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Effective Participation and minority rights Protection: The case of the Irish Travellers

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Abstract

The following project aims to investigate how states facilitate human and minority rights action in relation to effective participation through the case of the Irish Travellers. This study was conducted through a single case study of the Irish government's key initiatives aimed at the protection of the Irish Travellers and their engagement with the wider society. Each of these key initiatives has been examined with the aim of uncovering how the concept of effective participation is represented in relation to the facilitation of engagement in both political and social life, and how these initiatives comply with the international obligations of the Irish state. The project concludes that the Irish government shows clear attempts at facilitating effective participation in both political and social life for the Irish Travellers, and that these efforts overall align with their international obligations.

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Introduction

Within the field of human rights, the protection of minority rights is an especially relevant topic to modern-day society. Despite this, however, certain minorities are far less often represented in the discussion. While Roma and Travellers are an often-researched group overall, this is far less often the case for Roma and Travellers living in the western European countries (FRA, 2020). Nonetheless, the Roma and Travellers living in western Europe still face marginalisation, discrimination and social exclusion to a shocking extent (FRA,2020). The protection of minority rights is not a simple task, and requires that specific attention is paid to the issues they face on the basis of simply being a minority, such as the effects of marginalisation and discrimination, as well as the specific issues that arise from their unique cultural, ethnic, religious and linguistic identities. Concern for the protection of these rights is an issue commonly found in international conventions, especially in relation to human rights. While many European countries pledge to protect minorities through the ratification of such treaties (OSCE, 2023b; Council of Europe, 2023a; Council of Europe. 1995, ECHR, 2000), the ways in which this protection is regarded and effectuated nationally can at times be questioned. The Irish Travellers are an ethnic minority commonly found throughout the Republic of Ireland and the United Kingdom (O'hAodha, 2012; Gmelch and Gmelch, 2014). For decades, they have been systemically marginalised both through discriminatory legislation at the hands of the Irish state, and by the wider Irish society (Boyle Et al., 2018; O'Connell, 2006; Irish Human rights and Equality commission, 2021). As such, they are a group who on paper are protected under the provisions of minority rights afforded to them by the international obligations of the Irish state in relation to human and minority rights. The Irish government has however repeatedly been criticised for a lack of timely action regarding the protection of the Irish Travellers (Irish Human rights and Equality commission, 2021; The journal, 2013; Ed Carty, 2016). This project seeks to investigate how the Irish state manages its responsibilities towards the protection of the Irish Travellers in relation to their international obligations through the following problem statement.

Problem statement

How does Ireland facilitate human and minority rights action in relation to effective participation for Irish Travellers in the Republic of Ireland?

Problem area

The following section will present aspects of human rights actions in relation to the Irish Traveller community. These aspects will be assessed with the aim of outlining the problem area which provides the basis for this project.

The Irish Travellers are a group of indigenous people native to the island of Ireland. Their history and connection to the island can be traced back several centuries, and up until the 1960s they were considered to be mostly nomadic in nature, travelling throughout the country (Haynes et. al, 2021, Gmelch and Gmelch, 2014). Today, however, most Irish Travellers who reside on the island of Ireland live in urban areas, and no longer practise a nomadic way of life, although the nomadic life remains a fundamental part of their shared identity, traditions and culture (Hayes et. al, 2021, Central Statistics Office, 2017). Irish Travellers consider themselves, and are considered by many, to be a distinct group who share a common language, history and identity which differs from that of the ‘settled’ Irish population (Hayes Et. Al, 2021). This has not always been the case: In 1963, the first report on Travellers commissioned by the Irish government stated that they were not to be considered a separate group, ethnicity or community, but should be viewed as a collective of individual ‘itinerants’ who posed a problem for the state, hereby initiating the long practice of assimilation policies which would be upheld by the Irish government for decades to come (Hayes. Et al. 2021; Boyle et.al, 2000). Prejudice against Irish Travellers has resulted in Travellers being victims of violence, intimidation, systemic discrimination and exclusion from rights and services to such a degree that the Equal Status Act of 2000 specifically protects the right to be free from discrimination on the grounds of being members of the Irish Traveller community (O’Connell, 2006).

In March 2017, Irish Travellers gained the status of an indigenous ethnic minority, after having been a documented part of the population on the island of Ireland for centuries (FRA, 2020). As a group, the Irish Travellers still face discrimination, not only in their daily lives from their fellow Irish people, but also systemically, in the way they are treated, perceived, and protected by the Irish government (FRA, 2020). It is however important to note that this recognition as an ethnic minority did not create any new fundamental rights for any part of the community, or any individuals within it, but was to be seen solely as a symbolic acknowledgement (Haynes et. al, 2021), signalling a definitive end to the aforementioned assimilation policies practised by the Irish government (Haynes et. al, 2021).

The continuous systemic discrimination and marginalisation of Irish Travellers previously fostered by the Irish state's assimilation policies and blatant racism has over the years caused damage to the Irish Traveller community and their relationship with the wider society, and as a result there is a reported lack of trust in the government from the Traveller community. Moreover, Ireland has repeatedly garnered criticism from the international community and human rights bodies for its lack of action in the protection of the Irish Travellers. (Irish Human rights and Equality commission, 2021; The journal, 201; Ed Carty, 2016)

Over the past decade, Ireland has begun to adopt and implement several initiatives in an effort to better the lives of the Irish Travellers who reside within the Republic of Ireland. This project aims at further investigating these initiatives in relation to core concepts of minority and human rights protection, and in relation to Ireland's international obligations.

Project outline:

The following project aims to investigate how the Irish state facilitates human and minority rights action for Irish Travellers residing in the Republic of Ireland from a legal human and minority rights perspective, through the concept of effective participation. To do so, domestic action plans from 2017 and onwards centred around the Irish Travellers, relevant policies, European and domestic legal frameworks will be assessed in relation to the opportunities for effective participation in public life for the Irish Traveller community. Furthermore, the project aims at assessing how this complies with the major international obligations to which Ireland is party.

