

Are vegans a discrete minority for the purposes of the European Framework Convention for the Protection of National Minorities?

Jeanette Rowley

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Abstract

This paper examines the European Framework Convention for the Protection of National Minorities (FCNM) and considers its value for vegans. It explains how this treaty targets marginalisation by creating obligations on contracting Parties to legislate in the interests of minority communities. It explains that the FCNM does not define a 'national minority' and that contracting Parties have a wide margin of appreciation that has led to a restricted application of the treaty. Nevertheless, the paper observes the intended broad scope of the FCNM and suggests that vegans ought to explore the idea of identifying as strong, distinct minority community in their endeavour to protect, promote and develop their anti-speciesist world-view and way of life.

1 Introduction

The Framework Convention for the Protection of National Minorities (FCNM) is a treaty of the Council of Europe. It was adopted in November 1994 and came into force in 1998.¹ Its target is to protect minority cultures from discrimination and to promote and protect diversity by creating positive social conditions for minority communities to flourish.

The FCNM exists in relation to broader human rights provisions. Its existence assumes that existing human rights safeguards, such as the prohibitions on interference with protected freedoms, are insufficient to give minority communities an adequately effective voice in a plural, democratic society. Accordingly, special consideration is given to support 'national minorities'. The FCNM is related to the European Convention for the Protection of Human Rights (ECHR, the Convention) and its Protocols.² It builds on Article 14 of the ECHR which provides for the prohibition on discrimination towards minorities in the enjoyment of the rights the Convention contains. The FCNM is the most comprehensive European treaty dealing with protection for minorities. An important principle grounding

¹ Council of Europe, Framework Convention for the Protection of National Minorities (FCNM), adopted 10 November 1994, open for signatures 1 February 1995 and in force February 1998. ETS no 157.

² Council of Europe, *Framework Convention for the Protection of National Minorities and Explanatory Report* (Strasbourg, February, 1995) H (95) 10, Preamble, 2.

the FCNM is democracy and one of its main purposes is to ‘promote dialogue in open and inclusive societies’.³

2 The aims of the FCNM

The aims of the FCNM are to respect the cultural identity of individuals belonging to minority cultures and help create the social conditions in which they can express, preserve and develop their identity.⁴ The advantage of the FCNM is that it creates positive obligations on State Parties to ensure minority communities do not suffer discrimination and are able to grow and develop. These positive duties offer minorities much more than what results from the mere negative duties under the principle of non-interference: for example, the prohibition on unlawful interference under the right to freedom of conscience.⁵ The benefits of the FCNM are expressed in the various Articles. For example:

Article 4 requires that states guarantee minorities rights and equal protection of the law. It also requires States Parties to take steps to promote, in all areas of social, political and cultural life, full and effective equality between people belonging to minority cultures and those of the majority. To undertake this task, the Parties are required to take into account the conditions of the minority and any measures implemented in favour of the minority community will not be deemed discriminatory.

Article 5 requires that the Parties undertake to promote the conditions necessary for persons belonging to national minorities to maintain and develop their culture, and to preserve the essential elements of their identity, namely their religion, language, traditions and cultural heritage. It also requires Parties to refrain from developing and implementing policies or practices that assimilate persons belonging to national minorities against their will and provide protection from assimilation.

Article 6 requires the Parties to take effective measures to promote respect in the fields of education, culture and the media. It requires Parties to take appropriate measures to protect persons who may be subject to acts of discrimination in these areas of social life.

Articles 7 and 8 make it very clear that the FCNM gives respect to freedom and manifestation of conscience. The FCNM attaches a particular significance to the obligation to uphold the right to freedom of conscience and feels it ‘particularly appropriate to give it special attention’.⁶

³ Council of Europe Advisory Committee on the Framework Convention for the Protection of Minorities, *The Framework Convention: A Key Tool to Managing Diversity through Minority Rights* (Strasbourg, 27 May 2016) ACFC/56DOC(2016)001, 3.

⁴ Council of Europe, *Framework Convention for the Protection of National Minorities and Explanatory Report* (Strasbourg, February 1995) H (95) 10, Preamble, 2.

