is domestic treatment of the document within the legislative and the executive branches.
A particular advantage in using the FCNM is the fact that this convention lacks a narrow definition of what is a ‘national minority’, and focus is placed on the construction of identities in relevant domestic discourses within various fields, including legislative and administrative practices as well as in media debates. Each state party to the Convention is left room to identify the persons and groups to be covered by the safeguards included in the Convention. However, this does not entail that countries are left to full discretion in this matter. First of all, the Convention identifies the core elements or aspects of identity of relevance for the protection, maintenance and development of national minorities, namely religion, language, traditions and cultural heritage.

Secondly, the Convention provides that every person belonging to a national minority shall have the right to freely choose to be treated or not as such. The exercise of any rights under the convention can be done individually or in community with others, thereby transgressing the classic division between individual and collective human rights. In the work of the Advisory Committee for the FCNM, a standard approach and phraseology has developed at an early stage, according to which the margin of appreciation of states is to be examined by the Advisory Committee under general principles of international law and the provisions of Article 3 of the FCNM. The Advisory Committee emphasises that such interpretations by states should not result in ‘arbitrary or unjustified distinctions’. This discussion was most extensive in particular with regard to the first state report of Denmark and the Opinion adopted by the Advisory Committee.

Originally, many western countries in Europe saw minority treaties developed in the 1990s mainly as a tool for real or potential conflict management needed in the political turbulence at the end of the Cold War, with the disintegration of the Soviet Union and Yugoslavia and more generally the fall of communism in Eastern Europe. Such treaties were in the minds of many governments mainly for ‘the others’, not a tool for consolidating or reshaping identity politics and policies in their own country, or in the Nordic region. As we shall see below, this view has slowly been changing over time, mainly as a consequence of domestic debates where international obligations such as the Framework Convention on National Minorities are but one of many adjacent argumentative tools.

At the Nordic level, the enhancing of a Nordic identity has been made not only through the creation of Nordic institutions, such as the Nordic Council and the Nordic Council of Ministers, but also through agreements in the cultural and educational field. In this regard, of particular importance is the Nordic Language Convention

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9 Article 5, para. 1 of the FCNM. The full text of the Convention and its explanatory report is available at: http://www.coe.int/t/dghl/monitoring/minorities/1_AtGlance/FCNM_Texts_en.asp in all the major languages of Europe.
10 Article 3 FCNM.
which entered into force in 1987 and which regulates the right of Nordic citizens
to use their ‘mother tongue’ in contacts with the authorities in another Nordic
country.\textsuperscript{11} In this case the languages covered are not only the more or less mutually
intelligible Swedish, Danish and Norwegian, but also Icelandic and even Finnish.
Thus, the project of a Nordic identity does not coincide with any single linguistic
group. However, at the time when this Convention was adopted in the early 1980s,
the idea of multicultural and multilingual Nordic societies was still completely
absent in this formal reflection of Nordic cooperation. It was not until 2006 that
the Nordic Council of Ministers adopted a Declaration on a Nordic Language Policy
in which a chapter addresses issues of multilingualism in the Nordic region and
affirms, not only for citizens but in this case for all Nordic residents, the following
‘mother tongues’:

\begin{quote}
Sámi, the Kven language, Meänkieli (the Tornedalian language), Romani, Yiddish and Finnish (in
Sweden) and German (in Denmark), all of which are official minority languages in one or more of
the Nordic countries.\textsuperscript{12}
\end{quote}

In terms of visions, the Declaration identifies four areas in need of more attention
in the future. Those areas are: language comprehension and language skills, the
parallel use of languages, multilingualism and the Nordic countries as a linguistic
pioneering region. Regarding the parallel use of languages, the Ministers that signed
the Declaration and their governments emphasise that such parallel use of languages
requires at the same time a thorough instruction in the country’s language and the
opportunity to use and develop their ‘own mother tongue’. The Declaration ensures
further that ‘there is a will to preserve the Nordic language community’ but also to
‘strengthen the position of the Nordic countries as a pioneering region in language
issues’. The pioneering element seems to refer to the efforts made to understand and
respect the Nordic languages in the other Nordic countries.