Approach to the literature review:

The literature review has been approached from a thematic perspective, the aim being to uncover major themes and trends in the relevant literature within the field of human rights and protection of minority groups. This was undertaken in order to establish the appropriate approach to the theoretical framework and its construction. The literature has been collected on the basis of specifically chosen search terms which encompassed the scope of the field and the themes of the initial research inquiry. The initial search terms employed were as follows: "Human rights", "Minority rights", "Minority groups", "Irish Travellers" "Nomadic", "Indigenous peoples", "Human rights action" and "Discrimination". These were combined in

various ways, and based on the presented literature, the themes of ‘identity’, and ‘participation’ were detected. These were then combined with the initial search terms in a secondary collection round, which, combined with the initial literature search, laid the foundation for the following literature review. The selected literature covers the period from 2000-2023, to ensure timely relevance while still attempting to encompass an appropriate scope for the project.

Literature review:

The following literature review aims at investigating perspectives on human and minority rights protection and how these relate to the Irish Travellers. This section of the review will explore the major themes within the field and how these relate to the case of the Irish Travellers. Two major themes were uncovered in this process: Identity and Participation. The literature review outlines the significance of both of these concepts to ensuring and implementing adequate protection of minority rights and their relationship to the Irish travellers. The findings of the literature review will be utilised to guide the theoretical framework for the project going forward, drawing upon these concepts in the operationalisation of the analysis.

Identity:

Identity has been shown to be a crucial aspect, not only in relation to Irish Travellers but for minorities in general. A marker of identity is a component of what defines a minority, whether it be religious, cultural, ethnic or otherwise in nature, and the right of minorities to their identity is thereby foundational to the protection of minority rights (Henrard, 2000). However, in relation to human rights, identity presents a paradox, as identities are inherently personal but at the same time also shaped by external power mechanisms, which creates a problem for how the courts interpret the issue of identity –for instance in cases where the question of identity is crucial to the case (Al Tamimi, 2018). The importance of identity in relation to human and minority rights is illustrated by the study of the Roma identity at the European Court of Human Rights. Here it was exemplified how stereotypes and manipulated imagery create a gap between the legally protected rights and the social reality, while the applicants’ own perceptions of their identity played an important role in their perspective on the case (Farget, 2012). While the Irish Travellers and Roma are not be perceived as

interchangeable, the perspective brought forth offers an insight into the importance of identity in relation to the rights of minority groups. In the case of the Irish Travellers, ethnic recognition is an important step towards recognition of the Travellers' identity (Haynes et. al, 2021). This distinction supports the argument of racial discrimination of Travellers, and helps travellers to draw upon their ethnicity in claims for the rights already afforded to them as a protected group, but currently lacking in attention from agents of the Irish state (Haynes et. al, 2021). Likewise, any further legislation would have to heed this recognition, and attention would have to be given towards the obligations of the state, based on the protection of the rights of ethnic minorities, among whom it can no longer be disputed that Irish travellers should be included (Hayes. Et. al, 2021). In relation to participation, equality and identity, it is in the interest of minorities to have an influence over the rules that govern society, so as to negate any negative impact this might have on their minority identity (Henrard, 2019). Likewise, the attention given to the rights afforded by minorities often relates to matters of identity (Henrard, 2013). It is however important to note that, just as minorities can be constituted in many different ways (e.g. as cultural, linguistic or religious minorities, etc.), so can the relationship between participation and identity (Henrard, 2013).

Participation:

In the field of human rights, participation is presented as a crucial aspect in the protection of minority rights. Not only is participation a right that is protected under the Framework Convention for the Protection of National Minorities (FCNM), but in particular *effective* participation, under Section 2, Art. 15. This distinction is what sets the issue of participation apart from the other themes presented in this section. The use of the adjective 'effective' pinpoints the significance of participation, in that it serves as a crucial aspect in the group identity assertion of the minority community, as well as being essential to its interconnection to the wider community and the state (Ghai, 2001; Gilbert 2009; Verstichel, 2010).

Additionally, 'effective' then serves as a qualifier for the nature of the right in question, albeit a rather vague one (O'Connell, 2006; Verstichel, 2010; Kymlicka, 2008). The significance of effective participation is illustrated by the way in which the protection of minority rights is essential for all citizens of a state, and not just the minority in question (Ghai 2001; Verstichel, 2010; Kymlicka, 2008; Hadîrcă, 2019). The protection of minority rights has consistently been controversial, as failing to recognise the needs of a national minority or offering some form of public representation can lead to internal conflict within a nation-state.

If, on the other hand, this protection of rights and representation is perceived as overrepresentation and disproportionate, then the opposite situation can occur, where the majority population can believe this to be unjustified, and once again conflict may arise (Ghai 2001; Verstichel, 2010; Kymlicka, 2008; Hadîrcă, 2019). The significance of participation is then further placed in perspective via the difference between *representation* and *participation* – a distinction which highlights the importance of the effectiveness of said participation and the implementation of the mechanisms that secure it (Verstichel, 2010).

The significance of this distinction is that while mechanisms might be in place to secure representation for minorities in public affairs, for instance in decision-making processes, such as through occupying seats in national parliaments, this does not equal direct influence on those decision-making processes on behalf of the minority in question (Ghai, 2001; Verstichel, 2010). Such mechanisms furthermore do not negate the way in which such representatives will often still be outweighed in decision-making processes, and as such, without appropriate legal safeguards, the rights of minorities can still easily be outvoted. While representation still plays an essential role in the public participation of minorities, it is thus important to distinguish between active and effective participation, and mere representation (Ghai, 2001; Verstichel, 2010). With that established, it is important to note that effective participation can consist of much more than simply representation in a judicial or legislative sense. Participation can take many forms, both economic, cultural and social, and as such there are certain conditions to effective participation and a certain amount of ambiguity as to what effective participation in all these aspects entails (Ghai, 2001; Hadîrcă, 2019).

