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A PECULIAR CASE OF MONITORING.
MINORITY RIGHTS IN ROMANIA
AS SEEN THROUGH THE LENS
OF THE ACFC AND THE COMEX

Abstract: Romania submitted its state report to the Framework Convention on the Protection of National Minorities (FCNM) and the European Charter for Regional and Minority Languages (ECRML) roughly at the same time, however, the evaluation reports of the two bodies took rather different turns. The paper analyzes these two documents comparatively, and contrasts them to the earlier evaluation reports as well. The comparison highlights several textual differences and sheds light on the attitude of the two evaluation committees. The argument of the paper can be summarized in three points: 1) the two reports interpret differently many aspects of minority rights in Romania, and seemingly only in the case of the FCNM did the input of minority NGOs make a difference; 2) the usability of the two reports depends on the context in which one wants to use them: the FCNM report has more of an agenda setting effect, while the ECRML focuses on legally more accurate recommendations; 3) the technical and standardized approach of the Committee of Experts of the ECRML is not always suitable to describe the holistic situation of minority languages in a country.

Introduction

The period 2016–17 was an important one for minority rights in Romania, as the state submitted its periodical report both to the Framework Convention on the Protection of National Minorities (hereinafter FCNM or Framework Convention) and the European Charter for Regional and Minority Languages (hereinafter ECRML or Language Charter) roughly at the same time (2016 February for the former, and 2016 March for the latter).

1 Bethlendi András is the beneficiary of the Collegium Talentum 2018 Programme of Hungary.

Additionally, ethnic Hungarian NGOs and political organizations were visibly more active internationally in this period, as several shadow reports were submitted to the two monitoring bodies, the Advisory Committee of the FCNM (hereinafter ACFC) and the Committee of Experts of the ECRML (hereinafter COMEX).

The monitoring procedures of the two bodies, although similar in their protocol, took different turns. While the COMEX organized its on-the-spot visit quite early (10–13 May 2016), without meeting the representatives of ethnic Hungarian NGOs in the country, the ACFC took its time and realized its visit between 3–7 April 2017, and met with most of the Hungarian stakeholders. Furthermore, the COMEX radically changed its reporting measures, and has presented shorter and more technical reports. Despite these procedural differences both reports were adopted almost at the same time, in 22 and 23 June 2017, but the ACFC report was made official only in February 2018 along with the comments of the Romanian state.

Even without these procedural differences the comparison of the two documents is an intriguing task. As both reports refer to the same period and received similar inputs, the comparison should point out the internal logic of the two monitoring bodies. Neither reports were the first of their kind (the FCNM is at its fourth cycle, the ECRML at its second), and both received important critical inputs from the minority's side concerning the Romanian minority rights regime. In other words, by comparing the 2017 reports with earlier ones, the weight of these inputs can be measured and the “big, overall picture” presented by the two documents can be grasped.

Having these objectives in mind, the paper argues that the two reports interpreted differently many aspects of minority rights in Romania. While in the case of the FCNM, minority NGO input clearly made a difference in interpreting and evaluating the Romanian situation (compared to previous reports), this was less visible in the case of the ECRML. Also, it argues that the usability of the two reports depends on the context in which one wants to use them. The Fourth Opinion of the Advisory Committee of the Framework Convention has a strong agenda setting effect, while the Second Report of the Committee of Experts of the Language Charter formulate legally more accurate recommendations. Furthermore, we argue that the technical and standardized approach of the COMEX is not always suitable to describe the holistic situation of minority languages in a country.

The paper has the following structure. First, we present the general interpretation of the two documents in the scientific literature, and their importance from the perspective of minority rights and advocacy. Second, we analyze how the assessment of the Romanian

minority rights regime evolved from one reporting period to the other, emphasizing both the role of minority input and the perceived philosophy of the monitoring committees. Last, we compare the two documents, underlining the most important differences in their approaches.

International and European treaties on minority rights at a glance

Before analyzing how the two monitoring committees perceived and evaluated the minority rights situation in Romania, it is important to understand the purpose of the documents concerned, and how they can influence and improve the situation in countries that accepted and ratified its regulations. This is a central question, as neither document guarantees enforceable rights, but encourages states to accept and implement some measures for the protection of minorities and their languages.²

Despite this obvious flaw, the enforcement of these documents is not impossible. Simmons argues that international human rights documents can influence state action in three ways: 1) it has an agenda-setting power, putting minority and human rights issues on the formal agenda, 2) it can provide legal resources for strategic litigation, and 3) channel political mobilization on the issue.³ In other words, ratified international and European treaties can serve as political, legal and discursive resources for minority groups.

Another important aspect of how human rights norm infusion works is related to local and international advocacy NGOs. In a quantitative study on human rights situation around the world, Neumayer proved that human rights implementation is far better in those countries where there is a working civil society and where advocacy NGOs are active and strong.⁴ These findings are strengthened by several other authors as well,⁵ who argue that norm-violating states tend to change their attitudes and actions if they are pressured both from “above” (monitoring bodies of international treaties and international NGOs) and “below” (local advocacy NGOs and other stakeholders) at the same time.

2 Xabier Arzo, "The Nature of Language Rights," *Journal on Ethnopolitics and Minority Issues in Europe* 6, no. 2 (2007).

3 Beth A. Simmons, *Mobilizing for Human Rights: International Law in Domestic Politics* (Cambridge ; New York: Cambridge University Press, 2009).

4 Eric Neumayer, "Do International Human Rights Treaties Improve Respect for Human Rights?," *Journal of Conflict Resolution* 49, no. 6 (2005).

5 Thomas Risse-Kappen, Steve C. Ropp, and Kathryn Sikkink, *The Power of Human Rights: International Norms and Domestic Change*, Cambridge Studies in International Relations (New York: Cambridge University Press, 1999); Margaret E. Keck and Kathryn Sikkink, "Transnational Advocacy Networks in International and Regional Politics," *International Social Science Journal* 51, no. 159 (1999).

From an analytical point of view, international treaties act in two dimensions. First, they put pressure on states: by their agenda setting power they act in a *discursive dimension* where claims are made, and state need to adapt to these. Second, as they give guidance and legal resources to NGOs, international treaties are activated in a *legal dimension* as well: human rights activists try to influence the state's action by validating the existing legal norms through legal actions and the courts. For a successful claim making, both dimensions need to be activated.

The ECMRL and FCNM monitoring reports

The ECRML and the FCNM are not human rights treaties *par excellence*, thus many scholars have questioned the power of these documents. They are considered to be part of the so called “rebirth of minority rights”,⁶ which have lobbied for positive measures in the accommodation of minorities.

Many even have argued that the ECRML is not even a human rights document, as its subjects are not people but regional and minority languages.⁷ Also, its concept that states can choose which obligations they undertake questions the universality of the ECRML, as minorities will receive case-by-case protection and not dedicated rights. In contrast, other scholars believe that it is exactly this ‘outside the box’ approach that makes it successful: since states choose which provisions to implement, the ECRML can be more efficient than the universal counterparts.⁸ Correspondingly, by applying this *à-la-carte* method, the creators of the ECRML hoped that they could create some ‘objective’ standards in language policy, which eventually could bind states to create their own operational and accountable language policy.⁹

6 Will Kymlicka, *Multicultural Odysseys: Navigating the New International Politics of Diversity* (Oxford ; New York: Oxford University Press, 2007), 27–55.

7 Jean-Marie Woehrling, “Introduction” in *Shaping language rights. Commentary on the European Charter for Regional or Minority Languages in light of the Committee of Experts’ evaluation*. ed. Alba Nogueira López, Adiaro J. Ruiz Vieytez, Inigo Urrutia Libarona (Strasbourg: Council of Europe Publishing, 2012), 19.

8 Gábor Kardos, *Kisebbségek. Konfliktusok és garanciák* (Budapest: Gondolat, 2007).

9 Stefan Oeter, “Working with the Language Charter Committee of Experts,” in *Minorities, Their Rights, and the Monitoring of the European Framework Convention for the Protection of National Minorities: Essays in Honour of Rainer Hofmann*, ed. Tove H. Malloy and Ugo Caruso (Leiden: Martinus Nijhoff Publishers, 2013), 207.

On the same token, many critics of the FCNM argue that the document itself does not give more rights and possibilities to minorities than the already existing human rights treaties, such as Article 27 of the International Covenant on Civil and Political Rights, adopted by the UN in 1966. Two critical remarks are behind this statement. Some argue that 1) the FCNM formulates only very general provisions, leaving the state too much room to fulfill its commitments, and that 2) it does not define national minorities, thus it is not clear who the subjects of the treaty are. While both remarks are partly true, most scholars agree that the importance of the FCNM lays in its wide acceptance, relatively detailed agenda setting capacity,¹⁰ and its integration in the EU-conditionality system.¹¹ Furthermore, as many authors involved in the formation and standardization of the monitoring process argue, by relying on dialogue and persuasiveness, the ACFC slowly carved its way to accumulate “soft power”, and became a normative actor in minority rights whose opinions are noticed by both states and international institutions. Also, based on the result of the monitoring process, the ACFC developed a specific instrument called thematic commentaries that have the objective to define and interpret the general provisions. Through the thematic commentaries the ACFC tries to standardize and homogenize how the provisions can be interpreted, and thus tries to narrow the maneuvering capacity of the states.¹²

The work of the two monitoring committees is very important on both analytical levels presented in the previous section from at least three perspectives. First, their evaluation reports are the main sources of pressure of the international community. Second, they serve both as resource and reference for local advocacy NGOs in their work. Third, they want to promote an active and fruitful relationship with local NGOs, which are considered as the main pillars of democracy, and encourage them to give additional information on how the different provisions of the treaties are implemented in the country.¹³

10 Although on general terms it can be compared to Article 27 of the ICCPR, but it formulates provisions in different domains of public and private life, which makes it easier to refer to, compared to the generalist formulation of the UN document.