⁵ Article 9 of the European Convention on Human Rights for example: Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR) Article 9.

⁶ Council of Europe, *Framework Convention for the Protection of National Minorities and Explanatory Report* (Strasbourg, February, 1995) H (95) 10, 17 (Article 8, 54).

Article 9 requires Parties to respect the minority community's right to use radio and TV broadcasting facilities and states that they must ensure that their legal systems do not discriminate against minorities in their access to the media. It also requires that parties do not hinder minorities in the creation and use of their own printed media. On this matter, Parties are obliged to adopt adequate measures within their legal systems to ensure minority communities have access to the media.

Article 12 requires Parties to accommodate the minority culture in the education system by ensuring adequate teacher training.

Article 15 requires that Parties create the conditions for effective participation of those belonging to the minority community in cultural, economic and social life and in public affairs, in particular those affecting them. A provision such as this can justify positive discrimination to recruit under-represented minority groups to important public sector positions.

3 The beneficiaries of the FCNM

The FCNM does not define the term 'national minority'.⁷ Paragraph 12 of the Council of Europe Explanatory Report points out that 'the framework Convention contains no definition of 'national minority'. 'It was decided to adopt a pragmatic approach... it is impossible to arrive at a definition...'.⁸ The Framework Convention is designed to be inclusive and is, therefore, not suited for 'static definitions or criteria'.⁹ The beneficiaries of the FCNM are to be 'persons belonging to national minorities'. The Advisory Committee has indicated that whether or not a person belongs to a national minority is a matter of fact and should not be dependent on formal recognition by State Parties.¹⁰ Though contracting Parties have to determine the application of the FCNM and are granted a margin of appreciation, the Advisory Committee has made it clear that the FCNM should not be a source of arbitrary or unjustified distinctions¹¹ and is duty bound to advise contracting Parties that the scope of the FCNM should be

⁷ For comparison, for the purposes of the European Convention on Human Rights, 'national minority' refers (inter alia) to a group of persons who reside in a state and are citizens with cultural characteristics, are smaller in number than the rest of the population and are motivated to protect their common identity and culture. See Article 1 of the Parliamentary Assembly, Recommendation 1201, 1993, 'Additional Protocol on the rights of minorities to the European Convention of Human Rights'. (The description given of a minority includes the desire to protect a religion. Since both qualifying religious and non-religious beliefs have equal standing in human rights provisions, it is likely that the scope of the term 'religion' includes non-religious belief. As such, veganism qualifies on the ground that it has been accepted as a non-religious philosophical belief by the European Court of Human rights. See *H v UK* (1993) 16 EHRR.

⁸ Council of Europe, *Framework Convention for the Protection of National Minorities and Explanatory Report* (Strasbourg, February 1995), H (95) 10, 12.

⁹ Council of Europe Advisory Committee on the Framework Convention for the Protection of Minorities, *The Framework Convention: A Key Tool to Managing Diversity Through Minority Rights*. Thematic Commentary No. 4 The Scope of Application of the Framework Convention for the Protection of National Minorities ACFC/56DOC(2016)001, 27, 12.

¹⁰ The Advisory Committee is critical of such an approach to protecting minorities. See also, First State Report submitted by Finland. Accommodation of national minorities in the UK has been limited to those described as 'racial group' under the Race Relations Act of 1976 (now superseded by the Equality Act 2010). Though this approach gave wide scope, the Advisory Committee maintains that it is restrictive and potentially exclusive (for example, see the case of the Cornish people who could not be included under the FCNM because they were not a 'racial group' that could claim, successfully, under the Race Relations Act).

¹¹ See Advisory Committee Opinion on Austria, May 16th, 2002, ACFC/INF/OP/I(2002)009, para 14.

broad to accommodate persons not recognised by a contracting Party, as a national minority.¹² In this regard, the Advisory Committee supports Parties who disregard the need for formal recognition and who implement a wider application of the FCNM.¹³

Though the FCNM cannot be relied on to protect a group on the grounds of a '[m]ere participation in a common social activity, without more',¹⁴ the requirement for a state to consider 'all groups in society'¹⁵ encourages an assessment of the ways in which the vegan community constitutes a strong, discrete minority group for the purposes of the FCNM.