Turning our attention to how the concept of effective participation relates to the Irish Travellers, we see that while participation may be offered in legislation and in constitutional norms, this does not equal effective participation in practice (O’Connell, 2006). As discussed above, representation is not a direct avenue for participation, with minorities facing the issue of being outweighed in decision-making processes. The Irish Travellers have apparently previously been an example of this challenge (O’Connell, 2006). One major issue in the case of Irish Travellers, and perhaps also with other national minorities, is the issue of trust. As a minority, the Irish Travellers, being not only underrepresented but also heavily discriminated against, may not be inclined to trust governmental authorities, and may be reluctant to engage with opportunities for effective participation when these are presented to them, based on this

lack of trust. The result can be the possible breakdown of participation based on equality (O'Connell, 2006).

On the basis of the above literature review, we may conclude that in relation to the protection of minority rights, effective participation plays a major role, not only on the governmental side of the issue, but also on the side of the minority themselves, who can thereby represent and define themselves as a group and assert this identity within the wider community, which may be why much of the literature emphasises the significance of effective participation. Drawing on these points, the theoretical framework and the project going forward will also apply the concept of effective participation to outline how the Irish Travellers are represented as a group, and to the extent to which the Irish state ensures the protection of their rights as a national ethnic minority, both politically and socially.

Theory

Drawing on the themes identified in the literature review, the following theoretical framework will consist of a conceptualisation of effective public participation in relation to human rights action, and a description of how this will be utilised in this project. While there appears to be a firm argument for the significance of effective public participation in relation to both the identification of and the relationship between national minorities and the surrounding society, the manner in which this is conceptualised is a far more contested and complex issue. The following section therefore aims to present how effective public participation will be understood and conceptualised in this project, and how this conceptualisation will be further operationalised. Furthermore, the section aims at conceptualising government compliance with international obligations in relation to the concept of effective participation, and finally how these concepts come together to frame the perspective adopted throughout the analysis.

Effective public participation

While 'participation' itself may be conceptualised in many different ways, depending on the aspects of public life to which one is referring, adding 'effective' as a qualifier further complicates the matter. This project will take a two-pronged approach, focusing partly on public participation in terms of political participation through rights and representation, and partly on social public participation through anti-discriminatory and integration-related measures and the right of Irish Travellers to participation in cultural life and society. In

relation to the conceptualisation of effective public participation, I will draw upon various theoretical standpoints to create a framework that captures these elements. Some of the theoretical standpoints that will be drawn upon for the theoretical framework are themselves anchored in the *Lund Recommendations* of the Organization for Security and Co-operation in Europe's (OSCE) High Commissioner on National Minorities (HCNM). As Ireland is a participating state in the OSCE (OSCE, 2023b), this has been deemed to be of relevance to the case.

Effective public political participation

We will now direct our attention to effective public political participation, which for the purposes of this project will be defined as encompassing both legal and institutional measures for representation, and measures for direct participation. Thomsen (2019) divides the concept of effective public participation for minorities into two categories, which he calls, firstly, "Participation *de jure*", which is based on the Lund recommendations' conceptualisation of governmental obligations to ensure effective participation, and refers to any legal or policy frameworks or measures that the government employs to provide opportunities and tools for effective participation, and secondly "Participation *de facto*", which is based on the Lund recommendations' view of minority participation, and refers to how the national minority in question practises public participation (Thomsen, 2019). Each of these will then be further divided into *Opportunities* and *Means* for effective public participation, together with *Willingness* on the part of the minority to engage in effective public participation. However, no conceptualisation is provided for the *Willingness* aspect, which will not be further explored within this project (Thomsen, 2019). The above conceptualisation of effective public participation will be utilised in the analysis. For this project, I have chosen to focus on participation *de jure*, meaning that *opportunities* and *means* for effective public participation will be operationalised as "Participation *de jure*", examining any legal frameworks, actions plans or policies put in place by the Irish government to ensure effective public political participation for the Irish Travellers, or the lack thereof.

Effective public social participation

The concept of effective public social participation has been included in order to broaden the scope and understanding of the nature of effective participation for the Irish Travellers with a more sociological perspective. For this purpose, effective public social participation is defined as the participation of national minorities in the cultural life of society (Hadîrcă,

2019). A precursor of this is the ability to freely enjoy one's own culture and social life free from discrimination and as a part of the wider society, as participation for minorities is interconnected with consideration of equality, identity, and inclusion (Henrard, 2019). This project will focus on initiatives that aim at combatting said discrimination and fostering integration. While these are not exhaustive in relation to the possible reasons for the marginalisation of the Irish Travellers, they have been chosen as the focal points of this analysis, based on this conceptualisation. Borrowing from the model in Thomsen (2019), effective social participation will also be defined by the *opportunities* and *means* for public participation, defining these *opportunities* and *means* as legal frameworks, action plans or policies put in place by the Irish government in order to ensure public participation in cultural life and society, including initiatives to combat racism and discrimination, and initiatives to promote integration. Once again borrowing from the model in Thomsen (2019), the focus here will also be on participation *de jure*, thereby focusing on the governmental obligations to ensure effective social public participation.

For the sake of clarity, legal frameworks, action plans and policies will from here on be referred to under the blanket term "initiatives", with a distinction being made between political initiatives that would fall under the concept of effective public political participation, which from here on will be referred to as political participation, and social initiatives which would fall under the concept of effective public social participation, and which will also be shortened to social participation.

The initiatives identified in the analysis will subsequently be placed in relation to the international obligations of the Irish state, to assess the degree to which the initiatives put in place by the Irish state comply with and relate to said obligations. Additionally, the latest reports from relevant monitoring bodies and mechanisms will be utilised to give perspective on said initiatives and on Ireland's willingness to comply.