11 The ratification of the FCNM was part of the EU conditionality system for CEE countries. Its impact was widely debated in the literature. See among others: Melanie H. Ram, "Democratization through European Integration: The Case of Minority Rights in the Czech Republic and Romania," *Studies in Comparative International Development* 38, no. 2 (2003); Gwendolyn Sasse, "EU Conditionality and Minority Rights: Translating the Copenhagen Criterion into Policy," *EUI Working Papers*, no. 16 (2005); Jakob Skovgaard, "Power Beyond Conditionality: European Organisations and the Hungarian Minorities in Romania and Slovakia," *Journal of International Relations and Development* 14, no. 4 (2011).

12 Francesco Palermo, "Addressing Contemporary Stalemate in the Advancement of Minority Rights: Commentary on Language Rights of Persons Belonging to National Minorities," in *Minorities, Their Rights, and the Monitoring of the European Framework Convention for the Protection of National Minorities: Essays in Honour of Rainer Hofmann*, ed. Tove H. Malloy and Ugo Caruso (Leiden: Martinus Nijhoff Publishers, 2013).

13 Eduardo J. Ruiz Vieyetz, *Working Together: NGOs and Regional or Minority Languages ; the European Charter for Regional or Minority Languages* (Strasbourg: Council of Europe, 2004).

To avoid confusion, first 1) we assess how the main statements of the two committees evolved from the previous monitoring cycle, and then 2) we compare how they interpreted the Romanian minority rights situation in their last reports, being aware of the fact that they had received similar input from minority NGOs.

Comparing two generations of the ACFC and the COMEX reports to themselves

Similarities and differences between the third and fourth ACFC reports

In the case of the FCNM, Romania reached its fourth monitoring cycle, and seemingly the ACFC opinion has a stable structure. It starts with an executive summary and a general overview of the current situation. Then it reiterates the recommendations formulated in the previous report and examines the actions the state have taken in these matters. After these general assessments, the documents present the findings of the ACFC on an article-by-article basis. A slight difference can be observed in the closing sections of the two reports. While in the conclusion of the Third Opinion the ACFC presented separately positive developments, issues of concern, issues for immediate action and further recommendations, in the fourth report only recommendations for immediate action and further recommendations appear.

There is a slight structural difference in the case of the article-by-article analysis as well. In both reports, each article is structured according to topics or themes that are related to the article, however, the content of each topic differs. While in the 2012 report the ACFC reiterated its recommendations from the previous monitoring cycle, presented the current situation, and formulated recommendations for each of the addressed topics, the 2017 report presents the situation and formulates recommendations without explicitly recalling the recommendations from the previous monitoring cycle.

Problems may arise when one tries to select the content that focuses on one specific minority. The ACFC focuses on the implementation of each article in a general manner. However, we wanted to compare only those findings and recommendations that referred to ethnic Hungarians. We considered a statement relating to Hungarians if it explicitly referred to the Hungarian minority, to religious groups related to Hungarians, or if it used

the phrase “larger minority groups”.¹⁴ On the second level, we coded all statements in the report by sentiment. If the Advisory Committee formulated critiques toward the state, they were coded as negative, and if they appreciated the developments positively or described them neutrally, they were coded as positive. In the case of recommendations, three variables were used. As the ACFC formulates specific recommendations only related to the Roma, we coded these recommendations separately, while the rest were divided between the “general” and “Hungarian related” categories. A recommendation was coded Hungarian related if it was based on Hungarian-related statements.¹⁵

As a result of some political actors’ statements,¹⁶ the Hungarian public opinion unanimously celebrated the appearance of the Fourth Opinion of the ACFC as a breakthrough in the assessments of the Romanian minority rights regime. This optimism was based on a more accentuated presence of Hungarian issues in the reports. As Table 1 shows, the Fourth Opinion used the word “anti-Hungarian” for the first time in the case of Romania.

Table 1: The number of appearances of different concepts

Concepts	3 rd Opinion	4 th Opinion
anti-Roma	1	5
anti-Hungarian	0	6
anti-Semitic	5	2

This change of perspective can be confirmed if we analyze the statements of the recommendations more deeply. As shown in Table 2, in 2017 the number of negative statements related to Hungarian issues had grown to 34 compared to 7 in 2012, while the number of

14 There are two larger minority groups in Romania: Hungarians and the Roma. However, the ACFC opinions specifies the Roma when referring to their problems. Therefore, we can reasonably assume that the phrase “larger minority groups” refer mostly to Hungarians.

15 Ex. if the report “notes with regret” that minority language is not used by local authorities and refers to a survey on Hungarian language use (Paragraph 90 of the Fourth ACFC opinion), the recommendation that follows (“*The Advisory Committee reiterates its call on the authorities to ensure that the legal provisions on the use of minority languages in dealings with local administration are fully implemented.*” Paragraph 96 of the Fourth ACFC opinion) was coded as Hungarian related.

16 See for example a press release of RMDSZ: Kelemen Hunor: az Európa Tanács szakértői testületének véleményezése az igazságról szól, koránt sincs rendezve a magyar kérdés Romániában. RMDSZ 21 February 2018 (<http://www.rmdsz.ro/sajtoszoba/hir/kelemen-hunor-az-europa-tanacs-szakertoi-testuletenek-velemenyezese-az-igazsagrol-szol-korant-sincs-rendezve-a-magyar-kerdes-romaniaban> – downloaded on 27 January 2019)

positive statements decreased from 19 to 13. Also, it is important to mention that this tendency is characteristic to almost all fields. The only exception can be found in comments related to territorial reform, where the ACFC basically reiterated its 2012 statements.

Table 2: Recommendations and statements related to Hungarians

	Hungarian related recommendations	Statements				
		Negative		Positive		
		4th OP	3rd OP	4th OP	3rd OP	4th OP
bilateral cooperation	0	0	1	0	0	0
education	2	0	3	1	2	3
interethnic relations and identity	5	0	10	3	2	4
language use in administration ¹⁷	6	4	9	1	2	2
media	3	0	4	0	4	4
participation	0	0	2	0	2	3
financial support	0	0	1	0	1	2
restitution of property	1	1	3	1	0	1
territorial reform	1	1	1	1	0	0
Total	18	6	34	7	13	19

¹⁷ Including place name signs.

A similar picture emerges if we look at recommendations linked to Hungarians. In 2017, 18 recommendations rooted in statements related to Hungarians, compared to 6 issued in 2012. This represents 31.6% of the total recommendations, compared to the 12% of the previous reporting cycle (see Table 3). Another important novelty is that while in 2012 all Hungarian-related recommendations were found in Chapter II of the Report, in 2017 four thematic recommendations organized in two bullet points appear in the concluding sections under Further recommendations as well. These can be more significant as according to the ACFC, they “could serve as the basis for the resolution to be adopted by the Committee of Ministers with respect to the implementation of the Framework Convention by Romania.”¹⁸

Table 3: The number of recommendations according to their intent

	General	Hungarian related	Roma	Total
4 th Opinion	21 (36.8%)	18 (31.6%)	18 (31.6%)	57
3 rd Opinion	27 (54.0%)	6 (12.0%)	17 (34.0%)	50

This overall critical attitude is reflected discursively as well. For example, in the executive summary of the 2012 report, the positive measures taken by the Romanian authorities in different issues were emphasized, and attention was drawn only to some persisting problems.¹⁹ The negative aspects were presented dominantly by formulations such as “it has to be noted, however” or “there are concerns”, and no Hungarian-related observations were made. In contrast, in 2017, in many instances this type of balancing wording disappears,

18 Paragraph 163 of the Fourth Opinion of the ACFC

19 Ex.: “The authorities continue supporting the cultural activities of national minorities and the financial resources allocated to support them have been maintained or increased in recent years, in spite of economic difficulties. *There are concerns, however*, that in spite of the increase, the insufficiency of these funds may lead to a further weakening of ethnic identities and the progressive assimilation of persons belonging to national minorities, particularly the numerically-smaller ones, into the majority society.

The authorities maintain their efforts to increase awareness of the whole population, including persons belonging to national minorities, politicians and the media of the need for tolerance and respect for diversity, and to counteract prejudices against the Roma. It has to be noted, however, that negative attitudes and prejudices against persons belonging to certain national minorities, in particular the Roma, continue to be reported.” (Executive summary of the Third Opinion of the ACFC)

and only the negative aspects are emphasized.²⁰ Also, the report uses a more direct and criticizing language toward the state, such as “*need to be addressed immediately*”, “*minority protection is disjointed, piecemeal, full of grey zones and open to contradictory interpretation*”, or “*considerable concern*”.

As shown in Table 2, major changes in the evaluation of minority rights appear in four topics: interethnic relations, language use in administration, education and media. In the following we will examine these topics in detail.

