



Provisional version

Committee on Equality and Non-Discrimination

The situation and rights of traditional national minorities in Europe

Report¹

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A. Draft resolution

1. European history shows that minority protection is of utmost importance and can contribute to the achievement of Europe as a home for all. However, manifestations of extreme nationalism, racism, xenophobia and intolerance have not disappeared but, on the contrary, appear to be on the rise. The Parliamentary Assembly expresses concern for the situation and rights of national minorities.

2. The Assembly considers the Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages as essential instruments for minority protection in Europe. However, both instruments were not yet ratified by all Council of Europe member States. In addition, the lack of definition of national minorities in the Framework Convention leaves a wide margin of appreciation by States Parties, impacting on its implementation. In this respect, the Assembly recalls its Resolution 1713 (2010) on "Minority protection in Europe: best practices and deficiencies in implementation of common standards", its Resolution 1866 (2012) on "An additional protocol to the European Convention on Human Rights on national minorities" and relevant judgments of the European Court of Human Rights. The Assembly also welcomes the Programmatic Declaration of the Federal Union of European Nationalities (FUEN) adopted in Brixen on 23 June 2013.

3. The Assembly also recalls the definition of national minorities laid down in its Recommendation 1201 (1993) on an "Additional protocol on the rights of minorities to the European Convention on Human Rights" defining them as "*a group of persons in a state who: a. reside on the territory of that state and are citizens thereof ; b. maintain longstanding, firm and lasting ties with that state ; c. display distinctive ethnic, cultural, religious or linguistic characteristics ; d. are sufficiently representative, although smaller in number than the rest of the population of that state or of a region of that state ; e. are motivated by a concern to preserve together that which constitutes their common identity, including their culture, their traditions, their religion or their language*". For the purposes of this resolution, traditional national minorities are defined as minorities

¹ Draft resolution and draft recommendation adopted unanimously by the committee in Vienna on 5 March 2014.

who have been living on the same territory for centuries and have a common identity. These traditional national minorities are considered as a sub-category of national minorities.

4. The Assembly stresses the importance of stability, solidarity and peaceful coexistence of a multitude of people in Europe and calls for the promotion of the “unity through diversity” concept within and between countries. The protection of the rights of national minorities, including traditional national minorities, should remain a priority on the political agenda.

5. The protection of minority rights can help building a sustainable future for Europe and contribute to guaranteeing the respect of the principles of dignity, equality and non-discrimination. Benefits are not limited to minorities since this protection will bring stability, economic development and prosperity to all.

6. The inability to give a satisfactory response to minority issues has been a major cause of political tensions, conflicts and human rights violations. Minority protection is therefore also a means of conflict prevention. The right to self-determination, state integrity and national sovereignty can be reconciled so as to increase tolerance. In this context, Assembly Resolution 1832 (2011) on “National sovereignty and statehood in contemporary international law: the need for clarification” indicates the path to be followed.

7. In addition, territorial arrangements can play an important role for the protection of the rights of traditional national minorities. In this respect, the Assembly recalls its Resolution 1334 (2003) on “Positive experiences of autonomous regions as a source of inspiration for conflict resolution in Europe” which states that the establishment and operation of an autonomous entity can be regarded as part of the democratisation process. The Assembly also welcomes the adoption of the Resolution 361 (2013) on “Regions and territories with special status in Europe” by the Congress of Local and Regional Authorities, which acknowledges that the special status enjoyed by regions of some European states has brought stability and prosperity to those regions and states.

8. The Assembly is of the opinion that territorial self-government arrangements can also contribute to effectively protecting minority rights with a collective dimension and avoiding assimilation.

9. The Assembly considers the respect of the right to a common identity, which includes culture, religion, languages and traditions, as an essential element of the protection of the rights of traditional national minorities. They have the right to preserve and further develop their own institutions and should receive collective protection as stated in Assembly Recommendation 1735 (2006).

10. In the light of these considerations, the Assembly calls on the Council of Europe member States:

10.1. as regards international instruments:

- 10.1.1. to sign and/or ratify the Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages as soon as possible, if they have not yet done so;
- 10.1.2. to sign the Declaration on the Rights of Indigenous Peoples (UNDRIP) adopted by the General Assembly of the United Nations on 13 September 2007;
- 10.1.3. to promote the implementation of best practices for the protection of the rights of national minorities recognised by the Council of Europe and the United Nations;
- 10.1.4. in addition to the implementation of legal provisions of the Framework Convention, to create the conditions necessary for respecting the commitments/obligations as laid down in the “Document of the Copenhagen meeting of the Conference on the human dimension of the CSCE” (1990) and in related bilateral agreements;

10.2. as regards the protection of the right to identity:

- 10.2.1. to safeguard the right of national minorities to preserve, protect and promote their own identity as laid down in the Article 5 (1) of the Framework Convention, the International Covenant on Civil and Political Rights and the Resolution 47/135 of the United Nations General Assembly on a “Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities”;
- 10.2.2. to take the necessary steps to ensure the effective participation of national minorities in social, economic and cultural life and in public affairs in order to participate effectively in the decision-making process affecting their everyday environment - as laid down in Article 15 of the Framework Convention;
- 10.2.3. to refrain from adopting policies and practices aimed at assimilation of national minorities against their will - as laid down in Article 5 (2) of the Framework Convention;