Governmental compliance:

The conceptualisation of governmental compliance utilised in this project is undertaken as it is a crucial element in the interplay between domestic policies and international law. For the purposes of this project, governmental compliance with international obligations will be defined as occurring when a state's actions and identity conform to the behaviour prescribed by the international obligations to which they are party (Koops, 2014). As such, non-compliance may be defined as not aligning or conforming to the behaviours and identity prescribed by a state's international obligations. However, it is important to consider how

compliance and non-compliance are to be defined (Koops, 2014). It may be argued that non-compliance would need to be a significant deviation from the prescribed behaviour in order to merit criticism, and thus not every instance of deviation should be considered non-compliance (Koops, 2014). It is therefore important to identify the factors at play before defining an instance as non-compliance. Such factors might be the cost of enforcement vs compliance, or the prevention of social loss (Koops, 2014), which might be less beneficial to the state and its citizens in the context in question. Optimal compliance thus comprises the assessment criteria, rather than perfect compliance (Koops, 2014). With that in mind, the conceptualisation that will be adopted for this project aligns itself overall with the normative perspective of compliance theory, meaning that the underlying assumption is that states act and conform to international law under the guidance of ethics and morality, rather than cost benefit and self-interest. Not all instances of non-compliance are thus done with the intention of non-compliance, as some could be the result of communicational, informational or capacity issues, either known or unknown by the state (Koops 2014).

This conceptualisation of compliance may be argued to be a rather simple one, but has been chosen as this project does not seek to establish *why* or *why not* the Irish state complies with its international obligations in relation to minority rights, but rather takes a descriptive stance, seeking only to uncover whether compliance with said obligations exists. The concept will be operationalised as a marker of Ireland's compliance with its international obligations when looking at the initiatives adopted by the Irish state in relation to the Irish Travellers, and how well it complies with or relates to said obligations.

Methodology:

The approach of the project will mainly be descriptive in nature, aiming to examine how effective participation affects Irish travellers in terms of securing their rights and whether the Irish government is complying with its international obligations in a way that benefits the Traveller community. The project aims to investigate whether the initiatives adopted by the Irish state comply with its international obligations in relation to the protection of minority rights in the case of the Irish Travellers. The descriptive approach adopted by the project means that the project will aim to particularise and describe the current situation within the field, which may then later be applied in further analysis of the wider phenomenon. To do so I have chosen to conduct a single case study. The single-case approach has been chosen as the project aims to gain insight into the phenomenon of human and minority rights action and

protection, as exemplified through the case of the Irish Travellers. The following section will expand upon the case selection and its limitations.

Case selection

The following section will outline the choices made in connection to the selection of the case. The case consists of several parts: firstly, the Irish Travellers as a national minority, and secondly, the international obligations of the state of Ireland in relation to the protection of minority rights, including human rights obligations.

Irish Travellers:

It is important to note that while the Irish Travellers may by name be identified as ethnically Irish, they are, as we have touched upon, recognised as a separate group. Additionally, they also do not solely consist of individuals who live within the Republic of Ireland, but on the entire island of Ireland and parts of the mainland UK (O'hAodha, 2012; Gmelch and Gmelch, 2014). This project aims to look specifically at Irish Travellers who are citizens of the Republic of Ireland, and who thereby fall under the jurisdiction of the Irish state and the treaties to which it is party. For the purposes of this project I have chosen to focus on the Irish Travellers and their rights as a minority, and less so as a nomadic group. This is not to say that this aspect does not provide perspective to the project and has merit in itself as a crucial part of the identity of the Irish Travellers; however, the majority of Irish Travellers in Ireland today are considered to be settled and are no longer practicing a nomadic lifestyle to the same extent as previously (Hayes et. al, 2021, Central Statistics Office, 2017). This aspect of their identity is not however to be overlooked and will still serve as a frame of reference.

Considering the unique situation of the Irish Travellers and the fact that their status as an ethnic minority has only recently been afforded to them and was for a while highly contested (O'Connell, 2006), they cannot be considered to be typically representative of all European nomadic minorities. The nomadic minorities of Europe are distinct groups who are not interchangeable. However, the study of the Irish Travellers can still provide perspective in terms of the broader phenomenon of the protection of nomadic minorities, as the challenges of discrimination, lack of representation and opportunities for public participation are not exclusive to the Irish Travellers, and an understanding of how they are affected by these challenges can provide perspective on the challenges of other European nomadic minorities.

International obligations

For this project, I have chosen to focus on the European Convention on Human Rights (ECHR) and the European Framework Convention for the Protection of National Minorities (FCNM), to both of which Ireland is a party. While there are certainly interesting perspectives to be gained from other treaties or aspects of international law such as the UN Universal Declaration of Human Rights, or more broadly, the notion of customary law, for this project a more regional approach, limited to Europe, has been deemed to be a better fit, considering the scope of the project, but also as it provides an opportunity for the type of in-depth analysis appropriate to a single-case study, while simultaneously not limiting the future opportunities for a case study based on the same parameters.

The European Convention on Human Rights

The European Convention on Human Rights (ECHR) was initially adopted in 1950 and serves as a prerequisite to joining the Council of Europe, of which Ireland is a founding member and thereby a party (Council of Europe, 2023a; Council of Europe 2023b). The implementation of the Convention is overseen by the European Court of Human Rights. An individual can only bring a complaint of human rights violations before the Strasbourg court once all domestic opportunities have been exhausted within the member state in question (Council of Europe, 2023a). The convention spans a number of sections and protocols, each detailing different dimensions of human rights (ECHR, 2000). For the purposes of this project the focus will be on the protocols and articles which either concern minority rights or are commonly associated with minority rights. The commonly cited articles of the European Convention on Human Rights in relation to minority discrimination cases are protocol 1, Articles 8, 9, 10, 11, and 14, which have been used to offer protection to minorities or used in attempts to bring cases before the ECHR (Goldston, 2010, Medda-Windischer, 2003,). Article 14 directly prohibits discrimination on the grounds of sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or status (ECHR, 2000). Article 14 is of an accessory nature and is mainly but not solely applicable in relation to substantive rights in the convention, of which 8 – *The right to respect for private and family life*, 9 – *Freedom of thought, conscience and religion*, 10 – *Freedom of expression*, and 11 *Freedom of assembly and association*, are considered (Goldston, 2010).