In the case of identity and interethnic relations (Articles 3, 5 and 6 of the FCNM), the Fourth Opinion clearly shifts toward analyzing Hungarian claim-making. While in 2012 the Hungarian related topics included the rights of the Csángós to self-identification²¹ and the tense Hungarian–Roma relations in the Szeklerland,²² in 2017 additional, and more central claims of the Hungarian political parties and NGOs appear, such as the refusal of authorities to refer to the name Szeklerland,²³ and the actions of the Romanian state in the case of the recognition by UNESCO as non-material heritage of humanity of the annual pilgrimage to Șumuleu Ciuc (Csíksomlyói búcsú).²⁴ In addition, the report discusses in detail the “anti-Hungarian” sentiment and discourse appearing in different fields (politics, media and sports),²⁵ emphasizing a “mainstreamization” of the phenomenon and portraying a worrying general picture in the matter. Also, three of the recommendations formulated in this domain are related explicitly or implicitly to these events,²⁶ and the recommendations are repeated in the concluding section as well. Discursively, the Advisory Committee uses unusual heavy language, such as “regrettably” (Paragraph 14), “notes with deep concern” (Paragraph 60), “alarmingly” (Paragraph 61) or “calls on the authorities” and “take decisive action” in its recommendations.

A similar shift can be observed in the case of language use in administration and place name signs (Articles 10 and 11 of the FCNM). Although some problems related to language

20 “(...) Existing legislation regulating different aspects of national minority protection is disjointed, piecemeal, full of grey zones and open to contradictory interpretation. A coherent policy to guarantee access to minority rights is still lacking and respect of rights of persons belonging to national minorities varies according to local conditions and the goodwill of the municipal or regional authorities.

Persistence of negative attitudes and prejudice against the Roma and anti-Hungarian sentiment is of considerable concern.” (Executive summary of the Fourth Opinion of the ACFC)

21 Paragraphs 35, 39 and 40 of the Third Opinion of the ACFC

22 Paragraph 104 of the Third Opinion of the ACFC

23 Paragraph 51 of the Fourth Opinion of the ACFC

24 Paragraph 52 of the Fourth Opinion of the ACFC

25 See several paragraphs in the introduction and Paragraphs 14 and 60–63 of the Fourth Opinion, where the concept is used next to “anti-Roma”.

26 Paragraphs 54, 65 and 67 of the Fourth Opinion of the ACFC

use in administration appeared already in the Third Opinion, these were relativized by the emphasis put on the responsibility of the citizens. For example, it “*notes with regret that in, practice, the right to use one’s minority language in dealings with local authorities in the counties where the number of persons belonging to a certain minority is higher than 20%, is not always respected*”, but in the same paragraph it stated that “*in practice, persons belonging to this minority use Romanian in dealing with public administration in order to ensure more expeditious dialogue with the authorities.*”²⁷ This is a problematic approach as it suggests that members of the minority should be partly blamed, while research show that the problems in language use can be explained by the fact that local administrations do not offer the necessary support for citizens to pursue their rights.²⁸ In contrast, the Fourth Opinion delivers a detailed statistical description of the situation and presents some case studies in the matter.²⁹ Also, the 2017 report clearly emphasizes the responsibility of the state, without using the relativizing language that characterized 2012 report. As for the recommendations, the Fourth Opinion repeats the recommendations from the previous report but in a more explicit manner. While in 2012 it “invited the authorities to consider (...) the adoption of measures which would facilitate the use of minority languages”,³⁰ in 2017 it “reiterated its call on the authorities to ensure” that legal provisions in the matter are fully implemented.³¹ Also, in 2017 further recommendations were formulated regarding a flexible approach to language use in areas where minorities live in substantial numbers (Paragraph 97), and the establishment of bilingual standardized certified administrative forms (Paragraph 98 of the Fourth Opinion of the ACFC). These recommendations were reiterated in the concluding sections of the document as well.

The other aspect of language use is related to bilingual place signs. Article 11(3) of the Framework Convention states that states “*shall endeavor (...) to display traditional local names, street names and other topographical indications intended for the public also in the minority language.*” Despite the clear wording—and the fact that in Romania bilingual street name signs and other topographical indicators are not even regulated by law—the Third Opinion of the ACFC depicted a positive picture on the implementation of these undertakings. In comparison, the 2017 report draws a more nuanced picture. While it appreciates some actions of the Romanian state (e.g., bilingual signs in Cluj-Napoca in Paragraph 102

27 See Paragraph 136 of the Third Opinion of the ACFC.

28 Tibor Toró, “Egy helyben topogva? Kisebbségi nyelvi jogok alakulása Romániában 2008 és 2015 között,” *Magyar Kisebbség* 21, no. 2 (2016).

29 See Paragraphs 88–94 of the Fourth Opinion of the ACFC.

30 Paragraph 139 of the Third Opinion of the ACFC

31 Paragraph 96 of the Fourth Opinion of the ACFC

and other municipalities where the percentage of Hungarians does not reach 20% in Paragraph 100), it criticizes the implementation of the law on several accounts. First, it deals in detail with the question of bilingual street signs. Paragraph 99 underlines the shortcomings of the legal regulations, while Paragraph 101 notes the lack of bilingual street signs in some municipalities where the 20% threshold is met. As for the recommendations, the Fourth Opinion of the ACFC “asks the authorities [to] take more proactive measures” (Paragraph 103) to implement the provisions of Article 11(3). The recommendation also appears in the closing sections of the report. This puts more pressure on the state than the recommendations formulated in the previous cycle, which only encouraged authorities “to pursue a constructive dialog” regarding place names.”³²

The Advisory Committee’s comments about minority language media fit in the trend. The 2017 report presents several problems of public media broadcast that were related to the Hungarian minority, such as the reception of Hungarian TV channels (Paragraph 15) and the “unsuitable broadcasting hours” of some minority language programs (Paragraph 81). A third important issue is related to the decision of the National Council for Combating Discrimination (NCCD) that obliged a smaller municipality to finance the publishing of a bilingual newspaper, even though the municipality’s population is overwhelmingly Hungarian. According to the interpretation of the Advisory Committee, this type of protection of Romanian-language speakers hampers the possibility of minorities to publish newspapers. Consequently, “the Advisory Committee notes in this context the need for the authorities to uphold support for minority language print media which, due to their small size, are often not commercially viable” (Paragraph 84). These topics are reiterated in the recommendations as well. The authorities are “invited” and “encouraged” to resolve the problems appearing in broadcasting (Paragraph 85), and the ACFC calls upon the state to “*take the necessary legislative and administrative measures which would guarantee the possibility for local newspapers to be published in languages of national minorities with the support of local authorities, without impeding access of speakers of other languages to information*” (Paragraph 86).

The general trend is present in the chapter on education as well, but in numerically less significant numbers. The most important critical assessment in this matter is the comment made on the situation of the Rákóczi Ferenc High School in Târgu Mureş/Marosvásárhely, a school established by the Catholic church. The school’s operating license was withdrawn in an unclear manner, and the Anti-Corruption Agency accused its director

32 Paragraph 143 of the Third Opinion of the ACFC

with continuing abuse in office³³ (Paragraph 118). The issue was “noted with concern” by the Advisory Committee, and called upon the authorities to “take urgent steps” to resolve the situation of the school (Paragraph 119). In addition, the 2017 report makes references to the Hungarian opinions regarding the situation of the Hungarian departments at the Medicine and Pharmacy University (Paragraph 127), and the teaching of Romanian language as a foreign language for minorities (Paragraph 124). This latter issue even receives a recommendation in the report: the advisory committee “strongly recommends” the authorities to introduce a more flexible examination of the Romanian language and literature for minorities, ensuring that “the exam corresponds to the curriculum used to teach the subject” (Paragraph 129).

Similarities and differences between the first and second COMEX reports

The Language Charter radically changed its reporting procedure in 2017. Although it kept its language-centered structure from the previous reporting period (the Charter protects languages, and states chose personalized provisions for each of the languages it had selected to protect), and started with a general overview of the current situation of the implementation of the Charter, it also made severe changes in the logical structure and content of each chapter. The introductory part of the first periodic report contained general information about the ratification of the ECRML, the work of the COMEX, the demographic situation of the examined minority or regional languages, and issues related to the evaluation process and the application of undertakings. The second periodic report starts with a short “Executive Summary” and contains several critical assessments related to the implementation of the provisions of the Charter.

The most important difference between the two reports is the methodology of the evaluation of the undertakings in Part II and Part III of the ECRML. There are several key differences in this regard.

First, the 2012 report examined Part II (Article 7 on the objectives and principles of the ECRML) separately, and evaluated only the situation of those languages to which PART III

33 See for example: “Katolikus gimnázium: vádat emelt a DNA Tamási Zsolt és Štefan Somešan ellen”, *Krónika*, 22 September 2017 (<https://kronika.ro/erdelyi-hirek/katolikus-iskola-vadat-emeltektamasi-es-somean-ellen> – accessed on 20 January 2019)

was not applicable.³⁴ In contrast, the second report examined these undertakings for all languages.