So, we see that not only at a country level but also at a Nordic level, there is
at the moment a consolidation and shift in describing and conceptualising Nordic
identities. They are Nordic and thereby linked, but at the same time these identities
are multilingual, as well as open to the use of English and the parallel use of multiple
languages. In other words, we are witnessing the simultaneous strengthening of
regional as well as globalised identities in the Nordic countries. Minorities are trying
to find a space within the framework of this new understanding of Nordic identities
and the international legal obligations are used as a tool in this configuration.

\textsuperscript{11} The text of the Convention is available at the website of the Nordic Council: http://www.norden.org/en/about-nordic-co-operation/agreements/treaties-and-agreements/spraak/spraakkonventionen

\textsuperscript{12} The text of the Declaration is available at: http://www.norden.org/da/publikationer/publikationer/2007-746/at_download/publicationfile.
4.3 The concept of ‘minority’ in the four countries examined

a) Denmark

Denmark ratified the FCNM in 1997 and it entered into force in 1998. In its instrument of ratification, Denmark applied the following declaration handed to the Secretary General at the time of deposit of the instrument of ratification, on September 22nd, 1997:

In connection with the deposit of the instrument of ratification by Denmark of the Framework Convention for the Protection of National Minorities, it is hereby declared that the Framework Convention shall apply to the German minority in South Jutland of the Kingdom of Denmark.

The government of Denmark started off with a very closed, minimal understanding of the minority concerns in the country. The ratification had been preceded by a proposal for a parliamentary resolution by the Danish Minister for Foreign Affairs in November 1996. On April 22nd, 1997 the Folketing gave its approval for ratification.13 The Danish government explained in its declaration referring to:

The fact that the border between the Kingdom of Denmark and the Federal Republic of Germany actually does not delimit the areas inhabited by the two peoples. In the regions north and south of the border (which has been fixed since the referendums in 1920) - i.e. South Jutland in Denmark and Schleswig in Germany - Danes and Germans live together in traditional residential areas.

The declaration is interesting in at least two respects. First of all it emphasises the bilateral nature of legal obligations with regard to minorities. The logic seems to be that the Germans in Denmark are entitled to protection due to the bilateral agreements and regime along the Danish-German border, explained at length in the Danish state report. Secondly, the Danish report makes clear that there is to be protection afforded to the German minority, but only in the territorial area originally defined in the referendums of 1920 and later enhanced in the Copenhagen – Bonn Declarations of 1955, i.e. in South Jutland. This has been termed as the territoriality principle and it has been discussed and questioned with regards to various countries and contexts.14,15

13 First State Report of Denmark, ACFC/SR(1999)009, introduction. All relevant documents of the monitoring procedure are also available electronically: http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/Table_en.asp (retrieved May 17, 2010).
14 For a most interesting account of the political and philosophical origins of this principle see Clement, Jan ‘Territoriality versus Personality’, in Verstichel, 2008, loc. cit., Pp. 51-68.
The Advisory Committee did indeed engage quite extensively with this subject in its Opinion.\(^\text{16}\) The Committee noted that the Danish Government takes the view that because territorial home rule arrangements exist for Greenland and the Faroe Islands, the population of these territories, who, like persons belonging to the German minority, have deep historic ties with the Kingdom of Denmark, do not fall within the scope of application of the Framework Convention. Second, the Advisory Committee argued that the fact that a group of persons may be entitled to a form of protection, other than minority protection \textit{strictu sensu}, cannot by itself justify their exclusion from other forms of protection. The second problem in this reasoning, according to the Advisory Committee, concerns the territorial aspect. If the reasoning of the Danish Government is to be followed, the result is that the Greenlanders and Faroese persons enjoy an effective protection of their identity (language, education, culture etc.) within the respective home rule areas, but no such protection outside these areas, notably in mainland Denmark. The Committee concludes:

\begin{quote}
Although the Framework Convention attaches importance in a number of its provisions to the criterion of traditional inhabitation of certain areas for protection, the majority of its provisions are designed to apply throughout the territory of the state concerned, of course taking into account all relevant circumstances.
\end{quote}