4 Why consider veganism in relation to the FCNM?

There is no or very little explicit reference to veganism,¹⁶ formally or informally, in international rights and equality discourse or in the formulation of public and private sector policies and practices. Although the European Court of Human Rights (ECtHR) has recognised the ethical nature of the human relationship with nonhumans in terms of non-religious ethical orientation and freedom of conscience,¹⁷ the ambiguity of European Union (EU) law regarding non-religious belief has created a confused European legal landscape with regard to veganism. Further, rights and equality measures revolve around the idea of equality of individual human rights rather than emancipation from suffering and the moral imperative to deal with suffering as a result of speciesist prejudice. In this paradigm, the claims of vegans are set in the context of personal or significant personal disadvantage. Though the principle of non-interference in matters of freedom of conscience is paramount, whether or not vegans can be accommodated will be decided on the grounds of the legitimate aims of rules that serve the interests of the wider majority – and entrenched speciesist norms.

The normative principle of non-interference in human rights and equality law is, therefore, inadequate to ensure the protection of the vegan community and provide a suitable nurturing environment in which veganism can flourish. What vegans have, are useful theoretical legal principles that can be used to interpret current law and the articulation of a right under Article 9 of the ECHR to make a claim against interference in public authority contexts. The negative duty arising from such claims is, however, insufficient to support and protect vegans and allow veganism to thrive. Even in the UK where

¹² Advisory Committee Opinion on Germany, March 1st, 2006, ACFC/OP/II(2006)001, para 25-26.

¹³ For example, the Roma community is included under the FCNM in Cyprus without the need for formal recognition. See Second State Report submitted by Cyprus.

¹⁴ *Friend, The Countryside Alliance And Others v UK* App no 16072/06 and 27809/08 (ECtHR, 4 November 2009). The applicants in this case suggested that the UK hunting community ought to be beneficiaries of the FCNM.

¹⁵ Advisory Committee Opinion on the United Kingdom, May 35th, 2016, ACFC/OP/IV(2016)005, Summary, para 2.

¹⁶ For the unfamiliar, veganism is '[a] philosophy and way of living which seeks to exclude—as far as is possible and practicable—all forms of exploitation of, and cruelty to, animals for food, clothing or any other purpose; and by extension, promotes the development and use of animal-free alternatives for the benefit of humans, animals and the environment. In dietary terms it denotes the practice of dispensing with all products derived wholly or partly from animals'. The Vegan Society <<https://www.vegansociety.com/go-vegan/definition-veganism> > accessed 19 August 2017.

¹⁷ This is so not only by the finding in *H v UK*, but also in by other case outcomes. For example, the ECtHR has rejected that a right to hunting foxes with hounds comes within the scope of the right to freedom of conscience (*Friend, The Countryside Alliance and Others v UK* App no 16072/06 and 27809/08 [ECtHR, 4 November 2009] and in *Herrmann v Germany*, Judge Pinto argued that Article 9 is an important provision that gives expression to moral duties to nonhuman animals: App no 9300/07 ECtHR, 26 June 2012).

there is a strong historical liberal approach to accommodation in law,¹⁸ veganism is still subject to various social, cultural and political obstacles. For example, a professional sportsperson recently explained that she was told by the BBC not to mention her veganism in her forthcoming interview which she was giving because she had excelled in her sport. Similarly, many vegans report instances of unfair treatment and discrimination in various social and workplace contexts.¹⁹ In addition, a UK animal rights organisation has been prevented from using TV broadcasting;²⁰ in education, veganism is not sufficiently included in teaching and medical training. Vegans in employment worry about asking for synthetic shoes, gloves or other safety wear and about requesting 'dietary requirements'.²¹ Recently, a complete lack of understanding about veganism resulted in the National Health Service of the United Kingdom explicitly stating that vegans were not welcome to apply for one of their advertised vacancies.²² It is clear, then, that even in the UK and its very positive and liberal approach to inclusion, the vegan community is largely marginalised and dismissed: the situation in some other countries is much worse.