Second, the 2012 report presented the level of fulfilment of each undertaking and provision of the Charter in a descriptive manner, giving concrete examples and dedicating paragraph-long explanations why it considered an undertaking *fulfilled*, *partly fulfilled*, *formally fulfilled* or *not fulfilled*. Also, recommendations were inserted after each explanation. In the second periodical report, the COMEX chose to describe the situation in a more condensed structure. On the one hand, it created five rating categories (*Fulfilled*, *Partly fulfilled*, *Formally fulfilled*, *Not fulfilled*, *No conclusion*)³⁵ and three tendency indicators (↗improvement, ↘deterioration, = no change). Each undertaking from Part II and III got a separate rating and tendency indicator, which was presented not descriptively, but in a table for each language. All explanations were presented after the table and were added only in those cases where the rating changed. Recommendations appear at the end of the chapter dedicated to each language, in a thematically organized manner, on an article-by-article basis.

In other words, in order to analyze how the Committee of Experts interpreted the situation of the Hungarian language, we needed to compare only the information presented in the first chapter and those parts of the reports that refer to the Hungarian language.³⁶ A slight problem emerged because of the radically different methodology and structure of the second report. To avoid this challenge, we analyzed three types of statements: the assessment of the undertakings, the recommendations, and the critical remarks. In the case of assessments, first we needed to recode and ‘downgrade’ the statements from the initial report in a table with similar structure and characteristics as presented in the second report. Also, as an extensive number of recommendations and critical remarks were formulated in each report, we needed to analyze these comparatively as well.

34 The following languages fell into this category: Albanian, Armenian, Greek, Italian, Yiddish, Macedonian, Polish, Romany, Ruthenian and Tatar.

35 The report defines each of these categories in the following way:

- *Fulfilled*: Policies, legislation and practice are in conformity with the Charter.
- *Partly fulfilled*: Policies and legislation are wholly or partly in conformity with the Charter, but the undertaking is only partly implemented in practice.
- *Formally fulfilled*: Policies and legislation are in conformity with the Charter, but there is no implementation in practice.
- *Not fulfilled*: No action in policies, legislation and practice has been taken to implement the undertaking or the Committee of Experts has over several monitoring cycles not received any information on the implementation.
- *No conclusion*: The Committee of Experts is not able to conclude on the fulfilment of the undertaking as no or insufficient information has been provided by the authorities.

36 In the case of the first chapter of the report, where the general language policy of the country is assessed, we applied the same methodology as presented in the case of the ACFC.

Unlike the report of the FCNM, the Second Report of the COMEX did not receive that much of a praise. This can be explained by several factors. First, the radical methodological change made the report hard to decipher, and second, it lacked strong critical statements regarding the perceived unfair treatment of the Hungarian speaking population, which could have resonated with the public opinion.

As one can see from Table 4, from the 60+1 (Art. 11.1.a (ii) contains two undertakings) Hungarian language-related undertakings 23 was changed in a positive direction,³⁷ and none of the undertakings received a worse rating. The number of undertakings where the COMEX did not formulate any conclusions decreased from 28 to 9,³⁸ and only two undertakings, the obligation to use Hungarian in public services and to set up a Hungarian television channel were considered *not fulfilled*³⁹. Two undertakings related to language use in courts were rated *formally fulfilled*⁴⁰, and 16 undertakings were considered *partly fulfilled*⁴¹. The number of *fulfilled* undertakings doubled, from 16 to 32.⁴² In other words, the COMEX did not observe any degradation in the implementation of a Charter regarding the Hungarian language.

37 The evaluation of the following articles changed positively: 8.1.f (i), 8.1.g, 8.2, 9.1.a (ii), 9.1.a (iii), 9.1.b (ii), 9.1.b (iii), 9.1.c (iii), 9.2.a, 10.2.f, 10.5, 11.1.e (i), 11.1.f (i), 11.1.g, 12.1.b, 12.1.c, 12.1.g, 12.1.h, 12.2, 13.1.a, 13.1.c, 13.2.d

38 Art. 8.1.i, 9.1.d, 10.2.c, 10.4.c, 12.3, 13.1.b, 13.1.d, 13.2.c, 14.b.

39 Art. 10.3.a, 11.1.a (ii) (television).

40 Art. 9.1.c (ii), 9.1.c (iii).

41 Art. 8.1.d (i), 8.1.f (i), 8.1.g, 8.1.h, 10.1.a (ii), 10.1.b, 10.2.b, 10.2.d, 10.2.g, 10.4.b, 11.1.d, 11.1.f (i), 12.1.b, 12.1.c, 13.2.d, 13.2.e.

42 Art. 8.1.a (i), 8.1.b (i), 8.1.c (i), 8.1.e (i), 8.2, 9.1.a (ii), 9.1.a (iii), 9.1.b (ii), 9.1.b (iii), 9.2.a, 9.3, 10.1.c, 10.2.e, 10.2.f, 10.5, 11.1.a (ii) (radio), 11.1.b (i), 11.1.c (i), 11.1.e (i), 11.1.g, 11.2, 11.3, 12.1.a, 12.1.d, 12.1.e, 12.1.f, 12.1.g, 12.1.h, 12.2, 13.1.a, 13.1.c, 14.a

Table 4: Changes in the assessment of the undertakings based on the comparison of the two COMEX reports⁴³

		Fulfilled	Partly fulfilled	Formally fulfilled	Not fulfilled	No conclusion
Education	2012	4	2	0	0	4
	2017	5	4	0	0	1
Justice	2012	1	0	3	0	5
	2017	6	0	2	0	1
Administrative authorities and public services	2012	1	7	0	1	4
	2017	4	6	0	1	2
Media	2012	5	2	0	1	2
	2017	7	2	0	1	0
Cultural activities and facilities	2012	4	0	0	0	6
	2017	7	2	0	0	1
Economic and social life	2012	0	1	0	0	6
	2017	2	2	0	0	3
Transborder exchanges	2012	1	0	0	0	1
	2017	1	0	0	0	1
Total	2012	16	12	3	2	28
	2017	32	16	2	2	9

If we look more closely at the 23 positive changes (Table 5), a more nuanced picture emerges. 19 of these were changed from *no conclusion* to *formally*, *partly* or totally *fulfilled*. This means that in 2012 the COMEX did not have enough information to conclude on these issues, in 2017 it had enough information to formulate an opinion about their fulfillment. Nonetheless, none of these were qualified as *not fulfilled*, even though the COMEX had no information if there had been any progress since 2012 in the matter. In the remaining cases, the evaluation was changed from *formally fulfilled* to *fulfilled* in the case of Art. 9.1.a (ii) and Art. 9.1.b (ii), and from *partly fulfilled* to *fulfilled* in the case of Art. 10.1.c and Art. 11.1.g.

⁴³ For a joint table of all Hungarian-specific ratings see the Appendix.

Table 5: The type of evolution that can be concluded from the changed undertakings

	Nr. of undertakings related to the Hungarian language
Undertakings changed from <i>No conclusion</i> to a higher rating	19
Undertakings receiving a better rating	4
Undertakings with improved implementation	1
Worse implementation of undertakings	0

Changes from *formally fulfilled* to *fulfilled* mean that the COMEX acknowledged the legal and policy background in 2012, but did not find any evidence on implementation, but in 2017 it received enough data to consider the topic *fulfilled*. If we look at the explanation regarding these reevaluations, we see that in 2017 the COMEX received examples on the practical implementation of the two judicial undertakings, meaning that there were cases where citizens could use Hungarian in front of the courts in both criminal and civil proceedings. In other words, the higher rating does not necessarily mean a perceived progress since 2012, but rather indicates the reception of some new information regarding the implementation of the Charter. The possibility of progress is naturally not excluded.

A shift from *partly fulfilled* to *fulfilled* means that the COMEX considers the undertakings in conformity with the Charter. In the case of Art. 11.1.g (the support of journalism training in Hungarian language), the changed evaluation was due to the new information provided by the authorities, and not because of proof of improvement. Art. 10.1.c, however, is more interesting. In 2012 the COMEX considered that the “*publication by regional authorities of their official documents also in Hungarian*” was only *partly fulfilled*. This rating was explained by the fact that “[d]uring the on-the-spot visit, the Committee of Experts was informed that documents in Hungarian are not generally available in the areas where Hungarian is used by a considerable number of people.” Even though the definition of *fulfilled* undertaking means that “[p]olicies, legislation and practice are in conformity with the Charter”, and, according to our information, no notable change has been registered since 2012 in the matter, the COMEX rated it as *fulfilled*, but still formulated a recommendation regarding the implementation of the issue.⁴⁴

⁴⁴ See recommendation f.

In 2012, 15 recommendations had been formulated regarding the Hungarian language, which grew to 16 in 2017.⁴⁵ These cover 20 undertakings. Also, in 2012 the COMEX formulated a more general recommendation related to the lack of structural approach regarding the implementation of the undertakings of the Charter. The text of the recommendation was included in the second report as well, with the same wording, although not in the form a recommendation, but as a critical remark.

In Table 6 we summarize how Hungarian-related recommendations changed between the two monitoring cycles.⁴⁶ As we can see, despite the growing number of *fulfilled* undertakings, all language-specific undertakings that had received recommendations in 2012 were reformulated in 2017 as well. In 2017, 4 undertakings received new recommendations from the COMEX.