Even though the first impression of the Danish position indicates a rather narrow understanding of the notion of ‘national minority’ in the Danish context, a closer examination of the first state report indicates that there is information and consideration of migrant integration, discrimination as well as of broader issues of cultural diversity. The government enclosed with its report lists of the largest groups of immigrants, and of the recognised religious communities outside the Danish National Evangelical Lutheran Church. The Advisory Committee expressed concern about discrimination against foreigners and naturalised Danes in the labour market and housing sector and urged the Danish Government in rather vague terms to ‘maintain continuous vigilance’ in discrimination matters. The comment by the Danish Government to these remarks was quite sharp in linking the notion of a person belonging to a minority to the requirement of citizenship. In this respect, the Danish government applies a restrictive interpretation of the requirements necessary to be considered a ‘national minority’ and deviates from the position of most commentators in this field.\(^\text{17}\)

While it may be argued that issues of religion seldom occupy any important role in the Opinions of the Advisory Committee, in the case of Denmark there was a directly critical remark. The Advisory Committee had found that for the registration of the names at birth, the state church, under the authority of the state, is exclusively competent, in all areas of Denmark, except Southern Jutland where a names register exists. Thus, all persons, regardless of their religion, are obliged to address the authorities of the Evangelical Lutheran Church in order to have the names of their children registered. The Advisory Committee considered therefore that this requirement raises problems of conscience for those who do not belong to the state church and was therefore of the opinion that modifications should be introduced in order to allow persons who so wish, to register the names of their children directly with the state authorities, without having to involve the authorities of the state church.18 So, while noting that a state church system is not in itself in contradiction with the Framework Convention and that the latter does not entail an obligation to fund religious activities per se, the Advisory Committee considered that Denmark should review, in the light of the right to equality before the law and equal protection of the law, the privileged funding of the Evangelical Lutheran Church. Furthermore, it considered that persons not belonging to the Evangelical Lutheran Church should not be obliged to have the names of children born to them registered through the state church.19 Finally it can be noted that the Advisory Committee found that given the historic presence of Roma in Denmark, persons belonging to the Roma community ‘cannot be a priori excluded from the personal scope of protection of the Framework Convention’. We shall return to this issue of the Roma in the four Nordic countries in the final section of the present paper.

b) Finland

Finland ratified the FCNM in 1997 and the treaty entered into force with regard to Finland in 1998. Finland attached an explanatory note to the Act on the Ratification of the Framework Convention, dated September 5th, 1997, in which the Government concluded that it is likely that the question of to whom the Framework Convention should be applied will, ultimately, be determined through the monitoring process.20 In the first state report, submitted in 1999, it is explained that when Finland ratified the Framework Convention, it did not provide a list of national minorities falling within the scope of the Convention.21 The basic idea was, according to the Finnish government, that ‘it is not for the Government to define those minorities, because the existence of minorities does not depend on a declaration by the Government but on the factual

19 Ibid., para 40.
situation in the country.’ However, in practice it has been considered in Finland that the Framework Convention would cover the Sámi people, the Roma, the Jews, the Tatars, the so-called Old Russians and *de facto* also the Swedish-speaking Finns.\(^\text{22}\)

The concept ‘national minority’ is not used in Finnish law. Section 144, subsection 3 of the Constitution Act of Finland guarantees the right of different ‘groups’ to maintain and develop their own languages and cultures. The Constitution Act does not define more closely these ‘groups’. According to the relevant Government Bill which concerned the revision of the Constitution, the ‘groups’ referred to in the Constitution Act include the Sámi people, the Roma and other national and ethnic minorities, such as the Jews and the Tatars. The relevant explanatory note reads as follows:

*On the one hand the proposal is not limited to traditional minorities in Finland. On the other hand the groups referred to in [section 14, subsection 3] cannot include groups that only temporarily reside in Finland, but a certain stability and permanency is required from the group to be covered by it. [...] The provision would not only guarantee the language rights of minorities but would extend the protection to minority cultures. [...] [T]he provision would impose an obligation upon the Government to allow and support the development of the languages and cultures of the groups referred to in it. The provision also provides a constitutional basis for developing the living conditions of those groups with full respect for their cultural traditions.*\(^\text{23}\)