Additionally, Protocol 12, which was adopted in the year 2000, is concerned with the general prohibition of discrimination, and states that:

“All rights set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, or other opinion, national or social origin, association with a national minority, property, birth or other states.” Protocol 12, Art. 1, Paragraph 1. Page 51. (ECHR, 2000),

and:

“No one shall be discriminated against by any public authority on any ground as those mentioned in paragraph 1” Protocol 12, Art. 1, Paragraph 2. (ECHR, 2000)

It should be noted that Ireland has signed but not ratified Protocol 12, and is thereby not yet party to it (Danish Institute for Human Rights, 2023). The focus of this study will be on the rights afforded to Irish Travellers on the grounds of non-discrimination, as per Protocol 1 art. 14, and Protocol 12 Art.1, paragraphs 1 and 2 (ECHR, 2000). However, as Ireland has yet to ratify Protocol 12, it will not be a foundational aspect of the study in terms of the human rights obligations of Ireland, but will merely serve to provide perspective. The project will analyse the initiatives adopted by the Irish government to ensure the protection of this right for Irish Travellers, and whether in these initiatives the state lives up to its obligations of non-discrimination as set forth by the aforementioned articles. Additionally, the latest report from the European Commission against Racism and Intolerance (ECRI), one of the human rights monitoring bodies operating within this field, will be utilised to provide perspective on how Ireland handles said obligations.

The aim is to investigate whether efforts are being made towards upholding this obligation in relation to the concept of effective public participation, and not whether or not discrimination occurs towards Irish Travellers.

The Framework Convention for the Protection of National Minorities

The Framework Convention for the Protection of National Minorities (FCNM) was adopted in November 1994 and entered into force in February 1998. Today, the Convention is in force in 39 EU member states, of which Ireland is one (Council of Europe, 2023c; Council of Europe, 2017). The Framework Convention aims at protecting the rights of individuals

belonging to a national minority, such as but not limited to the free expression of ethnic, cultural, linguistic and religious identity, the right to freedom from discrimination, the right to use minority languages, the ability to influence public decisions made in relation to issues affecting persons belonging to national minorities, and participation in cultural, social and economic life. The protection of these rights is considered a state obligation under the Framework Convention (Council of Europe, 2023c). That said, the Framework Convention has been named as such due to the nature of its provisions, which can be translated into each country's specific situation through governmental policies where appropriate, and through national legislation (Council of Europe, 2023c). In the case of Ireland, it is important to note the Irish Travellers are not considered to be a national minority, in accordance with their own wishes, as expressed through the four national Traveller NGOs (Council of Europe, 2017). This is due to the concept not being applicable to their self-identification (Council of Europe, 2017). Ireland has also not made any declarations regarding the application of the Framework Convention to any minority in particular. Ireland has however chosen to recognise the special position of Irish Travellers in governmental provisions designed to protect their rights, and the state reports issued under the Framework Convention substantially deal with matters relating to the Irish Travellers (Council of Europe, 2017). As such, the Framework Convention has been deemed for the purpose of this project to be applicable in relation to the concepts under study, and Ireland's governmental initiatives will be assessed in relation to certain provisions of the Framework Convention. Specifically, this project aims to investigate Ireland's relation to the provisions under Section 2, Art. 15:

“The parties shall create the conditions necessary for the effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs, in particular those affecting them” – (FCNM, 1995, 6)

Ireland's compliance with the provisions under this article of the Framework will be assessed through any relevant key initiatives adopted by the Irish State from 2017 onwards, and will be considered in the wider perspective of Ireland's protection of minority and human rights in relation to the Irish Travellers. The latest report from the Advisory Committee that monitors the implementation of the Framework Convention (Council of Europe, 2023d) will be utilised to gain perspective on Ireland's willingness to comply with the provisions under the convention.

The Lund Recommendations on the Effective Participation of National Minorities in Public Life

The Lund Recommendations is a set of High Commissioner on National Minorities (HCNM) recommendations on the effective participation of national minorities in public life (OSCE, 2023a). The Recommendations aim to provide direction and guidance to OSCE-participating states, of which Ireland is one (OSCE, 2023b), in relation to the participation of minorities within their state (OSCE, 2023a). The Recommendations cover general principles of participation, including participation in elections and decision-making processes at all levels of government, constitutional and legal safeguards, and self-governance.

The Irish state's commitment to protecting minority rights and ensuring effective participation will not be directly assessed in relation to the Lund Recommendations. However, the conceptualisation of effective participation as conceptualised within the Lund Recommendations is foundational for certain theories utilised in part of the theoretical framework.

Government and local initiatives

As the analysis will consist of an examination of action plans, policies and other initiatives within the field of the protection of Travellers' rights and effective public participation, certain choices have also been applied concerning which documents to include. Documents relating to initiatives that came into effect before 2017 have been omitted, unless the initiative or policy had a significant impact on other, more recent initiatives, in which case it will be analysed in relation to the contemporary initiative in question, or unless the initiative was adopted before 2017 but had a period of implementation that continues through the year 2017 and beyond. The year 2017 has been chosen to ensure timely relevance, and because the official recognition of the Irish Travellers' status as an ethnic minority took place in 2017. While, as stated, this did not officially change the rights afforded the Travellers, it was deemed to be of significant importance to the Traveller community and their status within the wider Irish society. It is utilised as a marker for change, and thereby serves as the cut-off point for the analysis. A similar choice has had to be made in terms of the level of governance at which the initiatives have been implemented. I have chosen to focus mainly on state-wide initiatives, with the exception of local and regional initiatives that are implemented as part of a state-wide initiative.