Table 6x: Changes in the assessment of the undertakings based on the comparison of the two reports

	Nr. of recommendations related to the Hungarian language
Undertakings receiving recommendation only in 2012	0
Undertakings with recommendation in both reports	16 ⁴⁷
Undertakings receiving recommendation only in 2017	4 ⁴⁸
Recommendations with a positive narrative shift	11 ⁴⁹

45 Apparently, the COMEX tends to formulate recommendations whenever the rating of an undertaking is *not fulfilled*, *formally fulfilled* or *partly fulfilled*. If the undertaking was rated *partly fulfilled* because the COMEX did not have enough information to rate it *fulfilled*, no recommendation was formulated, but more information was requested. Interestingly, in 2017 the COMEX repeatedly formulated recommendations for two undertakings which had already been rated *fulfilled* in 2017, and for one undertaking to which the COMEX again could not draw any conclusion. In the case of Art. 13.2.c, although it did not formulate conclusions, the COMEX gave a recommendation in the matter of social care facilities, while recommendations were formulated in the case of Art. 11.1.g (to support the journalist training in Hungarian language) and Art. 10.1.c (to allow the administrative authorities to draft documents in Hungarian), even though the undertakings were considered *fulfilled*.

46 For a comparative table of all recommendations see the Appendix.

47 Articles 8.1.d (i), 8.1.h, 10.1.a (ii), 10.1.b, 10.1.c, 10.2.b, 10.2.d, 10.2.g, 10.3.a, 10.4.b, 11.1.a (ii), 11.1.d, 11.1.g, 13.2.e received recommendations in both reports and two general recommendations (to lower the threshold in the field of administrative authorities and to adopt a structured approach for the implementation of each undertaking) were repeated.

48 Articles: 9.1.c (ii), 9.1.c (iii), 9.1.d, 13.2.c

49 Recommendations: d, e, f, g, h, i, j, k, m, n, o

If we analyze the repeated recommendations narratively, an interesting shift can be observed in 11 cases. In 2017, in the case of Article 10, the COMEX formulated recommendations regarding the same undertakings as it had in 2012: 1) the use of Hungarian by officers in public service, 2) the range of widely used administrative texts in Hungarian, 3) drafting documents in Hungarian, 4) the submission of Hungarian language applications to local authorities, 5) the publication of official documents in Hungarian by local authorities, 6) the use of traditional place names, 7) the use of Hungarian language in public services, and 8) the recruitment of Hungarian speaking public servants. However, if we look at the proposed actions, they change from “ensure” or “allow” to “encourage” or “review”, or from “make available” to “extend”. This change in wording suggests that in the opinion of the COMEX, local and regional authorities do not deliberately hamper the implementation of linguistic rights in administration, and they only need more motivation and encouragement to fulfill their commitments.

A similar shift can be observed in the case of Article 11. Although the topics of the recommendations remain the same (production and distribution of audio and audiovisual works, and Hungarian language journalist training), a discursive shift can be observed from “facilitate” and/or “support” to “extend” and “increase.” The differences in terminology suggest that some aspects of the undertakings are considered implemented, only a wider applicability or action is needed.

The third sphere where a shift occurs is Article 13. The COMEX formulated a recommendation regarding consumer rights. While in 2012 it encouraged “the Romanian authorities to define, in co-operation with the representatives of the Hungarian minority, what information concerning consumer rights is relevant under this provision and to arrange that such information is made available in Hungarian.”⁵⁰, in 2017 it made a recommendation only for the last part,⁵¹ implying that the first stage—defining what information is relevant—has already been accomplished, and all they have to do is to make sure that the information concerning the rights of consumers is available in Hungarian.

As we pointed out, some information regarding the situation of the Hungarian language appear already in the executive summary and in the first chapter of the report. The latter one has two important parts. First it evaluates the implementation of the Charter in general, on an article-by-article basis, then it assesses shortly the situation of each language separately. Although it is unclear how the COMEX chose to highlight exactly these problems, in the following part we present and analyze these issues.

50 Paragraph 610 of the first report of the COMEX

51 Recommendation in the Second Report of the COMEX

In the case of the executive summary, three issues emerge. From these, two are best practice examples reiterated from the initial report and are related to the trilingual language track at the Babeş–Bolyai University in Cluj-Napoca/Kolozsvár, and to the private radio and television broadcasts in Hungarian. The last statement is a critique related to the use of most of the minority languages in economic life. The COMEX calls the attention of the state to extend the use of Hungarian in health care and in consumer rights.

In the general evaluation of the Charter, the COMEX repeats its previous comments regarding higher education⁵² and the use of minority languages in economic rights,⁵³ and formulates additional critical remarks that are related to the situation of Hungarian language. Two of these are related to language use in administration and one to education.

In the case of language use in administration, the Committee of Experts draws the attention of the state that the use of place names in minority languages needs to be diversified beyond the emblematic use of village/municipality names on place name signs. This should include other local toponyms in the minority language and other fields of use (including documents).⁵⁴ This is an important reinforcement of the recommendation formulated in the matter.⁵⁵

Second, the COMEX formulated critical comments regarding the use of minority languages in the local council assemblies. It believes that the 33% threshold is restrictive, and shares information regarding the hindrance of the implementation of the undertaking by presenting the case of Târgu Mureş/Marosvásárhely, where “although there is equipment for simultaneous interpretation, the meetings are held in Romanian.”⁵⁶ Interestingly, despite this criticism, no recommendation is formulated in this matter in the report.

In the case of education, the COMEX criticizes the state, because “[w]ith regard to Hungarian and German there is a shortage of teachers which significantly hampers the educational system, in particular the continuity between the different levels of education in some territorial units.”⁵⁷ This reinforces the recommendation formulated in the matter as well.⁵⁸

52 Paragraph 6

53 Paragraph 22

54 See par. 18.

55 Recommendation i

56 Paragraph 19.

57 See paragraph 8.

58 Recommendation a

The last narrative part refers to the general evaluation of the situation of Hungarian language.⁵⁹ Here, six issues are raised, and five of them are the reiterations of recommendations formulated in connection with the protection and promotion of the Hungarian language in Romania. These are the following: 1) the need to strengthen vocational and adult education, 2) the use of Hungarian in criminal and civil proceedings and in relations with the administrative authorities, 3) the lack of use of Hungarian regarding public services, 4) the lack of Hungarian language public television, 5) the extension of Hungarian language use in social care facilities. Additionally, a sixth comment is included, which is taken over from the explanatory part of the language-specific report, but is not formulated as a recommendation. This refers to the diversification of cultural works produced in Hungarian being accessible in other languages and vice versa.

In conclusion, the most important issue raised by the COMEX is related to Hungarian language use in social and economic life, as it is the only critical remark in the Executive summary, and it is reiterated both in the overall description of the implementation of the Charter and as a recommendation as well. Interestingly, other issues that were pointed out by some shadow reports, even though appear in the report, lack the expected critical edge.

Comparing the monitoring processes of the ACFC and the COMEX

Several objections might be raised against the comparison of the expert reports of the two documents. First, many argue that it is hard to compare them, because the ECRML focuses on minority languages, while the FCNM focuses on the protection of minorities. As it will be shown below, this distinction is not an absolute barrier for comparison in the case of linguistic minorities, as both documents prescribe states activities that need to be followed. Second, and more importantly, the comparison is hindered by the fact that the issues are not similarly addressed, and the two committees follow different protocol and methodology. Therefore, we only compared the recommendations of the two reports. First, we placed each recommendation into a thematic category (ex. education, language use in administration, place name signs, media, education), and if they did not appear in both reports, we tried to find in-text references for them. Second, we tried to decipher what input triggered the reaction of the two committees.

59 Paragraph 35

As mentioned earlier, the ACFC formulated 18 recommendations, while the COMEX formulated 16. Thematically in both cases most recommendations came regarding 1) language use in administration, courts, social and economic life,⁶⁰ 2) media and 3) education. In addition, the FCNM covers a broader range of other issues related to the life and rights of minorities, which do not belong to the area of interest of the ECRML, as it strictly focuses on languages based on a specific list of undertakings selected by the state.

Problems and challenges in language use in administration, courts, social and economic life

In relation to this topic five issues were raised by both committees: 1) bilingual forms, 2) the threshold, 3) language use in administration, 4) bilingual place signs and 5) administrative reorganization of the state.⁶¹ Additionally, the Charter raised important recommendations and points regarding language use in courts, social care facilities and information concerning the rights of consumers, which are completely missing from the ACFC's opinion. While the last two issues are not in the focus of the FCNM, the first issue was mentioned by some of the shadow reports,⁶² but it was not included in the Fourth Opinion of the ACFC.⁶³

Language use in administration, however, is one of the main topics in both reports. Also, according to our knowledge, it is the only domain where both committees received critical information from three or four different sources in the shadow reports.

Most similarities can be found in relation to bilingual forms. Both reports called on the authorities to extend the number of widely-used bilingual forms. However, if we look more closely at the language, there are several narrative differences. The COMEX recommends "to extend" the number of forms,⁶⁴ while the ACFC calls the state "to take steps"

60 These domains can be found in different Articles of the ECMRL, but since the FCNM does not differentiate between these domains, we merged them into a single category.

61 Unlike the ACFC Report, the COMEX discussed the possible effects of an administrative reorganization exclusively from the perspective of linguistic rights.