Indeed in 1999 a revised constitution entered into force in Finland. The relevant provision has the following wording:

*Section 17 - Right to one’s language and culture*

*The national languages of Finland are Finnish and Swedish.*

*The right of everyone to use his or her own language, either Finnish or Swedish, before courts of law and other authorities, and to receive official documents in that language, shall be guaranteed by an Act. The public authorities shall provide for the cultural and societal needs of the Finnish-speaking and Swedish-speaking populations of the country on an equal basis.*

*The Sámi, as an indigenous people, as well as the Roma and other groups, have the right to maintain and develop their own language and culture. Provisions on the right of the Sámi to use the Sámi language before the authorities are laid down by an Act. The rights of persons using sign language and of persons in need of interpretation or translation aid owing to disability shall be guaranteed by an Act.*\(^\text{24}\)

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\(^\text{23}\) Government Bill 309/1993. Regeringens proposition till riksdagen med förslag till ändring av grundlagarnas stadganden om de grundläggande fri- och rättigheterna. The present translation originates in the first Finnish state report under the FCNM.

In its first report under the FCNM and under the heading ‘minority within minority’, the Government of Finland reported also that ‘it can be said that the Finnish-speaking people living in the Province of Åland and the Inari Sámi and the Skolt Sámi constitute minorities within a minority’. As explained in the report from 1999, on Åland there were some 1,200 Finnish-speaking people, which is less than 5 per cent of the population in the islands, whereas there are in total some 6,400 Sámi living in Finland, but Inari Sámi and Skolt Sámi are spoken by some 200 people, respectively.25

In contrast to the Danish approach, Finland has a more open-ended understanding in at least three respects. The existence, or not, of a minority is looked at as a matter of fact rather than a matter of constitutive recognition through legislation. In the Finnish understanding the law does not ‘create’ minorities. It simply attaches consequences to their factual existence. Secondly, the Finnish approach in the new Constitution seems to be more open, in not having a fully closed list of minorities, recognised once and for all, and still speaks of ‘other groups’. Finally, the explanations given in the 1993 Government Bill concerning citizenship, were reproduced in the First report of Finland under the FCNM, and seem to indicate that Finland requires continuity in the connection between groups and the country, but not necessarily ‘traditional’ settlement or citizenship.

In dealing with the First Report of Finland, the Advisory Committee raised three distinct points.26 First of all the distinction between ‘Old’ and ‘New’ Russians. The Government had made a distinction between the so-called ‘Old Russians’, a group it considers to be covered by the Framework Convention, and other Russians, who, in the Government’s view, are not covered by the Framework Convention. However, again according to the Government, this distinction has no practical consequences whatsoever. Moreover, a number of representatives of both the so-called ‘Old Russians’ and other Russians had expressed reservations before the Advisory Committee about the said distinction. In view of the foregoing, the Advisory Committee concluded that the advisability of maintaining this theoretical distinction should be examined ‘in consultation with those concerned’. When considering the matter, the consistency of the Government’s approach vis-à-vis various minorities should be ensured, argued the Advisory Committee.

The second point discussed by the Advisory Committee was that of the personal scope of application of the Framework Convention with regard to the Swedish-speaking Finns. The Government in its Report considered that the Swedish-speaking Finns were *de facto* covered by the Framework Convention. The Advisory Committee concluded that Swedish-speaking Finns may indeed rely on the protection provided by the provisions of the Framework Convention. At the same

time, the Advisory Committee stressed that, in accordance with Article 3, paragraph 1, of the Framework Convention, every person concerned may decide whether or not he/she wishes to come under the protection flowing from the principles of the Framework Convention. This reminder was necessary in view of the position of representatives of the Swedish Assembly of Finland that the Swedish-speaking Finns do not constitute a minority but rather one of the two official languages of the country, according to the Constitution.