Limitations

In addition to the limitations presented in the case selection, certain further limitations apply. Firstly, the project focuses only on one aspect of human and minority rights action and on policies regarding Irish Travellers. This project thus only represents a snapshot of the case of the Irish Travellers and the challenges they face within the field of the human and minority rights action, and a snapshot of the general challenges of the Irish Travellers as a whole. In addition, this project only investigates the documents, action plans and policy papers available to outsiders. Any local or regional initiatives that may not have been accessible or which are beyond the scope of the project have not been included, and one cannot therefore dismiss the possibility that there are aspects of the phenomenon that are not comprehensively considered within the study. Likewise, certain theoretical choices made in the conceptualisation of the concepts, the choice of data and the structuring of the theoretical framework limit the scope of the project considerably. By choosing to focus primarily on the governmental aspects of ensuring effective public participation and its significance to the protection of minority and human rights, and on non-discrimination and integration measures in relation to the social aspects of public participation, there are again aspects of the phenomenon which may not be considered within the limits of the scope of the project.

Analysis:

Five key initiatives adopted by the Irish state were identified and analysed in relation to how the Irish state ensures effective public participation, with regard to the concepts of effective political participation and effective social participation, respectively. Subsequently, each of these five initiatives was then assessed in relation to Ireland's international obligations, the European Convention on Human Rights and the Framework Convention on the Protection of National Minorities. The five key initiatives analysed are as follows: *Tithe an Oireachtais (Houses of the Oireachtas) Joint Committee on Key Issues Affecting the Traveller Community*, *An Rionn Dlí agus Comhionannais (Department of Justice and Equality) National Traveller and Roma inclusion strategy 2017-2021*, *An Roinn Slaínte (Department of Health) National Traveller Health Action Plan*, *An Garda Síochána (Irish Police Force) Diversity and Integration Strategy*, and *Rialtas na hÉireann (Government of Ireland) National Action Plan against Racism*. Other initiatives were identified but deemed not relevant for the project, and were therefore excluded.

Effective public participation

Among the five initiatives, three were identified as having elements referencing effective political participation. In both the National Inclusion Strategy and the National Traveller Health Action Plan, recognition was expressed of the importance of securing Traveller representation in decision-making processes. The National Health Action Plan set forth a goal for Travellers to be represented in local, regional and national health-related structures (An Roinn Slaínte, 2022). While this is not directly representation for Travellers in a traditional political context, it expresses the goal of including Travellers in decision-making processes and structures, and is thereby interpreted as an indicator of participation *de jure*, with the Roinn Slaínte recognising its responsibility in ensuring representation for Irish Travellers within the health-related structure of government. Likewise, in the National Traveller and Roma Inclusion Strategy, the objective of supporting Traveller participation in political life was expressed. Here, a direct goal of political participation was put forth, stating that direct support would be given to Irish Travellers and Roma organisations to support voter education and voter registration (Rionn Dlí agus Comhionannais, 2017). Furthermore, an objective was set forth to support Traveller and Roma organisations in facilitating engagement and leadership within their communities, as well as the express promise that the Rionn Dlí agus Comhionannais would support the development of the capacity of Travellers and Roma to represent their communities at local, national and international level (An Rionn Dlí agus Comhionannais, 2017). Additionally, the Roinn Leanaí agus Óige (Department of Children and Youth) set forth the objective of developing mechanisms for young people to facilitate and participate in Comhairle na nÓg (Rionn Dlí agus Comhionannais, 2017), an Irish youth council programme which facilitates influence on local decision-makers on behalf of Irish youth (Comhairle na nÓg, 2023). Likewise, programmes and services have been designed to ensure active participation of Traveller and Roma youth in their structures (An Rionn Dlí agus Comhionannais, 2017). The objectives and goals set forth in the National Traveller and Roma Inclusion Strategy once again show recognition of the importance of representation and participation of Travellers at many different levels of governance and across different policy areas. This is interpreted as an indicator of participation *de jure*, and the recognition by the government of Ireland of its responsibility in the facilitation of mechanisms that can ensure political participation. This is particularly expressed in the final report of the Joint Committee on Key Issues for Irish Travellers, where it is noted that the lack of Traveller

representation on local councils actively blocks the implementation of initiatives relating to Irish Travellers. This comes as the local council members have significant authority over the final approval of proposals (Tithe an Oireachtais, 2021), which has subsequently led to delays and failure to deliver on certain objectives set forth by the national action plans (Tithe an Oireachtais, 2021). The reasons why these proposals are being voted down are not expressed in the report, but this may be interpreted as an indicator of lack of representation. However, the recognition of this failure points to a lack of participation *de jure*, or is at the very least a recognition of failure to facilitate effective political participation in this area.

The National Traveller and Roma Inclusion Strategy also contained elements referencing effective social participation, alongside two other initiatives, namely the An Garda Síochána Diversity and Integration Strategy and the National Action Plan Against Racism. The National Traveller and Roma Inclusion Strategy included references to social participation in several areas. In the area of children and youth, the objective that youth programmes should be culturally sensitive and inclusive in an appropriate manner was expressed, and special focus was given to the rights of Traveller and Roma children, specifically in terms of working to ensure coherence with the ten basic principles on Roma inclusion adopted by the European Commission (An Rionn Dlí agus Comhionannais, 2017). The ensuring of these rights, in addition to youth programmes being developed in a culturally sensitive way, is for the purpose of this project interpreted as measures of non-discrimination and integration, as it is interpreted as fostering the right to fully enjoy one's own culture. These measures will thereby be interpreted as an indicator of participation *de jure* in relation to social participation, as there is a focus on developing mechanisms for non-discrimination and integration on the part of the government. On the aspect of community, several measures have been put in place. The Garda Síochána are to consult Travellers on ways to ensure that crime and what is labelled 'anti-social behaviour' are responded to effectively, and that the community is protected. Likewise, the Gardaí are to be trained in ways that ensure a greater understanding of the Traveller community (An Rionn Dlí agus Comhionannais, 2017). Similarly, within the field of public services, there is an objective to ensure that all government departments and agencies provide anti-racism and cultural awareness training for all relevant public service staff (An Rionn Dlí agus Comhionannais, 2017). Once again, we see measures that recognise the need for Travellers to be represented, included and consulted on initiatives that affect their community, and we also see anti-discrimination measures being included, further indicating that the government recognises the need for effective