- 10.2.4. to look into and use as a guideline best practices used by some States (such as the experience of Alto Adige/South Tirol, Finland or others which grant collective or group rights) which constitute valid models and references even for States that are not yet parties to the Framework Convention;
- 10.3. as regards territorial arrangements and conflict prevention:
- 10.3.1. to implement, in a format agreed by all parties concerned, territorial self-government arrangements based on relevant European documents;
 - 10.3.2. to take into account, irrespective of economic reasons, the added value of historic regions in terms of culture, language, traditions and religions when defining/reforming the administrative and/or territorial structure/units of the country or of relevant state institutions;
 - 10.3.3. to initiate and have a continuous dialogue with representatives of the traditional national minorities, in order to prevent conflicts, meet the needs of their constituencies and promote multiculturalism and solidarity;
- 10.4. as regards the right to education and minority languages:
- 10.4.1. to promote the official use of languages spoken by traditional national minorities on the territories where they live, at local or regional level, while taking into account that the protection and encouragement of the use of regional and minority languages should not be to the detriment of the official languages and the need to learn them;
 - 10.4.2. to formulate education policies bearing in mind the needs of traditional national minorities including through specific educational system and institutions;
 - 10.4.3. to take the necessary steps to assure continuity of education in the mother tongue in secondary (including vocational education) and in higher education;
 - 10.4.4. to follow the recommendations of the Advisory Committee's First Thematic Commentary on Education under the Framework Convention on 2 March 2006, namely to take a proactive approach in education issues even when the expressed demand appears low;
 - 10.4.5. to initiate the common writing of history books together with the kin-states and the representatives of the traditional national minorities living on their territory so as to educate young people in favour of European cooperation and partnership;
 - 10.4.6. to take into account the specificity and interests of traditional national minorities when privatising public services, including media;
 - 10.4.7. to provide appropriate funding to organisations or media outlets representing minorities in order to bring their identity, language, history and culture to the attention of the majority;
- 10.5. as regards combating discrimination:
- 10.5.1. to refrain from discriminatory acts and to take "affirmative action" in the economic and social systems with the goal of removing the factual barriers to "equal opportunities" and promoting full and effective equality;
 - 10.5.2. in the spirit of Article 16 of the Framework Convention, to refrain from adopting laws or administrative measures which may enhance assimilation, encourage migration and change the ethnical structure in a specific region;
 - 10.5.3. to apply a bottom-up approach in identifying and tackling traditional national minority issues;
 - 10.5.4. to ensure - without undermining the fundamental right to freedom of movement and in conformity with the "unity through diversity" concept – the possibility for the traditional national minorities within their territories to remain in their birthplaces, to prosper and progress where they have been living for centuries, and to explore their full potential to the benefit of their communities, as well as the majority, the State and Europe as a whole;
 - 10.5.5. to formulate and effectively implement a comprehensive national strategy on the protection of traditional national minorities;
 - 10.5.6. to ensure that media can operate, free from discrimination, in minority languages;
 - 10.5.7. to adopt electoral legislation allowing pluralistic political representation of minorities;
 - 10.5.8. to refrain from adopting laws or administrative measures which weaken minority protection.
11. The Assembly invites its members to follow more closely the issue of traditional national minorities and play an active facilitator, problem-solving role and to work out proposals for direct political representation of traditional national minorities.
12. The Assembly invites its members to initiate in the following years reports on the situation of every traditional national minority in Europe in order to map out their needs, aspirations and possible tensions.

13. The Assembly asks the Secretary General of the Council of Europe to give particular attention to national minorities in the framework of his annual report on the situation of human rights in Europe.
14. The Assembly invites public and private media of any type in regions inhabited by traditional national minorities to provide services in minority languages.

B. Draft recommendation

1. Recalling its Resolution ... (2014) on the situation and rights of traditional national minorities, the Parliamentary Assembly expresses its concerns for the situation and rights of traditional national minorities.
2. The Assembly stresses the importance of stability, solidarity and peaceful coexistence of a multitude of people in Europe and calls for the promotion of the “unity through diversity” concept within and between countries.
3. Minority protection should remain a priority on the political agenda in order to address minorities’ needs and protect their rights and human dignity. An efficient protection of the rights of traditional national minorities contributes to preventing conflicts, to achieving the vision of Europe as a home for all and to creating a peaceful and prosperous environment.
4. The Assembly, therefore, asks the Committee of Ministers:
 - 4.1. to develop confidence-building programmes with a focus on minority issues addressed to Council of Europe member States;
 - 4.2. to ensure that the Council of Europe Schools of Political Studies address the issue of traditional national minorities, the definition of the concept of “nation state”, and the link between protection of minorities, peace and stability;
 - 4.3. in cooperation with the European Union, to consider the possibility of declaring a “day of traditional national minorities”, which would give traditional national minorities the possibility to present their culture, heritage, history and aspirations;
 - 4.4. through its competent Committees of Experts, to elaborate training programmes and organise seminars for history teachers and media representatives, especially for those working in ethnically mixed regions in order to educate young people in the spirit of tolerance and cooperation throughout Europe.

C. Explanatory memorandum

1. Introduction

1. *“The aim of our work is to make the borders of the European states disappear. Our aim is for Europe to become a common home, the home of freedom”*. These words, pronounced by Konrad Adenauer in 1950, are the very foundations on which the Council of Europe is built.

2. The situation of minorities should be central to Council of Europe work, since it plays an essential role for the preservation of peace and stability. In Europe’s history, the inability to give a satisfactory response to minority issues has been a major cause of political tensions, conflicts and human rights violations. This is not only a feature of the past. It is an issue of current affairs and a lesson that should guide our political decisions now and in the future. European states and organisations that are concerned with making Europe *“the home of freedom”* and *“a common home”* must have the courage to address the situation of minorities.

3. It is well known that State borders in Europe have changed several times, not only along ethnic lines but also on the basis of other considerations. As a result, traditional national minorities are today present in almost all Council of Europe member states. It is perhaps less known that people belonging to traditional national minorities represent 10.29%² of the total European population. According to the Federal Union of European Nationalities (FUEN), there are about 340 autochthonous minorities, totalling about 100 million persons in the 47 member states of the Council of Europe. Every seventh European citizen is part of a minority. In the European Union (EU) alone, there are more than 60 regional or minority languages, next to the 23 official EU languages. The number of speakers of these languages is estimated at 40 million.