Finally the Advisory Committee commented on the situation of Finnish-speakers in Åland and argued that taking into account the level of autonomy enjoyed and/or the nature of the powers exercised by the Province of Åland, the Finnish-speaking population there could also be given the possibility to rely on the protection provided by the Framework Convention as far as the issues concerned are within the competence of the Province of Åland. The Advisory Committee was of the opinion that Finland should consider this issue ‘in consultation with those concerned’, a phrase which has become part of the standard phraseology of the Committee.

c) Norway

Norway ratified the Convention in March 1999 and the convention entered into force in Norway in July of that same year. There was no formal declaration concerning the personal scope of application of the convention in connection with the ratification process. The term ‘national minority’ was not used at the time in Norwegian legislation. Thus there was no formal legal definition of the term, nor any list of the groups that were considered to be national minorities in Norwegian legislation. However, according to the first report by the Government of Norway, which made reference also to the domestic parliamentary debates, ‘the groups of persons considered to be national minorities in Norway are Jews, Kven (people of Finnish descent living in northern Norway), Roma/Gypsies, the Romani people/Travellers and Skogfinn (people of Finnish descent living in southern Norway)’.27

Regarding the Sámi people in Norway, the government found that they ‘are also a national minority in the terms of international law’. However, the government reported that the Sámediggi (the Sámi Assembly) had declared that it did not consider the Framework Convention to be applicable to the Sámi people, since as an indigenous people the Sámi have legal and political rights that exceed those covered by the provisions of the convention. In keeping with the wish of the Sámediggi, therefore, the Sámi people were not discussed in any detail by the government in its first report. Instead, Norway’s reports on the implementation of ILO Convention

The state report includes brief historical accounts of the groups mentioned above but very limited information regarding the Sámi. In Norway, the term ‘national minorities’ is understood to mean minorities with a long-term connection with the country. According to the lengthy explanations by the government in its report, minority groups must be in the minority and must hold a non-dominant position in society. Furthermore, they must have distinctive ethnic, linguistic, cultural and/or religious characteristics that make them substantially different from the rest of the population of Norway. The persons concerned must also have a common will to maintain and develop their own identity. The term ‘long-term connection’ has not been defined, but the Norwegian authorities have taken into consideration a criterion suggested internationally, to the effect that groups must be able to claim a minimum of 100 years of connection with the state in question. Thus, more recent immigrant groups are not deemed to be national minorities in Norway. However, as explained by the government, the situation is more nuanced in the case of immigrants to Norway with backgrounds from the same groups that have been granted the status of national minorities in Norway. These immigrants will be eligible for measures designed for the national minority (such as language training) even if the individual immigrant does not have a long-term connection with Norway. This would seem to be of particular importance for Finnish-speakers, and persons who identify with the Jewish and Roma identities, even though it is not expressly mentioned in the state report.

Turning to the issue of citizenship as a potential requirement for minority status, it was reported by the government that in order for a minority group to be deemed to be a national minority in Norway, it is ‘normally also required that all or most of the members of the minority group are Norwegian nationals. However, the requirement regarding nationality does not preclude a national minority from comprising individuals who have been granted a residence permit in Norway, but who are not yet Norwegian nationals.’

In its Opinion on the situation in Norway, the ACFC dealt with the protection of the Sámi minority without using the term ‘national minority’ to describe the population concerned. This approach of the Advisory Committee was said to reflect the applicability of the Framework Convention for indigenous peoples while taking into account the views expressed by the Sámi Parliament with respect to the
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applicability of the Norwegian policy for national minorities to the persons belonging
to this indigenous people. From the outset, the most difficult issue in Norway, for
the government as well as for the Advisory Committee, has been that of the Kven as a
group, their language, and the relationship between Kven and Finnish as well as Kven
and Sámi. In its Opinion the Advisory Committee indicated that it was conscious of
the debate as to whether the language of the Kven minority should be Kven or Finnish
in the educational system and in other contexts. The Advisory Committee indicated
that it shares the view of the Norwegian Government, that in principle the users of the
language themselves are entitled to clarify whether their language is to be regarded as
a separate language or a dialect. On the basis of this position, the Advisory Committee
therefore simply encouraged the Government to further pursue their dialogue with a
wide range of parties concerned, with a view to finding a pragmatic way forward and
avoiding artificially imposed solutions. With regard to the Roma, it may be worth
pointing out that the Norwegian government makes a distinction between the Roma
and the Romani/Travellers, something that seems to be endorsed by the persons
concerned themselves and consequently also by the Advisory Committee.