62 See the shadow report of the Democratic Alliance of Hungarians in Romania, pp. 17–18.

63 Interestingly, the issue of translation of documents was one of the most criticized parts of the COMEX report. The Committee of Expert encourage the state "to allow" the submission of documents or evidence in Hungarian without additional expense". (See Paragraph 74 and Recommendation b. of the second COMEX report)

64 Recommendation e. of the Second Report of the COMEX

and to introduce “standardized certified administrative forms”.⁶⁵ The latter report clearly makes references to the information received from some of the shadow reports on the bilingual forms offered by the Romanian Institute for Research on National Minorities. The COMEX disregarded this information, but acknowledged the sporadic existence of bilingual forms in use on local level. They interpreted this as a possible implementation of the undertaking, and rated this aspect *partly fulfilled*.

The second issue is related to the applicability of language rights and the threshold. Both committees received information that the implementation of the law is difficult in localities where the percentage of the minority falls beyond 20%. In this regard, the COMEX “encourages” the state to lower the threshold,⁶⁶ and the ACFC calls for “flexible measures” and “consultation” with the members of the minority.⁶⁷ Both formulations are “buzzwords”, typical for the two committees: they are generic recommendations that are widely used in different situations and settings, and reflect the institutions’ own agenda and terminology. In the case of the ECRML, the Committee of Experts comments on the issue of threshold several times, and many times interprets it as a restriction.⁶⁸ These comments are related to the fact that the COMEX believes that the use of a language in a specific area should not necessarily be conditioned by the percentage of the given language’s speakers.⁶⁹

In addition, both documents interpret the provisions of the Romanian legislation in the matter incorrectly, for example, in the case of Cluj-Napoca/Kolozsvár. In Cluj-Napoca/Kolozsvár, where approximately 50,000 ethnic Hungarians live and thus is the home of the second biggest Hungarian community in Romania, linguistic rights are repeatedly contested because the share of ethnic Hungarians fell under 20% in 2002. The terminology of both the ACFC and the COMEX is inadequate in this case, since Art. 131 of the Law nr. 215/2001 on Public Administration explicitly maintains the implementation of language rights as mandatory in situations like this. The ACFC, instead of strengthening

65 Paragraph 98 of the Fourth Opinion of the ACFC

66 Recommendation c. of the Second Report of the COMEX

67 Paragraph 97 of the Fourth Opinion of the ACFC

68 See for example the Executive Summary of the Second Report: “*There are two thresholds that restrict the use of minority languages in relations with the administrative authorities and in debates in local assemblies: the 20% threshold of population belonging to the minority living in a particular administrative unit limits the use of minority languages in relations with the administrative authorities, and the one-third threshold in the number of councilors limits the use of minority languages in debates in the local assemblies.*” (emphasizes by the authors)

69 Jean-Marie Woehrling, “Introduction” in *Shaping language rights. Commentary on the European Charter for Regional or Minority Languages in light of the Committee of Experts’ evaluation*. ed. Alba Nogueira López, Adiaro J. Ruiz Vieytes, Inigo Urrutia Libarona (Strasbourg: Council of Europe Publishing, 2012), 19.

the legal situation of minorities, relativized the mandatory character of the law, while the COMEX states that “some municipalities have voluntarily set up new bilingual or multi-lingual place name signs [...] these local initiatives, however, cannot guarantee the general implementation of Article 10(2)g, since municipalities *are under no legal obligation to maintain* place name signs in minority languages *if the minority’s population percentage falls below 20%*. (our emphases)”⁷⁰ This interpretation is contradictory, it does not recognize this very important right, and it is also harmful to advocacy, because it fuels and legitimizes the continuous violation of Hungarian language rights in Cluj-Napoca/Kolozsvár and in other places.

The third issue is minority language use in local administration. In this matter, the ACFC formulates one general recommendation that “call[s] on the authorities to ensure that the legal provisions on the use of minority languages in dealings with local administration are fully implemented”.⁷¹ In contrast, the COMEX formulates five recommendations, one for each different undertakings of Article 10 of the Charter: it calls on the states to encourage “officers... to use the Hungarian language”,⁷² “local branches of state authorities to draft documents in Hungarian”,⁷³ “the possibility for users of Hungarian to submit (...) applications”,⁷⁴ and local authorities to publish “official documents in Hungarian”.⁷⁵ The last recommendation refers to the recruitment and training of officials (where necessary), and it encourages the state to “review” the situation.⁷⁶ Several comments can be made on these approaches. The ECMRL’s recommendations are more direct, and—compared to the general approach of the FCNM—leave less room for interpretation, however, there is a sharp difference between the two approaches’ attitudes. The COMEX focuses on local actors, and transfers the responsibility to local authorities, without making any reference to the responsibility of central state institutions, such as the government or the prefect’s office. In contrast, the ACFC’s report puts pressure on authorities in general, but it is also interpretable on the level of exact steps that need to be taken.

The fourth common topic is related to bilingual place signs. The COMEX “encourages the Romanian authorities” “to encourage” municipalities to use traditional place names in all relevant domains.⁷⁷ In comparison, the ACFC “asks the authorities to take more

70 Paragraph 18 of the second COMEX report.

71 Paragraph 96 of the Fourth Opinion of the ACFC

72 Recommendation d. of the second COMEX report.

73 Recommendation f. of the second COMEX report.

74 Recommendation g. of the second COMEX report.

75 Recommendation h. of the second COMEX report.

76 Recommendation k. of the second COMEX report.

77 Recommendation i. of the second COMEX report.

proactive measures” in the matter. Also, “it encourages” the state “to take a flexible approach over the introduction of signs displaying street names”.⁷⁸ These formulations are interesting from several perspective. First, in the case of place signs, both committees believe that the challenges regarding implementation can be found on the local level. Second, although both documents explicitly define that place signs include all topographical indicators, and while the Romanian legislation restricts place signs only to municipality and institution names, neither committee asks authorities to adapt its legislation to the ratified international documents, but only encourages them to take a flexible approach in the matter.

The fifth common issue is related to the territorial reform of the state. While the ACFC in a recommendation “urges the authorities to ensure” that the redrawing of administrative boundaries will not affect “the rights and freedoms which flow from the Framework Convention”, the COMEX reiterates the statement of the Romanian authorities, which stresses that “the acquired linguistic rights of the persons belonging to the Hungarian minority will not be affected” by the administrative reorganization of the state. Since there is no such undertaking in the Charter, the COMEX did not address this possible issue in its recommendations.

Issues related to media

In the case of media, three issues were salient: 1) public television and radio, 2) journalist training and, 3) the production and distribution of audio and audiovisual works in Hungarian. Only the first issue was part of both committees’ agendas.

In the case of public television and radio, both committees received the same input from the Democratic Alliance of Hungarians in Romania (DAHR), which focused on the problems in Hungarian language broadcasting and the scheduling of programs in the public television. The ACFC presented these problems rather extensively, but it did not formulate any recommendations.⁷⁹ In contrast, the COMEX did not mention any of the problems, but it focused only on the lack of existence of a Hungarian language public television channel, an undertaking that Romania chose to implement when it signed the Charter.

⁷⁸ Paragraph 103 of the Fourth Opinion of the ACFC

⁷⁹ Paragraph 81 of the Fourth Opinion of the ACFC

In the case of journalist training, the DAHR briefly touches upon the issue, but no extensive information or convincing evidence regarding the problem is provided in their shadow report. Despite these shortcomings, the criticism is included as a recommendation in the COMEX report, and a recommendation is formulated in the matter. This approach is even more interesting, knowing that the Committee of Experts appreciated the fact that “journalism diplomas with courses taught in Hungarian can be attained at the Babeş–Bolyai University, and Hungarian-speaking staff was also trained by the Minority Department of TVR,” and considered the undertaking *fulfilled*.⁸⁰ The ACFC opinion does not make any references to journalism training.

The last issue related to media focused on the production and distribution of audio and audiovisual works. Although most of the Hungarian media outlets only seldomly depend on the Romanian state, because of the permissive legal environment most of these undertakings are interpreted as *fulfilled* by the COMEX. Also, without making any critical references to the matter, it “encourages” the state to extend the production and distribution of audio and audiovisual works in Hungarian. In contrast, the ACFC focuses on a totally different issue: the broadcasting licenses of minority language TV channels.⁸¹ Although the recommendation mentions the less numerous minorities, the examples delivered and the information received from DAHR clearly point toward the fact that this recommendation had been triggered partly by Hungarian input.

Problems and challenges in education

There is only one issue which inspired both monitoring committees to give recommendations: the training of Hungarian language teachers. Additionally, the FCNM formulates recommendations in connection with the examination in Romanian language and literature, and with the situation of a school in Târgu Mureş/Marosvásárhely run by the Roman Catholic Church.⁸²

Despite its inclusion in both reports, the case of teacher training presents a rather divergent picture. While the COMEX formulates criticism and recommendations related to

80 Paragraph 76 and Recommendation n. of the second COMEX report.

81 Paragraph 85 of the Fourth Opinion of the ACFC

82 The problems regarding this school have risen after the on-the-spot-visit of the COMEX in Romania.

teacher shortage “at all levels” and especially in the “technical and vocational” education,⁸³ the ACFC interprets the developments in the matter positively.⁸⁴ Although these discrepancies can be partly explained by the fact that the ECMRL is more detailed and focuses on different levels of education, but if we look at the written input received by the two committees,⁸⁵ the positive interpretation formulated by the ACFC is incomprehensible.