4. The ethnic, cultural and linguistic diversity of Europe has been an essential element of its competitiveness and creativity. *“Unity through diversity”* is one of the European slogans. It is a principle which does not apply only at European level, but also within each European country.

5. This richness should be protected and nurtured. Otherwise, it runs the risk of disappearing. I am seriously concerned about the deterioration of the situation and rights of traditional national minorities despite the manifold conventions, resolutions, recommendations adopted by international organisations, including the Council of Europe and more recently also the European Union.

6. The concept of nation state arose in the 18th and 19th centuries when the process of nation building took place in Europe. Several states wanted to have an ethnically homogenous population within their borders and those that did not belong to the majority became second-class citizens. As a result, over the centuries, in different parts of Europe, forced assimilation, massive deportations, atrocities, ethnical cleansing, emigration, lack of community rights, restrictions of the use of mother tongue and falsification of history were widely applied. Increased intolerance and tensions marked the last century.

7. I am convinced that the modern idea of a state is one of an inclusive state in which the majority population and minorities live together, both as constituent parts and active pillars of the democratic system. According to Francesco Palermo, First Vice-President of the Advisory Committee on the Framework Convention for the Protection of National Minorities, *“differences should be the rule and not the exception”*.³ The future of Europe also depends on the capacity of states to recognise and protect the rights of traditional national minorities and to involve them in the political process.

8. My opinion is that, regrettably and despite its importance for stability and security, the protection of the rights of traditional national minorities has not yet become a political priority. Intolerance, ignorance, lack of trust but also globalisation have accelerated an assimilation process of the traditional national minorities into the majority. State policies or personal motivations have triggered this process. If it continues at this speed, I predict that national minorities may soon be at risk. Human and European cultural values which represent the richness of Europe will be lost and the well-known European diversity might fade away.

9. The issue of traditional national minorities in Europe is of utmost importance and should be dealt with relentlessly within the framework provided by the Council of Europe and the European Union. This is a way to prevent conflicts and to ensure the accomplishment of the vision of Europe as a home for all. Conflicts or

² This data is based upon the publication of Dr Christoph Pan / Beate Sibylle Pfeil, “National Minorities in Europe. Handbook“ Ethnos Vol. 63, Vienna: Braumueller, 2003.

³ Meeting with Mr Francesco Palermo Head of the Institute for Studies on Federalism and Regionalism, European Academy of Bolzano/Bozen (EURAC), 10 May 2013, Bolzano/Bozen, Italy.

peace, degradation or prosperity - that is at stake! The issue is European, the risk is global! A ban on discrimination does not represent a comprehensive solution to the problems arising from the situation of traditional national minorities. The real aim is to stop their assimilation, to make them feel entirely at home on the territory where they have been traditionally living, to have a say in decisions that will affect their lives, and to exercise autonomously their cultural, educational and linguistic rights. The principle of subsidiarity shall also prevail in this matter.

2. Origin of the report

10. This report stems from a motion for a resolution presented by Elvira Kovács and others (Doc. 12994). The motion recalls that 2013 marks the 20th anniversary of Recommendation 1201 (1993), in which the Assembly first called on the Committee of Ministers to draw up an additional protocol on the rights of minorities to the European Convention on Human Rights, as well as the 10th anniversary of Resolution 1334 (2003) on positive experiences of autonomous regions as a source of inspiration for conflict resolution in Europe.

11. The signatories of the motion consider that *“These documents show that for the presence of traditional national minorities to become a source of cultural richness and political stability it is necessary for Council of Europe member States to set up a framework for the protection of traditional national minority rights. It may also be necessary to set up specific mechanisms to ensure or boost political representation and the different kind of territorial autonomies in accordance with historical tradition and European standards”*. On the basis of these considerations, they suggest that *“the Assembly should draw up a report on best practices and follow up of the above mentioned documents for protecting traditional national minority rights in Europe and formulate recommendations addressed to member States”*.

3. Definitions

12. There is still **no generally accepted definition** of the notion of “national minority”. Neither the United Nations Declaration on the Rights of Persons Belonging to National, or Ethnic, Religious and Linguistic Minorities, nor the Framework Convention for the Protection of National Minorities (FCNM) provide a legal definition. The lack of a legal definition offers a relatively large margin of discretion to governments in selecting the minorities to which they want to provide legal protection. This can easily lead to different approaches to minority protection by member states, although it is contrary to the rulings of the European Court of Human Rights. I am of the opinion that a clear European definition of the term of minority should be agreed upon in the near future to be able to improve the effectiveness of minority protection.

13. The Parliamentary Assembly of the Council of Europe, however, has laid down a definition in its Recommendation 1201 (1993) on an Additional protocol on the rights of minorities to the European Convention on Human Rights : *“the expression “national minority” refers to a group of persons in a state who: a. reside on the territory of that state and are citizens thereof ; b. maintain longstanding, firm and lasting ties with that state ; c. display distinctive ethnic, cultural, religious or linguistic characteristics ; d. are sufficiently representative, although smaller in number than the rest of the population of that state or of a region of that state ; e. are motivated by a concern to preserve together that which constitutes their common identity, including their culture, their traditions, their religion or their language”*. I will rely on such a definition for the purposes of my work.

4. Scope of the report

14. The term “minorities” in Assembly Recommendation 1201(1993) refers both to traditional and new minorities. I would like to focus in this report on traditional national minorities, whom I would define as groups of persons who have been living on the same territory for centuries and share the same national and cultural identity. Some of them became a minority because State borders changed; others have always been a minority and have managed to preserve their identity.

15. I have decided to keep my report as focused as possible, with a view to formulating precise recommendations which would enhance impact. In line with this approach, although I consider these as equally important issues, I shall not deal with the situation of so-called “new minorities”, Roma people and religious minorities, as this would expand exceedingly the scope of the report. For instance, the European Charter for Regional or Minority Languages itself also makes a distinction between so-called “new” or often non-European languages and the regional or minority languages defining the terminology of regional or

minority languages. It also takes the view that “new” or regional or minority languages have to be addressed separately.⁴

16. With this report, I intend to shed light on the situation and rights of traditional national minorities, focusing on their right to participate in political and public life effectively and the use of minority languages, in education and media. I will give attention both to the collective and to the individual dimensions of minority rights.