The FCNM offers much more to vegans than a mere negative duty of non-interference. This is because it is designed to prevent oppression, exclusion, marginalisation and assimilation by obligating contracting Parties to be pro-actively involved in supporting the minority community in question. The benefits for the vegan community are profound. Firstly, if vegans were beneficiaries of the FCNM, there would be institutional support for dismantling speciesist prejudice. There would also be institutional support for the protection and development of veganism. These factors bring about significant changes in social dynamics and impact positively on the transition to veganism. They also ensure a dramatic change in institutional policies and practices. They would support, for example, a restructure of educational and health care policies and practices and even encourage the development of infant formula for vegan parents.

4 Positive elements of the FCNM

There are a number of positive elements to consider in assessing the utility of the FCNM for the vegan community and some of them have been listed above. The first and most important point is that identification of a national minority begins with the self-identification of the group or some of its members (or that the group is entitled to benefit from the Articles of the FCNM).²³

Secondly, the FCNM obligates the state to implement specific measures in the interests of the national minority. Suggestions by the Advisory Committee include establishing a programme of

¹⁸ The UK Equality and Human Rights Commission cautions the public and private sector to be careful in their treatment of vegans on the grounds that current law is likely to accommodate.

¹⁹ Jeanette Rowley, 'Vegan Equality Survey (Draft)' available at https://www.academia.edu/12613803/Vegan_Equality_Survey

²⁰ *Case of Animal Defenders International v UK* [GC] App no 48876/08 (ECtHR, 22 April 2013).

²¹ Jeanette Rowley, 'Vegan Equality Survey (Draft)' available at https://www.academia.edu/12613803/Vegan_Equality_Survey

²² For more information see The Vegan Society < <https://www.vegansociety.com/whats-new/news/vegans-welcome-apply-%E2%80%93-it%E2%80%99s-law> > accessed 19 August 2017.

²³ Although members can opt out of accommodation and there should be no imposition of a cultural identity on any person or group of persons. See opinions on Russian Federation ACFC/INF/OP(2003)005, para 25; Ukraine, ACF/INFOP(2002)010, para 21.

consultation with representative of minorities when Parties are contemplating legislation or administrative measures that are likely to affect them directly.²⁴ Working with minorities and including them in the decision-making process are also suggestions that aim to empower minorities and create the positive conditions required for their growth.

A third positive factor is that although minority communities are obliged to respect the constitution and laws of the land, the content of constitutions and legislation does not permit Contracting Parties to ignore the provisions of the FCNM. The FCNM is grounded by the principles of international law and of tremendous significance is that the aim of the FCNM is to ensure that minorities benefit from whichever of the relevant national or international human rights legislation is most favourable to them.

Additional positive factors of the FCNM are that the Advisory Committee does not support distinctions on the basis of citizenship, length of residency or whether the community lives together in large numbers.²⁵ These inclusive factors recognise the principle in international law that '[t]he existence of communities is a question of fact; it is not a question of law'.²⁶ A final point to make on the benefits of the FCNM is that non-member states can become a contracting party, thereby expanding the scope of protection for minorities beyond Europe.²⁷

5 Resistance and obstacles

The FCNM is related to broader human rights principles that give due regard to the needs of minority communities who may be at risk from a dominant majority. United Nations cases under Article 27 of the International Covenant on Civil and Political Rights illustrate the importance of human rights protection for national minorities. These cases concern minority communities that enjoy their own language, occupy specific geographical space and observe historical traditions and ways of life that are very different to that of the majority.²⁸ This concept of national minority has influenced to a large extent the application of the FCNM in Europe. Contracting Parties have a wide margin of appreciation to determine how to implement the FCNM and it is typical to observe a narrow and restrictive application on the basis of ethnicity and race. For example, in the United Kingdom, if a minority group could bring an action under Race legislation, then it would also likely come within the scope of the FCNM. Notwithstanding, there is no definition of national minority or a comprehensive explanation of who can be regarded a minority.²⁹

²⁴ A recent public consultation in the UK concerned the use of an animal-derived polymer substrate in the manufacture of bank notes. Under this measure, vegans were encouraged to submit a response.