With regard to the issue of whether the Sámi in Norway fall within the personal scope
of application of the FCNM, the Advisory Committee underlined that the applicability
of the Framework Convention does not necessarily mean that the authorities should
in their domestic legislation and practice use the term ‘national minority’ to describe
the group concerned. Against this background, the Advisory Committee argued that
the protection of the Framework Convention remains available to the Sámi should
persons belonging to this indigenous people wish to rely on the protection provided
therein. Again, the Advisory Committee encouraged the authorities to continue their
dialogue with the Sámi Parliament and others concerned with this issue, with a view
to ensuring that the Framework Convention and the treaties designed for indigenous
peoples ‘are not construed as mutually exclusive regimes and that the Sámi can
continue to rely on a wide range of international norms’.

Concerning non-citizens, the Advisory Committee was quite pro-active in its
position in the Opinion on Norway. It found that it would be possible to consider the
inclusion of persons belonging to ethnic and linguistic groups, not considered by
the government as national minorities and including non-citizens ‘as appropriate’,
in the application of the Framework Convention on an ‘article-by-article basis’. In
this connection, the Advisory Committee noted ‘with satisfaction’ that the Norwegian
government considers that non-citizens belonging to the national minorities listed
in the report can benefit from the general measures aimed at the protection of

33 Ibid, para. 10.
34 Ibid., para. 15.
national minorities. As we saw in the Opinion on Denmark, the ACFC found it to be problematic that the Evangelical Lutheran Church of Norway enjoys a number of benefits not available to other religious communities, even though ‘a state church system is not in itself in contradiction with the Framework Convention’. There was also considerable controversy in Norway, around the introduction of the subject ‘Knowledge on Christianity, including religious and ethical education’ in the public schools curriculum, and the ACFC argued that such a system needs to be coupled with particular attention to the situation of other religions and the principles of Article 8 in the Convention, which provide that persons belonging to minorities have a right to ‘manifest his or her religion or belief and to establish religious institutions, organisations and associations’.

**d) Sweden**

*Sweden* was the last of the Nordic countries examined to ratify the Framework Convention, when doing so in February 2000. Interestingly, the then government of Sweden was the only one of the four examined that made an effort from the very outset to identify the goals of its minority policies. Those are defined as ‘to provide protection for the national minorities and promote their opportunities for influence and also to support their historic minority languages so that they are kept alive’. What is meant by ‘providing protection’ is not defined in the report, but it is coupled with notions of language maintenance and participatory inclusion.

Early in the report, the government describes Sweden as a country with a strong presence of persons born outside Sweden, indicating that in the beginning of the year 2000 more than 10 per cent of the population was born abroad. This is emphasised further in the text when it is said that Sweden ‘is today a country characterised by ethnic and cultural diversity, where every fourth inhabitant was born in another country or has parents who were born abroad’. The ethnic groups who in recent times have immigrated to Sweden are, however, according to the position of Sweden, not regarded as national minorities ‘as they do not satisfy the criteria for national minorities established by the Government, concerning among other things, a long historic bond with Sweden’.

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39 First report by Sweden, ACFC/SR(2001)003, p. 6. Today the percentage of persons born abroad in the Swedish population has risen to 14,3 per cent and has been steadily increasing since the 1960ies. See the official population statistics, http://www.scb.se/Pages/TableAndChart____26040.aspx (as of May 4th, 2010).
The concept of ‘minority’ in the four countries examined

While the concept of ‘national minority’ was not defined in Swedish legislation, the government referred extensively to the preparatory work done for the Government Bill 1998/99:143 National Minorities in Sweden, where it is stated that the following criteria should be satisfied for a group to be regarded as a national minority:

– Groups with a pronounced affinity who, numerically in relation to the remainder of the population, have a non-dominating position in society. The determination of the group cannot only be made according to the numeric number of persons within the group but importance must be attached here to the structure and unity of the group.

– Religious, linguistic, traditional and/or cultural belonging. Only one of the listed characteristic features need exist, but those characteristic features that the group demonstrates must in some essential respect distinguish it from the majority.