17. I will refer to previous work by the Assembly and recall the Framework Convention and the Advisory Committee commentaries to formulate recommendations with a view to strengthening the protection of traditional national minorities in Europe.

18. This report is based on desk research and on information collected during a fact-finding visit to Italy on 9 and 10 May 2013, a fact-finding visit to Finland on 6-7 November 2013 and a fact-finding to Serbia on 11-13 December 2013. I would like to thank the parliamentary delegations for their support in the preparation and conduct of the visits. I also had a meeting with Mr Mark Lattimer, Executive Director of Minority Rights Group International, following a hearing held at a meeting of the Committee on Equality and Non-Discrimination on 3 December 2012 when I presented an outline for the report. Committee members discussed a first version of the memorandum at the Committee meeting in Warsaw on 18 March 2013. The Committee held a hearing with Professor Athanasia Spiliopoulou Åkermark, President of the Advisory Committee on the Framework Convention for the Protection of National Minorities and Mr Stefan Oeter, Chair of the Committee of Experts of the European Charter for Regional or Minority Languages at its meeting on 17 September 2013 in Madrid. The Committee also held a discussion on the Spanish language policy with the participation of Mr Rafael Rodríguez Ponga, Secretary General of Instituto Cervantes and Mr Fernando Rey Martínez, President of the Council for the promotion of equal treatment and non-discrimination on the grounds of racial or ethnic origin. On 1 October 2013, the Committee held a hearing on political participation and territorial autonomies with the participation Ms Michèle Akip, Head of the Secretariat of the Framework Convention for the protection of National Minorities (FCNM) and Professor Stefan Wolff, Director of Research and Knowledge Transfer, College of Social Sciences, University of Birmingham.

19. I would also like to thank the members of the Committee on Equality and Non-Discrimination for their active participation in the discussions on this report and for the inputs and comments they have provided throughout the process.

5. Aims of the report

20. I hope that this report will contribute to raising the issue of national minorities higher in the political agenda of Council of Europe member states.

21. I would like to demonstrate that the respect of minority rights is beneficial to all those who live in a given country, whether they belong to the majority or to minorities, and that minority protection strengthens the democratic fabric of the political system.

22. Finally, I wish to highlight that the situation of traditional national minorities has an **economic aspect**, which is all too often overlooked. A significant economic development can be noted on several territories where ethnical tensions were handled successfully and resulted in a situation which is satisfactory for both the state and the minorities concerned. Alto Adige/Südtirol is an example in this regard.

6. International instruments for the protection of the rights of traditional national minorities

23. The protection of the rights of national minorities and prohibition of discrimination form today an integral part of the international system for the protection of human rights. The international minority protection system, as it has developed over the last few decades, is however mainly but not exclusively based on an individualistic approach.

⁴ Explanatory Report to the European Charter for Regional and Minority Languages (ETS NO. 148) “The charter does not deal with the situation of new, often non-European languages which may have appeared in the signatory states as a result of recent migration flows often arising from economic motives. In the case of populations speaking such languages, specific problems of integration arise.” The CAHLR took the view that these problems deserved to be addressed separately, if appropriate in a specific legal instrument.”

24. Several decades after the end of the League of Nations' minority system (and the consequent decades long setback in the minority protection system in general), the adoption of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities⁵ by the UN General Assembly in 1992, represented a landmark event in the renewal and development of the protection and promotion of minority rights at global level.

25. When assessing the overall importance of the Declaration in the evolution of minority rights, we should not forget that its adoption initiated several important institutional developments in the field of minority protection. A Commentary to the Declaration adopted in 2004⁶ stated that minority protection was based on four pillars: the protection of the concerned group, the prohibition of their exclusion, of their negative discrimination and of their assimilation. It also established that while the rights in the Declaration are consistently set out as rights of individuals, the duties of States are in part formulated as duties towards minorities as groups, and in some cases they can best be implemented by arrangements for different types of participation in decision-making. The Declaration on the Rights of Indigenous Peoples⁷ is another instrument of the United Nations that has contributed to the broader legal context in which minority protection norms are being developed.

26. While instruments at the global level tend to confirm the basic minimum for the protection of national minorities, regional instruments may present higher standards of protection. The Framework Convention for the Protection of National Minorities,⁸ a multilateral treaty signed in 1995, entered into force in 1998. The Framework Convention constitutes today the most comprehensive international instrument for the protection of the rights of individual persons belonging to national minorities. To date, 39 states are parties to the Convention, four states – Belgium, Greece, Iceland and Luxembourg – have signed but not yet ratified it, and four others – Andorra, France, Monaco and Turkey – have neither signed nor ratified it.

27. The European Charter for Regional or Minority Languages adopted in 1992 places the emphasis on the obligation of the state to protect and promote regional or minority languages as part of cultural heritage. It is a unique international instrument and plays a complementary role to the Framework Convention.⁹ Significant similarities between the provisions of the Framework Convention and the Charter can be found particularly in the detailed provisions of Part III of the Charter. "While the nature and scope of application of the two instruments may diverge, the individual rights approach of the Framework Convention and the broader approach to cultural protection and promotion contained in the Charter result in a strengthening of the overall legal framework relevant for the protection of the linguistic rights of members of national minorities."¹⁰

28. The Parliamentary Assembly has always been a motor for minority protection in the Council of Europe member states (Assembly Recommendation 1609 (2003) and Resolution 1334 (2003) on Positive experiences of autonomous regions as a source of inspiration for conflict resolution in Europe and Assembly Resolution 1832 (2011) on "National sovereignty and statehood in contemporary international law: the need for clarification"). In its Recommendation 1201 (1993), the Assembly significantly developed its list of minority-specific rights, especially in the linguistic and educational spheres in a proposed additional protocol on the rights of minorities to the European Convention on Human Rights. I also wish to recall its Recommendations 1492 (2001), 1623 (2003), 1766 (2006), 1713 (2010) concerning the rights of minorities.