²⁵ The Advisory Committee has, for example, objected to the exclusion of members of the Roma (encompassing, travellers, gypsies and many diverse groups of the community of '*Gens du voyage*'). See First Opinion on the Netherlands.

²⁶ This quote is taken from the discussion in *Greco-Bulgarian Communities*, Advisory Opinion 1930 P.C.I.J (ser. B) no. 17 (July 31), 35.

²⁷ Being a Council of Europe treaty, it also has no bearing on Brexit.

²⁸ For example, *Chief Bernard Ominayak and the Lubicon Lake Band v Canada* Comm no 167/1984, UN Doc CCPR/C/38/D/167/1984, 10 May 1990; *Kitok v Sweden* Comm no 197/1985, UN Doc CCPR/C/33/D/197/1985 10 August 1988; *Angela Poma Poma v Peru* Comm no 1457/2006 UN Doc CCPR/C/95/D/1457/2006 27 March 2009

²⁹ For a discussion, see Eeyassu Gayim, *The Concept of Minority in International Law: A Critical Study of Vital Elements* (University of Lapland Press 2001). See also the critical review of this work by Kristin Henrard, 'Gayim E., 'The Concept of

An additional obstacle is that the obligations outlined in the FCNM, when applied to veganism, amount to contributing to the dismantling of institutional speciesist practices and would, therefore, likely be met with strong resistance.³⁰ It is this inevitable, subsequent institutional contribution to dismantling speciesist dominance, however, which is most appealing to a consideration of the utility of the FCNM for the vegan community. Its application may be the key to the formulation of a plural society that takes anti-speciesism much more seriously.

6 A way forward?

The proposed way forward takes into account the fact that veganism is not considered to be within the scope of human rights and equality provisions in many European and non-European countries. Though vegans should benefit from a range of positive, well-established human rights norms - such as the right to freedom of conscience, the right to practically manifest freedom of conscience, and various social and cultural provisions - the policies and practices of states inevitably favour those that protect entrenched speciesism. As such, veganism is marginalised, dismissed and largely misunderstood. Even in states that respect veganism when claims are made, they will concern only the ethical conscience of the individual claimant rather than the moral imperative to care about suffering nonhumans. Such individual claims of unfair treatment or interference will also be adjudicated in the context of the wider interest of the majority. These social and political conditions do not adequately give expression to the ethical vegan orientation to respect the moral standing of nonhuman animals, nor do they support or protect the vegan way of life for parents, schoolchildren, students, prisoners, those in police custody or public authority employees. In the context of universal human rights, the European principle of non-discrimination and the emphasis on inclusion and plurality, the FCNM is of enormous significance when considering the needs of the vegan community.

A proposed way forward is that the vegan community establishes a special committee to explore existing literature and jurisprudence on the FCNM. What could be more effective is if the global vegan community establishes an International Vegan Council,³¹ mandated by national vegan societies, to promote, protect and support veganism more vigorously in the political domain. The council would be responsive to legislation, practices and policies that do not recognise or support the vegan community. Its first task could be to examine the ways in which the vegan community can be considered a discrete minority group that is entitled to benefit from the pro-active support of state authorities under the provisions of the Framework Convention for the Protection of National Minorities.

Minority in International Law: A Critical Study of the Vital Elements', University of Lapland Press, Rovaniemi 2001, vi + 138 pp. ISBN 951-63334-793-2' [2002] 49(3) *Netherlands International Law Review* 408.

³⁰ For example, acting in the interests of vegans in relation to state policies and practices, rather than being under a mere duty not to interfere with the rights and freedoms of vegans under Article 9 of the ECHR is significantly more demanding and goes against established dominant speciesist norms.

³¹ Forming an 'association' in order to express and promote its identity may be instrumental in helping a minority to preserve and uphold its rights. *Gorzelik and Others v Poland* App no 44158/98 (ECtHR 17 February 2004). Regional vegan societies are thus, equally relevant.