A similar situation appears in the case of the examination in Romanian language and literature. Although both committees received information on the problems regarding the teaching of Romanian language and literature to minority students, and neither of the treaties have undertakings that would refer to this issue, the ACFC formulates both criticism and recommendation in the matter, while the COMEX does not make any references to it.⁸⁶ The discrepancy between the two attitudes can be explained with how the two committees perceive their mandate. While the Advisory Committee continuously expands its role and its interpretation of the Framework Convention following a “normative spirit” of the treaty,⁸⁷ the Committee of Expert takes a more conservative stance in the matter: it retains itself from formulating unjustified opinions, and does not deviate from the “letter” of the Charter.

All in all, comparing the recommendations formulated by the two committees regarding Hungarian (language), a mixed picture emerges. First, the Committee of Experts clearly shifted its attention from the responsibility of the state in several issues, and thus it gave the authorities the benefit of doubt for the lack of implementation in the matter. Second, apparently the Advisory Committee is more open to venture into new ground and to critically touch upon issues that do not necessary follow from the letter of the treaty. Also, most recommendations of the ACFC are of general matter. In contrast, the COMEX is more grounded in the text of the ECMRL, and formulates more precise, but in many cases more permissive recommendations.

83 Paragraph 73 and Recommendation a. of the second COMEX report.

84 Paragraph 122 of the Fourth Opinion of the ACFC

85 The DAHR shadow report provided detailed information on the matter.

86 See paragraph 129 of the Fourth Opinion of the ACFC

87 A similar conclusion is drawn by Adrian Szelmenczi, who argues that this characteristic of the FCNM and the Advisory Committee can be explained by the fact that its provisions are vague, which leaves room for the states to interpret them, and for the ACFC to adapt its monitoring instrument to the contextual situation of each state apart (“Cu Privire La Avizul Nr. 4 Al Comitetului Consultativ Referitor La Aplicarea De Către România a Convenției-Cadru Pentru Protecția Minorităților Naționale,” *Noua Revista de Drepturile Omului* 14, no. 2 (2018).)

“Monitoring the monitors.”⁸⁸ Remarks and conclusions

As already mentioned, the work of the two committees can be analyzed from two perspectives: 1) their agenda-setting power (putting minority and human rights issues on the formal agenda) and claim-making potential, and 2) their legal resource potential for strategic litigation.

In relation with the Hungarian minority, the Fourth Opinion of the Advisory Committee presents a more nuanced picture, because it formulated several critical assessments and uses a heavier language in the matter. Furthermore, it formulates 18 recommendations (compared to the 6 recommendations in the previous cycle), however, only a few of them refer to concrete issues that could be used in advocacy work. If we look at these findings from the two analytical dimensions presented in the theoretical chapter, the critical language and vivid presentation of the changing internal environment of minority protection (the detailed presentation and comment of the different law infringements in the context of the growing “anti-Hungarian” sentiment) is more useful in the discursive dimension than in actual legal references. Thus, it makes a solid reference for minority representatives to underpin their claims and critiques toward the state in both in the internal and in the international setting.

Contrary to the ACFC’s report, the COMEX published a highly technical report. It introduced a non-discursive, restrictive rating system, which proved to be unable to perceive the difference between the randomly *fulfilled* and the consequently or systematically *partly fulfilled* undertakings. This led to an issue-blind presentation of the accurate situation of the Hungarian language in Romania in at least two regards: the lack of structural approach in the implementation of the Charter, i.e. the lack of actions from the side of the Prefect (the guarantee of rule of law) in relation with the implementation of linguistic rights of minorities, and the occasional anti-Hungarian climate in which linguistic rights should be exercised and pursued. Without an accurate rating for randomly *fulfilled* undertakings, the overall aspect of the COMEX conclusions about the situation of Hungarian language were rather positive, even though there is no real proof of improvement regarding the possibility to use the Hungarian language in Romania since the first monitoring cycle. Furthermore, as a result of the methodological changes, the situation of the Hungarian language could

88 We use this title to honor the seminal work of James Hughes and Gwendolyn Sasse, “Monitoring the Monitors: Eu Enlargement Conditionality and Minority Protection in the Ceecs,” *Journal on Ethnopolitics and Minority Issues in Europe* 1, no. 1 (2003).

not be fully understood from the latest report only. Extra efforts were needed to understand the report's statements, and it had to be compared with the first one. In other words, it is unlikely that this report can be efficiently used as an agenda-setting instrument in politics.

The agenda-setting power and mobilizing power of a report is strongly attached to and depends mostly from the two aspects: the way how the critical assessments are formulated, and the issues identified by it. The ACFC performs well in this respect, since it identified several issues and managed to formulate them in a catchy, sometimes even harsh and politicized way. The Charter, in contrast, did not manage to identify any new problems related to how the Romanian authorities implemented Hungarian language rights, and is also lacking an easily understandable manner of presentation. It is almost impossible to interpret the COMEX report if we limit the descriptive commentary only to those language-specific undertakings which received a changed rating, and if we lack to compare its content to the comments and statements of the previous report.

Another important conclusion that can be drawn is the fact that apparently, the COMEX did not take into account the remarks made by NGOs, while the ACFC was more open to those. Although several NGOs submitted shadow reports to both committees, the COMEX not only failed to meet those NGOs during their on-the-spot visit, but seemingly it accepted as proven facts only the remarks made by the political actors of the Romanian authorities. However, we have no reason to question that all members of the COMEX were aware of the content and the existence of all shadow reports. In contrast, the FCNM used the information gained from shadow reports extensively, and presented a more critical report than in the previous cycles.

A further conclusion is related to how the two committees interpreted contextual issues and their roles. While the Committee of Experts had a more conservative approach and focused strictly and formally on those undertakings that were ratified by the state, the Advisory Committee took a freer approach, and made comments on issues that are only marginally linked to the Framework Convention. This approach resulted in superficiality in the case of the Committee of Experts, as it could not react to the general climate in which Hungarians have to exercise their linguistic rights. As there are several explicit and implicit strategies that hinder Hungarian language use, without perceiving and addressing these, the COMEX report hardly can accomplish its role. In contrast, the Advisory Committee addressed some of these issues by making comments and putting pressure on the state to change its course of action.

Without minimizing the potential of the reports' discursive parts, it is generally accepted that the recommendations are the most important elements of them. As we already mentioned, the ACFC's opinion has a stronger discursive dimension than a legal resource potential. This can be explained by the overgeneralizing formulas used by the FCNM, and the mostly general recommendations formulated in the monitoring report. We believe that the technical character of the Charter, and the more specific recommendations of the COMEX make this report more apt to serve as a legal resource in strategic litigations. But this advantage is deteriorated by the non-accurate rating system, which in many cases hide the real problems that hinder the implementation of linguistic rights. Additionally, in its second report, the COMEX restricted its recommendations exclusively to the extent of the actual undertakings. As a result, it did not address in any recommendation the key deficiency of the Romanian authorities: the lack of structural approach to the implementation of the Charter. Although this is not completely missing from the document, it was downgraded to a critical assessment in the first chapter.

As already mentioned, the COMEX seemingly disregarded the input of ethnic Hungarian NGOs, and considered only the information offered by the Hungarian political party and the Romanian government. This raises questions about the entire monitoring procedure. According to the publications in human rights and the ones advertised on the webpage of the Council of Europe, shadow reporting and NGO input have a watchdog role in monitoring, as they provide important sources of information against state bias. If these voices are disregarded, the objectivity and professionalism of the whole process is weakened, and NGOs become discouraged to get involved in the process. Shadow reports submitted by NGOs could have helped the COMEX to formulate a more nuanced picture regarding Hungarian language use in Romania. Also, it could have helped the Committee to avoid the misinterpretation of the legal regulations on municipalities where the share of a minority falls under 20% (Art. 131 of Law on Public Administration), and the legitimization of continuous violation of language rights in Cluj-Napoca/Kolozsvár.⁸⁹ The problem of misinterpretation appears in the ACFC's report as well, which also relativized the mandatory character of the law in matter. The FCNM, however, used the information received from shadow reports extensively, and presented a more critical report than in the previous cycles. A possible explanation of the Advisory Committee's receptivity could be the fact that they received shadow reports for the first time, and these reports did not contradict each other. Our presumption is that the NGO shadow reports also urged the DAHR to take a more critical stance toward state policies and minority rights implementation, which it had not done before.

89 See: par. 18.

In conclusion, the concrete findings of two reports do not contradict each other, but they describe a very different image about the attitude of the Romanian authorities towards ethnic Hungarian claims, and about the general climate regarding the rights of minorities. The issue-blindness of the COMEX and the lack of proper rating system to describe the *randomly fulfilled* undertakings question the positive effects of the report. It can strengthen the belief of authorities that a consequent, systematic approach toward the implementation of language rights is not mandatory, and there is no need to extend the range of exercisable, practically available linguistic rights. Without changing the monitoring methodology, future COMEX reports will probably repeatedly avoid to address decisive issues related to the use of Hungarian language in Romania. In contrast, the latest ACFC report gives useful feedback on ethnic Hungarian claims, and draws the attention of Romanian authorities that the international community is aware of these issues, and that the Advisory Committee of the FCNM is sensible to the violations of minority rights in Romania.