29. In addition to the above-mentioned instruments (UN and Council of Europe), others can also be relevant for the protection of traditional national minorities. They range from legally-binding norms and standards to recommendations and guidelines. The European Convention for the Protection of Human Rights and Fundamental Freedoms and related case-law of the European Court of Human Rights (ECHR), as well as the revised European Social Charter, foresee minority protection. In addition, recommendations and guidelines published by the OSCE High Commissioner on National Minorities can also be relevant. Acts, norms and recommendations by the Council of Europe, the OSCE and the United Nations have inspired bilateral agreements between States. These bilateral agreements, which became legally binding norms for the signing States, if respected, can contribute to the protection of the rights of national minorities. On a more general level, the International Convention on the Elimination of all Forms of Racial Discrimination, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and

⁵ www.ohchr.org/Documents/Issues/Minorities/Booklet_Minorities_English.pdf

⁶ <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G05/133/85/PDF/G0513385.pdf?OpenElement>

⁷ www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf

⁸ <http://conventions.coe.int/Treaty/en/Treaties/Html/157.htm>

⁹ Thematic Commentary n.3: the language rights of persons belonging to national minorities under the Framework Convention, paragraph 3,

www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_CommentaryLanguage_en.pdf. paragraph 11.

¹⁰ Ibid.

Cultural Rights, and the Convention on the Rights of the Child also touch the domain of minority rights. In the case of national minorities living in the European Union, the EU *acquis* on language rights is relevant, as well as the constitutional traditions common to EU Member States. Good practices in Council of Europe Member States could serve as an inspiration.

30. The European Parliament resolution on the protection of minorities and anti-discrimination policies in an enlarged Europe (2005/2008(INI)) pointed out the inconsistency of policies with regard to minorities – while protection of minorities was a part of the Copenhagen criteria, there was no standard for minority rights in Community policy nor was there a Community understanding of who can be considered a member of a minority. The European Parliament recommended that a definition of minorities should be based on the definition, laid down in the Assembly Recommendation 1201 (1993). In the case of *Timishev v. Russia* (Application Nos. 55762/00 and 55974/00), the ECHR defined the notion of minorities as societal group.

7. Achievements and challenges in the implementation of the Framework Convention for the Protection of National Minorities

31. The Framework Convention for the Protection of National Minorities is one of the major achievements of the international minority protection system. The need to protect and promote the rights of members of these communities who are seen as holders of cultural, economic and other values important for the society at large, is accepted. Minority cultures and languages are no longer considered, at least in theory, a problem or a threat to the integrity of the society, but are considered instead a valuable and often underused resource. There is a general consensus among states that the protection of national minorities is not considered a domestic issue.

32. The Framework Convention shows the way for an enhancement of the minority protection system. It is essential to note, however, that aiming to preserve minority cultures or languages in their present form can be insufficient. A recommendation adopted by the Congress for Local or Regional Authorities of the Council of Europe on Minority languages – an asset for regional development¹¹ states that “Regional and minority languages are not luxuries: as well as being an integral part of Europe's rich cultural heritage, they have a vital role to play in increasing the integration and economic prosperity of the greater European area”.

33. Certain conditions must be met in order to ensure the development, thus the survival of minority cultures and languages. If a state, responsible for the protection of a given national minority, does not put in place all the necessary structures and does not take appropriate measures to effectively and adequately protect the given community (its culture, language and members), then the minority culture in question will decline, even if the state meets, at least in theory, all its internationally binding obligations.

34. As highlighted by Professor Athanasia Spiliopoulou Åkermark, President of the Advisory Committee on the Framework Convention for the Protection of National Minorities, “Minorities are not homogeneous, monolithic groups and may require different measures (...) The Convention is implemented and monitored on an “article by article” basis”.¹² The commentaries (especially the recent Commentary no. 3.) of the Advisory Committee on the Framework Convention, based on the close monitoring of the implementation of the Convention in the States Parties, should be seen as living instruments whose interpretation will be developed as the monitoring process under the Framework Convention evolves: they recognise that there is a constant evolution of the standards, in other words a continuous possibility for enhancement.

35. While the monitoring system of the Framework Convention improves the standards and defines its scope of application, there are issues that limit its applicability. The slow ratification process of the Convention, as well as the reservations made by States Parties, have weakening effects. It is important to note, however, that the improving standards and best practices by some states still constitute valid models and references even for states that are not yet parties to the Convention. In this context, I wish to recall that, according to Article 27 of the Vienna Convention on the Law of Treaties, a party may not invoke the provisions of its internal law as justification for its failure to execute a treaty. Therefore, the Framework Convention provisions apply to all state bodies without limitations or exceptions, irrespective of the federal, centralised or decentralised structure of the state.

36. Although the implementation of the Framework Convention has entailed the adoption of new and effective solutions in this field, there have been deficiencies in ensuring adequate protection of persons belonging to national minorities. In some states the process of implementation of the Framework Convention has brought about not only good practices but also serious challenges. The protection of persons belonging

¹¹ Recommendation 286 (2010).

¹² Meeting of the Committee on Equality and Non-Discrimination held in Madrid on 17 September 2013 .

to national minorities can be considered as a political issue and its extent depends on the current political situation. The implementation of policies to reinforce this protection is often discontinued following changes of ruling parties or coalitions. Such changes sometimes also imply transfer of competences between different state institutions. Moreover, due to political changes, certain states develop policies promoting the majority (official or “state”) language and culture, which may, in practice be detrimental to the protection of persons belonging to national minorities. Furthermore, the lack of definition for the term of national minorities remains a persistent issue.