– Self-identification. The individual and also the group should have a desire and ambition to retain their identity.

– Historical or long bonds with Sweden. The Government does not consider that it is possible to draw an absolute limit measured in years. Minority groups whose minority culture existed in Sweden prior to the 20th century may be said to satisfy the requirement for a historic or long bond.

On the basis of these criteria, the minority policy decisions of the Government and the Swedish parliament entailed the acknowledgement of five groups as national minorities in Sweden. These were the Sámi, who were also regarded as an indigenous people, Swedish Finns, Tornedalers, Roma and Jews.40 There are clear parallels to the approach adopted in Norway, both regarding the issue of citizenship and long bond as well as pertaining to the construction of the recognition pattern of the various groups. The Swedish Finns and the Tornedalers are looked at as separate groups and languages (in a way similar to the Kven, Finns and Skogsfinns in Norway). The Sámi are dealt with as a unitary entity, even though with relation to language issues the various Sámi languages are seen in their respective particularities. In the Swedish report, the North, Lule and South Sámi language varieties are mentioned separately. As we earlier saw, Finland makes specific reference to the Inari and Skolt Sámi, possibly because of the importance of specific legislative provisions for them, and in particular the Skolt Sámi. In contrast the Norwegian report deals with the Sámi in a completely unitary way.

Longstanding bonds are required in Sweden for qualifying as a minority, but citizenship is not an absolute requirement, as newly arrived persons belonging to an already existing minority are looked at as merging into this group. In the case of Sweden this was of particular importance for the Finns who had migrated to Sweden in significant numbers after World War II, but where there has also been a

40 Ibid., p. 9.
longstanding presence for centuries, due to the common united history that Sweden and Finland share, dating back more than 600 years prior to 1809.

In its first Opinion on Sweden, the ACFC raised this issue of citizenship in an appreciative manner.\textsuperscript{41} The Committee noted that in its dialogue with the Swedish authorities they have confirmed that ‘the provisions of the Framework Convention are to be implemented in the same way for all persons belonging to these particular minorities regardless of whether or not they are Swedish citizens’. This approach was strongly welcomed by the Advisory Committee, who noted that bearing in mind that a large number of persons concerned are not Swedish citizens, this inclusive approach contributes to the impact of the Framework Convention and helps to avoid any arbitrary or unjustified distinctions within these minorities.\textsuperscript{42}

\textbf{4.4 Concluding reflections}

From the examination conducted in this chapter it is apparent that there are some common elements recurring in all the Nordic countries. First of all, it is easy to assert that in none of the countries analysed is there \textit{a priori} a ‘self-evident’ and definitive list of national minorities. The categorisation of a group as a group and as a minority falling within the scope of application of the Framework Convention is a decision taken by each government against the political dynamics in that country, including the mobilisation of the relevant groups themselves, the bulk of scientific evidence selected and gathered in each specific case and the comments and dialogue with the institutions supervising and implementing the Convention at the national and international levels. However, as shown in the Norwegian case where Kven was recognised in 2005 as a language in its own right by the Norwegian government, the categorisations and definitions made at a certain point of time are not definitive and permanent but subject to revision and amendment.

The difficulty in this negotiability is the potential risk it implies in terms of increasing competition and possibly even hostility between groups both in majority – minority and minority – minority situations. This risk is evident if minority and diversity regimes are perceived and managed as zero sum games where one group loses if another gains in terms of resources and power. Are there any ways to avoid such risks or at least minimise them? In my view a crucial factor is the decision making traditions and cultures prevailing in the states and societies concerned. In many cases in the Nordic countries, discussions between the state and a certain group are only bilateral, i.e. minority – state. In such discussions the views of other minority

\textsuperscript{41} First Opinion on Sweden, ACFC/INF/OP/I(2003)006, para. 16.

\textsuperscript{42} Ibid.
groups are not heard and the totality of issues, interests and claims is never revealed for all interest holders.