participation and its responsibility in the matter, and the manner in which this extends into such areas as law enforcement and public services. A similar aim has been presented in the National Action Plan Against Racism, where support for the representation and participation of ethnic minorities in all aspects of life in Ireland, especially in areas where they are currently underrepresented, is expressed alongside new measures set in place to strengthen protection from racism (Rialtas na hÉireann, 2023). It is however important to note that neither Irish Travellers nor any other minority group are specifically mentioned within the action plan (Rialtas na hÉireann, 2023), the only qualifier here being the use of the term “ethnic”, meaning that Irish Travellers qualify due to the 2017 recognition of their status as an ethnic minority. However, this measure has nonetheless been deemed to fall under social participation *de jure*, despite not explicitly referring to Irish Travellers.

Lastly, the Coimisiún na hÉireann um Chearta an Duine agus Comhionannas (The Irish Human Rights and Equality Commission) promises in the National Traveller and Roma Inclusion Strategy to consult Traveller and Roma organisations in developing training for government departments, statutory agencies and local authorities on implementing the public sector duty in ways that systematically and pre-emptively address human rights and equality issues in their daily work. This will once again be interpreted as an anti-discrimination measure and a recognition of the responsibility of the government and its departments in ensuring the protection of the Irish Travellers’ minority and human rights, here represented by ensuring effective social public participation.

Governmental compliance and international obligations

In terms of the governmental compliance of the Irish state with its international obligations, the same five key initiatives have been analysed and assessed in relation to the European Convention on Human Rights and the Framework Convention for the Protection of National Minorities. Overall, Ireland appears to be willing and striving to comply with its international obligations in the protection of minority and human rights. With the clear signs of recognition of both political and social effective public participation throughout the five key initiatives, there is a strong indication that Ireland is attempting to comply with the provisions under Section 2, Art. 15 of the Framework Convention. Whether its efforts are sufficient cannot be concluded on the basis of this study, and would require separate investigation. However it may still be concluded that Ireland is attempting to create the necessary conditions for the effective participation of persons belonging to national minorities in cultural and social life and in public affairs, as prescribed under article 15. The effective participation in economic

life which is also mentioned under article 15 was not analysed in this study, and cannot therefore be commented on. The aspect of effective participation appears to be an integral part of Ireland's strategy within the field of minority rights, as a concept that is both directly and indirectly referenced throughout all the five key initiatives, as illustrated above.

Directing our attention to the European Convention on Human Rights, the same pattern seems to emerge. While this analysis does not gauge whether the initiatives are sufficient or successful in their protection of the human rights of Irish Travellers, we do observe an awareness of the issue and active efforts to improve the situation which go beyond simple recognition of the existence of a problem. While not every relevant law under the jurisdiction of the Irish state was analysed, and we cannot therefore draw any definitive conclusion as to Protocol 12 and its component provisions, we do see initiatives which relate directly to ensuring non-discrimination in a myriad of different sectors, and a high level of awareness of the importance of these rights under the provisions of Protocol 1, art. 14.

With that in mind, when we turn to the latest ECRI Report on Ireland from 2019, we see that concern was expressed concerning Ireland's lack of contemporary legislation on the topic of racism (ECRI, 2019). Ireland subsequently chose to rectify this by adopting the National Action Plan Against Racism and the An Garda Síochána Diversity and Integration Strategy, alongside other initiatives. This was noted positively by the ECRI, and it was concluded that Ireland had partially implemented the recommendations (ECRI, 2021). There were other recommendations and criticisms within the report, such as the continuing failure to provide adequate accommodation for Irish Travellers, and the fact that Roma are not included in the plans for providing accommodation under the National Traveller and Roma Inclusion Strategy. The recommendations for change in these areas were thus not deemed to have been successfully implemented, despite encouraging developments (ECRI, 2021). Ireland has also still not ratified Protocol No. 12 of the ECHR, despite this also being recommended by the ECRI (ECRI, 2019; Danish Institute for Human Rights, 2023). With this in mind, it can be argued that Ireland is aware of its shortcomings, and, through the initiatives adopted, has shown that it is willing to comply with the recommendations of the ECRI and the provisions of the ECHR, in areas where the country has the capacity to do so. To fully conclude on this matter, one would have to further investigate the specific cases of non-compliance and the capacity of the Irish state, but the findings of this study can serve as indicators of a willingness to comply, at the very least. In terms of the European Framework Convention on the Protection of National Minorities, the latest report from the advisory committee on

Ireland was due in 2015 and was finally published in 2017, which is before most of the initiatives analysed for this project were fully adopted and implemented. As such it can be difficult to gauge whether Ireland has fully complied with the recommendations given in the report, since no subsequent report has so far been released. There are however mentions of some of the measures we see in the key initiatives. In terms of Art.15 of the Framework Convention, in its 2017 report the Advisory Committee invites the Irish authorities to consider legislative and practical measures which will create the necessary conditions for political participation of Irish Travellers in consultation with representatives from the community (Council of Europe, 2017), in connection with which efforts to address the key initiatives have been observed, namely in the National Traveller and Roma Inclusion Strategy. Likewise, the Advisory Committee urged the Irish authorities to develop specific programmes addressing all key issues of discrimination, access to health care, employment, and housing (Council of Europe, 2017), in which connection efforts have been observed to accommodate the five key initiatives. In 2019, the final resolution on the implementation of the Framework Convention for the Protection of National Minorities by Ireland was published, in which it was recommended that Ireland adopt an implementation plan for the National Traveller and Roma Inclusion Strategy in co-operation with the Traveller and Roma communities, to ensure that the measures contained in the strategy were implemented without delay, and were monitored (Committee of Ministers, 2019). Whether such a plan is underway remains unknown at the time of writing. While this once again indicates a willingness by the Irish government to comply with the provisions of the Framework Convention and the recommendations of the Advisory Committee, the degree and capacity of this willingness cannot be concluded on the basis of the findings of this study.