8. The right to identity

37. “The right to identity represents in many ways the essence of the case for minorities within the corpus of human rights - the claim to distinctiveness and the contribution of a culture on its own terms to the traditional, cultural, linguistic heritage of mankind”.¹³ The protection of identity is specifically laid down in Article 5 (1) of the Framework Convention, according to which: “[States Parties] undertake to promote the conditions necessary for persons belonging to national minorities to maintain and develop their culture, and to preserve the essential elements of their identity, namely their religion, language, traditions and cultural heritage.” The protection of identity is part of a policy of non-assimilation. The protection of identity is furthermore part of Article 6 of the Framework Convention, which prohibits discrimination based on ethnic, cultural, linguistic or religious identity. The identity to be protected and promoted may be national, ethnic, cultural, religious or linguistic or all of these altogether. The concept of identity is a broad and important concept for individuals and communities since it concerns their belonging, their way of thinking, feeling and acting. Consequently, respect for and protection of identity can be considered as constitutive elements of respect for human dignity.

38 The right to identity can be considered as intermediate between individual rights and collective rights,¹⁴ with an individual and a collective dimension because individuals as well as communities can benefit from it.¹⁵ The individual right to participate in cultural life for example makes no sense without a community.

39. Article 5 (2) of the Framework Convention prohibits forced assimilation and states that: “without prejudice to measures taken in pursuance of their general integration policy, the Parties shall refrain from policies or practices aimed at assimilation of persons belonging to national minorities against their will and shall protect these persons from any action aimed at such assimilation”. In the case of traditional national minorities that developed their national identities and institutions for centuries while living on the same territory, I consider that integration as a community represents a solution that makes it possible to avoid both forced assimilation of minority groups and the secession of parts of the state territory. Thus integration as a community is a constructive element for the promotion of peace and stability while integration at the individual level can easily lead to assimilation and thus possibly become a source of tensions or a security threat. Traditional national minorities should integrate into society as a community. This opinion was confirmed by all persons I met in Alto Adige/Südtirol, especially Prof. Joseph Marko, Head of the Institute of Minority Rights of the European Academy of Bolzano/Bozen. It was also confirmed during my fact-finding visit to Serbia.

40. International minority rights law has clearly set boundaries to integration policies: they cannot lead to forced assimilation and to give up one’s own specific identity. Traditional national minority communities need to better integrate to larger units of society (at regional, national and European level, as it may apply) as autonomous communities composed of individuals, contributing to the cultural and economic enrichment of society at large. They need to preserve their culture and language by maintaining (or reestablishing) and running the institutions developed during centuries, by maintaining or reacquiring the official status of their language, which is also expressed in the Article 9.1.a.i, 10.1.a.i. and 10.2.a of the European Charter for Regional or Minority Languages. These historically based needs are to be considered their vested rights and respected as such. An integration policy may be in line with the expectations of the Framework Convention when it ensures that the integration of traditional national minority as a group does not become unwanted assimilation or undermine the group identity of persons living on the territory of the State. It is vital to distinguish between integration (of autonomous communities), which is a solution, and forced assimilation, which could mean breaching human rights and triggering a security threat.

¹³ Patrick Thornberry, *Collected Courses of the Academy of European Law/ Recueil des cours de l'Académie de droit européen* (European courses 121995 vol VI book 2), 1997.

¹⁴ Conference: Enhancing the Impact of The Framework Convention, Report prepared by Tove Malloy, Roberta Medda-Windischer, Emma Lantschner and Joseph Marko, *Indicators for Assessing the Impact of the Framework Convention for the Protection of National Minorities in its States Parties*, Council of Europe, 9 - 10 October 2008 Palais de l'Europe, Strasbourg, p 57.

¹⁵ *Ibid* p 56.

9. Language rights

41. Language is a key aspect of cultural identity. The link between linguistic rights and the protection of identity of persons belonging to minority groups is particularly relevant and a key aspect because the use of a minority language represents one of the main means to assert and preserve one's identity.¹⁶ The right to use freely and without interference one's minority language is enshrined in Article 10 of the Framework Convention and also in Article 7.1.d of the European Charter for Regional or Minority Languages. The speakers of regional and minority languages are a precious asset because they act as bridges between people. In its Thematic Commentary no 3, the Advisory Committee states that "*although the Framework Convention protects the rights of individual persons belonging to national minorities, the enjoyment of certain rights has a collective dimension*" (paragraph 3). As the Framework Convention noted, some rights, including the right to use a minority language in public, can be effectively enjoyed only in a community with others." The human rights protection system is reasonably effective in guaranteeing the free use of languages in the private sphere, but not so effective when the issue is language rights in relation to public authorities.

42. Article 1 of the European Charter for Regional or Minority Languages defines the term of regional or minority languages, which are traditionally used within a given territory of a State by nationals of the State who form a group numerically smaller than the rest of the State population, different from the official language(s) of the State. It does not include either dialects of the official languages of the State or the languages of migrants. This definition covers 84 regional and minority languages used by 206 national minorities or linguistic groups in 23 of the 25 European Charter for Regional or Minority Languages States Parties.¹⁷

43. A number of documents, such as Commentary no. 3 of the Advisory Committee on the Framework Convention, stresses the importance of reciprocity when dealing with language policies: "*In order to create respect for lesser-used languages, language policies should encourage the use of different languages in public places, such as local administrative centres, as well as in the media. In addition, it is not only important for speakers of minority languages to learn majority languages but also vice versa*" (Article 33).

44. The Finnish Constitution states that Finnish and Swedish are the official national languages. After birth, parents decide to affiliate a child to one of the official languages, Finnish or Swedish. At 18, this choice can be changed and after 18 one can change as many times as one wants. Citizens should be provided with the same level of services in Finnish or Swedish in bilingual municipalities.

