

CORNISH ETHNICITY DATA TRACKING GROUP

SHADOW REPORT

UNITED KINGDOM'S (DRAFT) THIRD REPORT TO THE COUNCIL OF EUROPE UNDER THE FRAMEWORK CONVENTION FOR THE PROTECTION OF NATIONAL MINORITIES

About the Cornish Ethnicity Data Tracking Group

The Cornish Ethnicity Data Tracking Group (Cedtag) is a Cornish human rights and civil liberties research group established in 2006 as a result of concerns about the failure on the part of statutory bodies to collect even rudimentary statistical data on the Cornish. This missing information is the biggest statistical unknown in Cornwall, and one of national and international significance. The negative impact of this has been reinforced by the named exclusion of only the Cornish from protection under the UK Government's second FCNM State Report.

With a focus on promoting educational, economic and cultural equality, fairness and justice towards the Cornish, Cedtag has the aim, in association with other organisations, of securing full recognition and a viable future for the Cornish.

The Framework Convention for the Protection of National Minorities in the UK

The Cornish Ethnicity Data Tracking Group has identified a number of key issues in regard to the United Kingdom Government's (Draft) 3rd Report under the Council of Europe's Framework Convention for the Protection of National Minorities, and to the application of the Framework Convention in the United Kingdom and its efficacy in protecting minorities within the UK.

1. Reasons for signing the Framework Convention.

A fundamental flaw in this legislation as administered in the UK is that the reasons for the UK Government signing the Convention are not for the purposes for which the Convention was intended. The UK Government has admitted to signing the Convention not to protect minorities but to "underline its commitment to tackle racial discrimination". Tackling racial discrimination and the protection of minorities are not the same, and they require different measures and have differing results. The prevention of discrimination requires the elimination of imposed adverse distinctions, whereas the protection of minorities requires the establishment of safeguards to preserve distinctions voluntarily maintained. In the UK, combating racial discrimination is the function of Race Relations legislation while the protection of minorities is the role and purpose of the FCNM. By misapplying the Convention, its potential to protect minorities in the UK is effectively neutered.

2. Identification of included and excluded minority groups.

The Draft 3rd Report does not name the groups which are included within the Framework Convention, and neither does it identify the groups which are excluded. This makes it impossible for the Council of Europe, the Equality and Human Rights Commission, the Government itself or any other body to monitor the effectiveness of the FCNM in the UK on those who are included. It also means that UK legislators, policy makers and service providers are not provided with the information needed regarding which groups to award Convention rights and benefits to and it is not possible for public authorities, employees and service industries to know if they are carrying out their functions and if they have complied with or are breaking the law. To this effect, it would be particularly helpful for those involved in minority rights in the UK to have provision of a list of all the names of the minority groups which are included for protection within the FCNM in the UK, and a list of all the names of the groups which are excluded from protection.

3. Absence of definition of 'National Minority'

The UK Government states that “‘National Minority’ is not a legally defined term within the UK”, despite, of course, the term being used in the Human Rights Act 1998. In the UK determination of the groups who may be protected by the Framework Convention is currently a matter of interpretation by the Courts, a system which has the capacity to be arbitrary and is viewed as too narrow. These factors are not helpful in facilitating the potential of the Framework Convention in the United Kingdom.

4. Political Motives for the Content of the UK Draft 3rd Report.

The Framework Convention has always been used for political purposes in the United Kingdom but the Draft 3rd Report would seem to observers to be purely a vehicle for use in furthering a narrow Government agenda regarding race relations. The Cornish language is mentioned, but there is no reference to the corresponding Cornish ethno-linguistic minority, its distinct heritage and culture, and the protection of the identity of those who are Cornish. The Ulster Scots who were given real prominence in the UK 2nd Report have no mention made at all in the Draft 3rd Report. The Welsh Language is included in the Draft 3rd Report, but there is no reference to protecting or promoting Welsh identity, culture or heritage. Indeed, other than in the section on languages, just these 20 words are devoted to Scottish identity and culture: 'to raise awareness among school staff and pupils about Scotland's indigenous ethnic minority communities, and their place in Scottish society'. Europeans who form significant minority groups within the UK but who are neither Gypsy / Travellers nor 'visible minorities' are not mentioned in the Draft Report. Further to this, although the Draft Report explains that while those protected have to be both a 'racial group', and a minority in the UK, as each constituent country is addressed individually then only minorities within these countries are highlighted, thus avoiding detailing provision for those who, like the Welsh and the Scots are minorities within the UK overall. It would seem therefore that the Draft 3rd Report has the key political functions of assimilating the Black / Minority Ethnic (BME) groups, and providing for the Gypsy / Traveller groups who have no connection to a specific territory and thus prove no threat to the expansionary majority population, while eliminating for all practicable purposes any reference to protection of the indigenous / territorial / traditional minorities which include the Cornish and the Welsh.

5. Inclusion Dependent on Race Relations Case Law

The Advisory Committee has said that “on its own the 'racial group' criterion may result in exclusions from the Framework Convention's scope of application of groups that have legitimate claims to be covered. The Government should consider supplementing its current criterion based on recognition as a 'racial group' in case law with other criteria to ensure that an equitable approach to the Framework Convention's scope of application is pursued”

Further to this, some of the weaknesses as 'racial group' case law referencing as the sole determiner for protection are highlighted within the Draft 3rd Report itself:

' the inconsistencies in anti-discrimination legislation' 'existing legislation is often seen as a patchwork of coverage as a result of case law based on race'.

The history of case law recognition as the basis for inclusion within the FCNM in the UK shows many inconsistencies - for example, the June 1999 1st UK Compliance Report stated that Irish Travellers were a Convention group – but this group did not become case law recognised until August 2000. Although the Ulster-Scots are not case law recognised, the 1999 and 2007 UK Compliance Reports treated them as a Convention group. The 2007 UK Compliance Report actually states that Scottish Gypsies are not case law recognised, but that the UK authorities have decided to treat them as if they were and include them within the Convention. The Draft 3rd Report details support given to Circus and Showtravellers.

Additionally, the Draft 3rd Report refers to the ethnic groups used in the Census being standard, and yet not all of these groups have RRA case law references which, to take the Cornish as an example, under the standard Census classification individuals are rightly recognised as being Cornish, but according to the rigid UK Framework Convention criteria the same individuals are incorrectly seen as belonging to the majority English group.

Conclusion

Taking into account the evidence, also from Government, that the Framework Convention was not signed for the right reasons in the UK, the absence of lists of those who are included and those who are excluded from protection, the lack of a definition for a 'national minority', the political motives for the content of the Draft 3rd Report, and the much-criticised rigidity and potential subjectivity of Race Relations Act case law 'racial group' criterion for inclusion, it is evident that the key guidelines of the FCNM - “implementation of the Framework Convention should not be a source of arbitrary or unjustified distinctions” and “the main aim of the Framework Convention: to ensure the effective protection of national minorities and of the rights of persons belonging to those minorities” - are not, and cannot be fairly and justly effected in the United Kingdom under the current interpretation of the Treaty.