The process of categorisation and hierarchisation can in itself be more or less participatory. In some cases, certain groups said by the state to constitute a minority refuse themselves such categorisation, such as is the case with the Sámi in Norway or the Swedish-speakers in Finland. In my understanding this does not indicate that they categorically refuse the relevance of the Framework Convention for their empirical situation. It rather indicates a preference for a different ‘tag’ or legal category to which there is attached a different conceptual package. So, when the Sámi prefer the ‘indigenous’ tag, this is an argumentative move in order to underline that the issue of land rights and natural resources is at the center of indigenous self-identification. In a similar vein, when the Swedish-speakers in Finland prefer to be addressed as ‘one of the two official languages’ in Finland and not ‘simply’ as a minority, this is to say that in this case there is a strong constitutional basis and tradition and practice with regard to the position of Swedish as one of the two official languages in Finland which goes far beyond the minimum rules encompassed in the Framework Convention. However, from a legal perspective while this is true, it does not exclude the possibility that the Framework Convention can function as an interpretative background and tool for the authorities as well as for the groups concerned; or, as a minimum standard with regard to the rights and obligations regarding such cases as well.

There are several important differences in the way issues of identity and minority rights are dealt with in the four Nordic countries examined. These differences are of course established in this text at the level of formal discursive practices and exchanges of positions at the official as well as internationalised level. So, for any robust conclusions to be drawn one would need to refine them with an examination over longer time periods and in domestic debates as well.

The justificatory patterns of minority protection in international law follow four main paths: peace and security; individually oriented human dignity; group oriented protection and promotion of culture and cultural diversity; and democratic participation and pluralism. Following such a theoretical categorisation of minority protection regimes, it is possible to look at the Nordic countries as representing more or less one or the other of these models.

Denmark has the most restrictive understandings and policies in a number of respects, including the views regarding citizenship as a requirement for minority protection, the position of persons from Greenland and the Faroe Islands on mainland Denmark, as well as the reciprocal basis of minority obligations, focussing entirely on the position of the Germans in the South of Denmark. In these respects, it represents perhaps more strongly the ‘peace and security’ justificatory understanding of minority protection.

protection. While it is less clear in the examined materials, Sweden seems from the above to be arguing mainly along the path of democratic participation and pluralism. Finland and Norway are more traditional in terms of the human dignity and cultural protection goals of their policies. Norway and Sweden share the basic constructions of identities of the groups in their respective societies, while all four countries give very limited accounts of their struggles in managing the evolving identities of the Roma and Traveller groups. Sweden and Norway share the somewhat ambivalent relationship with their Finnish language populations, while Finland, similarly as with Denmark in relation to Greenland and the Faroe Islands, seems unable to find an appropriate model for describing and accommodating minority issues in its autonomous region, Åland. While Denmark has essentially a hands-off policy with regard to its autonomous regions, the situation seems to be more complicated with regard to Åland.

All the countries seem to run into trouble with regard to their systems of privileges of the state churches. This is quite remarkable in a part of the world that sees itself as secularised and unaffected by various kinds of religious discussions and disagreements. In Finland public financing is provided automatically to two faiths, the Evangelical Lutheran Church and to the Russian Orthodox Church, while there is only one such privileged faith in the other three countries. For this reason it is not entirely a surprise that there are multiple debates surfacing around the Nordic countries at the moment, not least with regard to the position of the Lutheran faith in education and the role of religion in the education system. From the legal point of view this covers issues of the modes for teaching religion and theology at school, the conditions for establishment of private or independent religious schools, the observance of religious holidays of various faiths, as well as the issue of religious symbols in classrooms and schools.

As in many other countries, diversity and multiculturalism present considerable challenges of a theoretical as well as practical nature. In the Nordic countries the combination of egalitarian welfare systems with the required sensitivity towards minority identities has meant the need to rethink the way things such as day care facilities, schools, elderly homes and the health system are able and prepared to meet legitimate expectations and the needs of minorities, without however overloading the systems with unrealistic requirements and costs. In many cases the response has been that of using and adapting the resources already existing, for instance in Sámi speaking areas in Norway or in the Finnish speaking areas of Sweden. However, there is still a lot more discussion to be expected in years to come with regard to what should be seen as legitimate expectations and normatively guaranteed rights for minorities in the region.