45. In Serbia, the 2002 Federal Law on the Protection of the Rights and Freedoms of National Minorities regulates the rights of minorities to education in their mother tongue. A minority language may be used by the local administration when 15% of the population belongs to a national minority. According to the regional Ombudsman of Vojvodina, the application of this law in certain municipalities is still problematic.

46. The Advisory Committee noted in its Third Thematic Commentary that media play a central role with regard to the linguistic rights of national minorities: "*The right to receive and impart information and ideas in a minority language, as stipulated in Article 9 of the Framework Convention, depends on effective opportunities for access to the media. Furthermore, the possibility to receive and impart information in a language one can fully understand and communicate in, is a precondition for equal and effective participation in public, economic, social, and cultural life*". The public service broadcasting must guarantee an adequate presence of persons belonging to minorities and their languages in order to reflect the cultural and linguistic diversity existing within the society.

47. I support the request made to the authorities by the Advisory Committee to increase funding to organisations or media outlets representing minorities in order to bring their identity, language, history and culture to the attention of the majority. Special attention should be paid in this regard to the particular needs of rural and remote areas where persons belonging to national minorities live traditionally or in substantial numbers. The Advisory Committee has valued the significant role played by private and community media for the realisation of linguistic rights of persons belonging to national minorities: "*Negative consequences facing minority language outlets may include the limitation of broadcasting time, increased costs due to requirements for translation or the production of subtitling in the official language, and even, in some instances, fines for infringements of legal provisions in this domain.*"

¹⁶ Ibid p 57.

¹⁷ <http://languagecharter.eokik.hu/byLanguage.htm>.

10. Right to education in one's language

48. The right to education is closely linked to linguistic rights. Education is the most important for cultural reproduction, socialisation and identity formation and thus an invaluable means for the maintenance and respect of one's identity. Teaching in minority languages is vital to the protection of minority rights. The importance of the right to use mother tongue in education cannot be stressed enough. Language constitutes a significant 'gate-keeping factor' and is thus considered a crucial element for the access to all levels of education. Education is indeed crucial for the survival of traditional national minority languages which make up the cultural heritage of Europe. In its Recommendation 1353 (1998), the Assembly stated that minorities should be able to express their identity and to develop their education, culture, language and traditions, and that states should take all necessary measures to this end. The right of persons belonging to national or ethnic, religious and linguistic minorities to express their characteristics and to develop, inter alia, their culture and language, is also recognised by the United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (1992). The Declaration recognises as well the right to receive education in one's language.

49. The right to learn and be taught in one's mother tongue is recognised in Article 14 of the Framework Convention, as "*one of the principal means by which such individuals can assert and preserve their identity*". States Parties are expected to recognise this right in their legal and educational systems. Article 14 (1) refers explicitly to "the right" of national minorities to learn their minority language as "*one of the principal means by which such individuals can assert and preserve their identity*".

50. Mother tongue education is considered a best practice in language maintenance. However, protecting and promoting the right to and right in education in a minority language as a human right is a difficulty encountered by traditional national minorities. The Assembly Recommendation 1740 (2006) stated that education based on the mother tongue "significantly increases the chances of educational success and can even give better results". It is undoubtedly true that every language has its own linguistic logical system which cannot be replaced by the logic of another language. A child's mother tongue is the language in which he/she expresses himself. The Hague Recommendations of the Organization for Security and Co-operation in Europe (OSCE) High Commissioner on National Minorities recall that the first years of education are of pivotal importance in a child's development.¹⁸ Educational research suggests that the medium of teaching at pre-school and kindergarten levels should ideally be the child's language. The continuity of the education in mother tongue in secondary and in higher education (including vocational education) is indispensable for traditional national minorities. In its Recommendation 1353 (1998), the Assembly has recalled that governments should avoid prescribing the exclusive use of the official majority language and abstain from pursuing policies aimed at assimilation of national minorities into the majority culture.

51. The right of persons belonging to national minorities to establish and maintain their own educational institutions, for which they seek private as well as public assistance, is protected by Article 13 of the Framework Convention. Education policies should be formulated in line with the needs of traditional national minorities. I am convinced that specific educational institutions for traditional national minorities are best solutions to learn in one's language through the method of their own minority educational system. In Alto Adige/Südtirol, each linguistic minority has its own educational system. In the German system, lessons are taught in German, Italian is taught as a foreign language. In the Italian system, lessons are taught in Italian and German is a foreign language. In the Ladin system, half of the lessons are taught in German and half in Italian, with two hours of Ladin language a week. In Finland, Finnish speaking and Swedish speaking children have the right to education in their mother tongue. In the Sámi homeland, the basic education should be mainly in Sámi language. The state gives extra subsidies to providers of education for the teaching of their mother language to Sámi, Roma and migrant children.

52. When a child is capable of expressing him/herself in his/her mother tongue as a native speaker, it is the right time to acquire the language of the majority properly, which is indispensable to be competitive. If integration policies are pushed too far in education, the result is assimilation and the disappearance of the minority language as a distinct culture. Teaching of the minority language to persons who are not members of the minority can also be a useful tool in improving understanding between the majority and the minorities. On a few occasions, when the Advisory Committee has had a chance to review the implementation of the provisions under Article 13, it has referred to private minority educational and pedagogic institutions as a key

¹⁸ Second World Conference on the Right to and Right in Education, Draft of the Proceedings of the Workshops on Linguistic Rights in the in Education spirit of understanding, peace, tolerance, equality, and friendship, 8-10/11/2012, Education Law and Policy (ELA) Brussels, (CRC) Gracienne Lauwers & Jan De Groof (Eds.): Dženana Hadžiomerović, *Multilingualism and Conflict Prevention: Speaking the Language(s) of Integration* (2005) p. 41., available on Internet: <http://www.ua.ac.be/main.aspx?c=.ELA&n=109131>

source for minority language education.¹⁹ The Advisory Committee welcomed and encouraged the initiatives of the States parties to provide subsidies for private minority language schools.²⁰

53. The Advisory Committee devoted its First Thematic Commentary on Education under the Framework Convention on 2 March 2006. The following conclusions can be drawn when analysing the Commentary. Regarding the qualification “if there is sufficient demand”, “the Advisory Committee has encouraged governments to take a ‘proactive approach’ even when the expressed demand appears low”. Emphasis has been placed on the continuity of traditional minority language education at all levels, including at the pre- and post-primary stages. The Advisory Committee has also emphasised that Article 12 of the Framework Convention for the Protection of National Minorities requires the commitment of States Parties to promote equal access to education at all levels for national minorities.