Appendix Nr. 1

Article 8 Education	Fulfilled		Partly fulfilled		Formally fulfilled		Not fulfilled		No conclusion	
	2012	2017	2012	2017	2012	2017	2012	2017	2012	2017
8.1.a (i)	x	=								
8.1.b (i)	x	=								
8.1.c (i)	x	=								
8.1.d (i)			x	=						
8.1.e (i)	x	=								
8.1.f (i)				↗					x	
8.1.g				↗					x	
8.1.h			x	=						
8.1.i									x	=
8.2		↗							x	

Article 9 Justice	Fulfilled		Partly fulfilled		Formally fulfilled		Not fulfilled		No conclusion	
	2012	2017	2012	2017	2012	2017	2012	2017	2012	2017
9.1.a (ii)		↗			x					
9.1.a (iii)		↗							x	
9.1.b (ii)		↗			x					
9.1.b (iii)		↗							x	
9.1.c (ii)					x	=				
9.1.c (iii)						↗			x	
9.1.d									x	=
9.2.a		↗							x	
9.3	x	=								

Article 10 Admin- istrative authorities and public services	Fulfilled		Partly fulfilled		Formally fulfilled		Not fulfilled		No conclusion	
	2012	2017	2012	2017	2012	2017	2012	2017	2012	2017
10.1.a (ii)			x	↗						
10.1.b			x	=						
10.1.c		↗	x							
10.2.b			x	=						
10.2.c									x	=
10.2.d			x	=						
10.2.e	x	=								
10.2.f		↗							x	
10.2.g			x	=						
10.3.a							x	=		
10.4.b			x	=						
10.4.c									x	=
10.5		↗							x	

Article 11 Media	Fulfilled		Partly fulfilled		Formally fulfilled		Not fulfilled		No conclusion	
	2012	2017	2012	2017	2012	2017	2012	2017	2012	2017
11.1.a (ii) (radio and television)	x	=					x	=		
11.1.b (i)	x	=								
11.1.c (i)	x	=								
11.1.d			x	=						
11.1.e (i)		↗							x	
11.1.f (i)				↗					x	
11.1.g		↗	x							
11.2	x	=								
11.3	x	=								

Article 12 Cultural activities and facilities	Fulfilled		Partly fulfilled		Formally fulfilled		Not fulfilled		No conclusion	
	2012	2017	2012	2017	2012	2017	2012	2017	2012	2017
12.1.a	x	=								
12.1.b				↗					x	
12.1.c				↗					x	
12.1.d	x	=								
12.1.e	x	=								
12.1.f	x	=								
12.1.g		↗							x	
12.1.h		↗							x	
12.2		↗							x	
12.3									x	=

Article 13 Economic and social life:	Fulfilled		Partly fulfilled		Formally fulfilled		Not fulfilled		No conclusion	
	2012	2017	2012	2017	2012	2017	2012	2017	2012	2017
13.1.a		↗							x	
13.1.b									x	=
13.1.c		↗							x	
13.1.d										=
13.2.c									x	=
13.2.d				↗					x	
13.2.e			x	=						

Article 14 Transfron- tier exchanges:	Fulfilled		Partly fulfilled		Formally fulfilled		Not fulfilled		No conclusion	
	2012	2017	2012	2017	2012	2017	2012	2017	2012	2017
14.a	x	=								
14.b									x	=

Appendix Nr. 2

Article 8 Education	Recommendations (2012)	Recommendations (2017)
8.1.d (i)	499. The Committee of Experts considers this undertaking <i>partly fulfilled</i> . It encourages the Romanian authorities to ensure that there is a sufficient number of teachers able to teach subjects in Hungarian in technical and vocational education.	a. Provide the basic and further training of a sufficient number of teachers to fully implement the undertakings under Article 8 with regard to Hungarian, including teachers able to teach subjects in Hungarian in technical and vocational education.
8.1.h	509. The Committee of Experts considers this undertaking <i>partly fulfilled</i> . The Committee of Experts encourages the Romanian authorities to provide the training of a number of teachers that is sufficient to meet the demand for education in Hungarian and to introduce incentives for minority language teachers.	

Article 9 Justice	Recommendations (2012)	Recommendations (2017)
9.1.c (ii)		b. Allow, whenever a litigant has to appear in person before a court, that he or she may submit documents or evidence in Hungarian, if necessary by the use of interpretation and translations, in civil and administrative proceedings and without thereby incurring additional expense.
9.1.c (iii)		
9.1.d		

<p>Article 10 Admin- istrative authorities and public services</p>	<p>Recommendations (2012)</p>	<p>Recommendations (2017) <i>The COMEX encourages the Roman- ian authorities to...</i></p>
	<p>The Committee of Experts encour- ages the Romanian authorities to lower the general thresholds in the field of administrative authorities in order to make them compat- ible with the Charter as well as to encourage local authorities to volun- tarily apply the Charter irrespective of thresholds.</p>	<p>c. Lower the thresholds in the field of administrative authorities and encourage local authorities to take decisions to use Hungarian in their administrative activities.</p>
<p>10.1.a (ii)</p>	<p>538. The Committee of Experts con- siders this undertaking <i>partly fulfilled</i>. It encourages the Romanian authori- ties to ensure that those officers who are in contact with the public use the Hungarian language in their relations with persons applying to them in this language</p>	<p>d. Encourage those officers who are in contact with the public to use the Hungarian language in their relations with persons applying to them in this language.</p>
<p>10.1.b</p>	<p>541. The Committee of Experts con- siders this undertaking <i>partly fulfilled</i>. It encourages the Romanian authori- ties to make available widely used ad- ministrative texts and forms for the population in Hungarian or in bilin- gual versions</p>	<p>e. Extend the number of widely- used administrative texts and forms for the population in Hungarian or in bilingual versions.</p>
<p>10.1.c</p>	<p>544. The Committee of Experts con- siders this undertaking <i>partly fulfilled</i>. It encourages the Romanian authori- ties to allow the local branches of the State authorities to draft documents in Hungarian and to ensure an appropri- ate level of implementation in practice</p>	<p>f. Encourage the local branches of the state authorities to draft docu- ments in Hungarian and to ensure an appropriate level of implemen- tation in practice.</p>

10.2.b	547. The Committee of Experts considers this undertaking <i>partly fulfilled</i> . It encourages the Romanian authorities to allow and/or encourage the possibility for users of Hungarian to submit oral or written applications in this language to local authorities.	g. Encourage the possibility for users of Hungarian to submit oral or written applications in this language to local authorities.
10.2.d	552. The Committee of Experts considers this undertaking <i>partly fulfilled</i> . It encourages the Romanian authorities to allow and/or encourage the publication by local authorities of their official documents also in Hungarian.	h. Encourage the publication by local authorities of their official documents in Hungarian.
10.2.g	561. The Committee of Experts considers this undertaking <i>partly fulfilled</i> . It encourages the Romanian authorities to adopt a structured approach encouraging the use of all place-names in Hungarian in a given municipality in all relevant domains.	i. Encourage relevant municipalities to use traditional place names in Hungarian in the relevant domains (street names, public transport and tourist signs or signposts; documents/forms; public relations materials/websites).
10.3.a	565. The Committee of Experts considers this undertaking <i>not fulfilled</i> . The Committee of Experts encourages the Romanian authorities to ensure that Hungarian is used in the provision of public services in practice and asks them to clarify the national legal basis for the implementation of this provision	j. Encourage the use of Hungarian in public services.
10.4.b	567. The Committee of Experts considers this undertaking <i>partly fulfilled</i> . It encourages the Romanian authorities to ensure, regarding all relevant authorities, the recruitment and, where necessary, training of the officials and other public service employees required to implement their undertakings under Article 10 regarding the Hungarian language.	k. Review, in co-operation with the representatives of the speakers, the recruitment and, where necessary, training situation of the officials and other public service employees required to implement their undertakings under article 10 regarding the Hungarian language, regarding all relevant authorities.

Article 11 Media	Recommendations (2012)	Recommendations (2017)
11.1.a (ii) (radio and television)	575. The Committee of Experts considers this undertaking <i>fulfilled</i> for radio and <i>not fulfilled</i> for television. The Committee of Experts encourages the Romanian authorities to set up a television channel in Hungarian.	l. Set up a public television channel in Hungarian.
11.1.d	581. The Committee of Experts considers this undertaking <i>partly fulfilled</i> . It encourages the Romanian authorities to facilitate the production and distribution of audio and audiovisual works in Hungarian.	m. Extend the production and distribution of audio and audiovisual works in Hungarian.
11.1.g	585. The Committee of Experts considers this undertaking <i>partly fulfilled</i> . It encourages the Romanian authorities to support the training of journalists and other staff for media using Hungarian.	n. Increase the support to the training of journalists and other staff for media using Hungarian.

Article 13 Economic and social life	Recommendations (2012)	Recommendations (2017)
13.2.c		p. Increase the use of Hungarian in social care facilities.
13.2.e	610. The Committee of Experts considers this undertaking <i>partly fulfilled</i> . It encourages the Romanian authorities to define, in co-operation with the representatives of the Hungarian minority, what information concerning consumer rights is relevant under this provision and to arrange that such information is made available in Hungarian.	o. Arrange for information concerning the rights of consumers to be made available in Hungarian.