To conclude the analysis, Ireland has actively attempted to meet its international obligations to provide the necessary conditions for effective public participation in both political and social life, as evidenced by its extensive national strategies and plans aimed at securing participation and non-discrimination for Irish Travellers within the Irish state. There is also an observable willingness to comply with said international obligations, and a recognition of the responsibility to facilitate the protection of minority rights.

Discussion

On the basis of the findings of the analysis, we can see that while human rights legislation and other major bodies of law might be perceived to be set in stone from the day they are ratified, there is in reality a lot more to the process. Stating that discrimination is prohibited does not mean that it does not happen, and most of the actual direct legislation is enacted at the domestic level, after a state has bound itself under the provisions of a treaty or convention. As such, actual mechanisms must be in place to ensure that those rights are actually protected. Ratification thus in certain respects resembles a vow to comply with the provisions, much in the same way as a signature acts as a vow to ratify later on. That said, in the case of Ireland there seems to be a willingness to comply, despite this compliance not always being wholly or successfully implemented. From this, one might question whether a willingness to comply at the national level is sufficient to implement actual mechanisms that protect the rights of minorities. The findings of the analysis show that in certain instances action plans have been blocked at local level due to a lack of representation from the Traveller community. As is often the case with minorities, Travellers are a marginalised group, and marginalised groups may exhibit behaviours that are not desirable to the surrounding community, furthering the separation between the wider society and the Travellers. As mentioned, this has in Ireland been labelled as “anti-social behaviour”. The question that thus arises is whether inclusion strategies and national action plans against racism, while they are nice to have, are sufficient to implement real change at local level. Even if Travellers were to be represented on local councils, mechanisms would have to be in place to ensure their representation was actually proportional on issues relating to them, or else they could easily be downvoted. As a minority, it seems likely that this would be the case in local councils. This brings us back to some of the major issues associated with ensuring effective participation that have been highlighted in the literature, namely that mere representation does not equal direct influence, and that mechanisms would have to focus on influence rather than representation in order to actually secure effective participation in decision-making processes. This in turn brings us to the issues of proportionality, as such mechanisms would have to avoid undermining the influence of other parts of the local communities to a degree where conflict might arise. As such, while it might be a more complicated process to actually address the issue of marginalisation in order to negate the opposition of the local community towards integrating Travellers and the opposition of the

Irish Travellers to integrating with the local community, it might be more sustainable in the long run. Unfortunately, this type of action is given less focus in the national initiatives. The issue of the marginalisation of the Irish Travellers is deeply rooted in the history of Ireland, and for decades has been enforced systemically through legislation (Irish Human rights and Equality commission, 2021; Boyle et.al, 2018). One could argue that it is as a result of this marginalisation that lack of trust in the authorities is now one of the major issues that confronts the state in relation to the Traveller community. While the five key initiatives have been created in collaboration with NGOs such as the Irish Traveller Movement, and thereby to some extent introduce an element of representation for the Irish Traveller community, one could also argue that these organisations are comprised of the most resourceful members of the community, who have a willingness to collaborate, and are thus not necessarily representative of the community as a whole. The lack of trust that is endemic in the community needs to be directly addressed, alongside efforts to reduce marginalisation, if effective participation is to be achieved in the long run. While some of the measures analysed indicate both the Irish state's recognition of this responsibility and quite large-scale efforts to facilitate participation, it can be argued that this is more focused on dealing with the effects of marginalisation rather than addressing the root cause of conflicts within local communities as a result of the systemic racism that has been built up through generations. It is thereby not enough to show a willingness to comply with international obligations at the national level if there is a strong opposition at the local level. One can then argue that while human rights obligations may seem inviolable, this is not the case and many violations do happen at local level. While these might not always make it all the way to the court in Strasbourg, they are still the lived experience of members of minority communities, and the effects can lead to long-term issues if they are not appropriately addressed at the root cause by the domestic state.

Conclusion:

This project set out to investigate how Ireland facilitates human and minority rights action in relation to effective participation for Irish Travellers in the Republic of Ireland. This has been undertaken by a single case study analysing five key initiatives of the Irish state on the protection of minority groups in relation to the Irish Travellers and effective public participation. In addition, the extent of these initiatives' compliance with Ireland's international obligations was also assessed. On the basis of the findings of this study, it may be concluded that Ireland seemingly recognises its responsibility to facilitate the protection of minority rights and human rights action through non-discrimination and integration initiatives and through political representation and community leadership initiatives. In relation to the international obligations of the Irish state, the initiatives studied show a possible willingness of the Irish state to comply with said obligations, as there were elements within the different initiatives that addressed key provisions of each of the analysed international conventions: the European Convention on Human Rights and the Framework Convention on the Protection of National Minorities, respectively. However, it may be questioned whether these initiatives adequately facilitate the protection of minority rights for Irish Travellers, as they do not address some of the key issues associated with effective public participation. Further research into this would have to be conducted to sufficiently investigate this inquiry. This project can thereby conclude that Ireland facilitates human and minority rights action through national actions plans and strategies that align with its international obligations. While these are not entirely focused on the concept of effective public participation, this is a concept addressed in the facilitation of said initiatives.

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