54. The European Charter for Regional or Minority Languages (ECRML) was designed with the aim of protecting and promoting regional and minority languages as part of Europe’s cultural heritage. Its Article 8 is intended to ensure that regional or minority languages are used in education. France, Greece and Turkey have yet to ratify the Charter. The system also depends on states’ good will, and taking active measures to promote the use of regional and minority languages. These conditions are not universally fulfilled, and some states remain hostile to the Charter or do not implement it effectively. The recommendations of the Committee of Experts of the ECRML do not represent a legal obligation. In several countries there is a gap between existing legislation and implementation. The ECRML is a unique instrument and exchanges on best practices for the implementation of its provisions should be further encouraged.

55. The UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities and the UN Declaration on the Rights of Indigenous Peoples include the right to education in one’s language. But, unfortunately, they are not legally binding instruments. While they show that, at international level, there is a growing trend towards acceptance of the principle that the right to be educated in one’s language should be guaranteed, the fact is that there is not yet a general, unambiguous and legally binding obligation for such a right, clearly established in international law. At global level, there is still some difficulty in getting a broad international agreement in order to make this a legally binding norm. However, the UN Committee on the Rights of the Child has interpreted indigenous people’s right to education in their own language in its General Comment Nr. 11 from 2009 (CRC/C/GC/11) in the following terms: “62. Article 30 of the Convention establishes the right of the indigenous child to use his or her own language. In order to implement this right, education in the child’s own language is essential. Article 28 of ILO Convention No. 169 affirms that indigenous children shall be taught to read and write in their own language besides being accorded the opportunity to attain fluency in the official languages of the country. Bilingual and intercultural curricula are important criteria for the education of indigenous children. Teachers of indigenous children should to the extent possible be recruited from within indigenous communities and given adequate support and training”.²¹

56. From a legal point of view, the Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages provide the clearest expression of a right for traditional national minorities to not only learn, but in some cases to also receive education in, their own language – at least under certain circumstances. The provisions in these treaties do however raise problems and do not quite fulfill the promises they seem to make. Unfortunately, it would seem that mother tongue education for traditional national minorities depends heavily on the attitude majority shows towards the protection of minorities. I would also like to highlight the importance of including courses about minorities in the school curriculum in order to raise awareness about their culture, history and rights.

11. Right to participate in political and public life

57. People belonging to traditional national minorities should be able to participate in political and public life. Members of a society should be able not only to formulate their interests but also to decide, either directly or indirectly, the methods and ways they would like to use to formulate their interests with due respect for democratic principles and the rule of law. In my view, the state bodies should involve representatives of the minorities concerned in the decision-making process on possible ways and methods of participation. Effective participation in public life also provides members of national minorities with an opportunity to learn from the process and become democratic actors in mainstream society. Guaranteeing

¹⁹ ACFC Second Opinion on Sweden, para.139

²⁰ ACFC Second Opinion on Cyprus, para.125. Similar comments are given with regard to public subsidies in the following opinions: on Germany, paras.55-56, Estonia paras.49 (1st opinion) and 134 (2nd opinion), Austria paras.59-60 (1st opinion) and 151(2nd opinion)

²¹ www2.ohchr.org/english/bodies/crc/docs/CRC.GC.C.11.pdf

participation rights in public life for national minorities is thus considered a democratisation tool : it helps societies overcome deep divisions as it forces all sides to meet and discuss the process.

58. Article 15 of the Framework Convention for the Protection of National Minorities states that 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. Moreover, they “*should also have a say on issues which are not of exclusive concern to them but affect them as members of the society as a whole*”.²² As noted in the Commentary of the Advisory Committee on the effective participation of persons belonging to national minorities in cultural, social, and economic life and in public affairs, “*although the Framework Convention protects the rights of individual persons belonging to national minorities, the enjoyment of certain rights, including the right to effective participation, has a collective dimension*”. This means that some rights can be effectively enjoyed only in community with other persons belonging to national minorities. While Article 15 is the Framework Convention’s central provision devoted to the right to effective participation, participation is also the key to the full enjoyment of other rights protected under the Convention. “*The relation between Article 15 and Articles 4 and 5 is, in this context, particularly important. In fact, Articles 15, 4 and 5 can be seen as the three corners of a triangle which together form the main foundations of the Framework Convention*”.²³

59. Article 4 requires States to promote full and effective equality for persons belonging to national minorities in all areas of life. This implies the right of equal protection of the law and before the law and the right to be protected against all forms of discrimination based on ethnic origin and other grounds. Furthermore, full and effective equality also implies the need for the authorities to take specific measures in order to overcome past or structural inequalities and to ensure that persons belonging both to national minorities and to the majority have equal opportunities in various fields. Professor Joseph Marko²⁴ in his study *The Law and Politics of Diversity Management: A Neo-institutional Approach* writes: “Therefore, the concept of ‘substantive’ equality requires the state not only to refrain from discriminatory acts, but to interfere through ‘affirmative action’ measures in the economic and social systems with the goal of either removing the factual barriers to ‘equal opportunities’ or even guaranteeing ‘full and effective equality’ as this is prescribed by Article 4 of the Council of Europe’s Framework Convention for the Protection of National Minorities (FCNM). Thus, only ‘affirmative action’ measures and ‘special rights’ in the form of group rights can remedy in their view the factual, societal disadvantages. Group-related rights as ‘special rights’ for minorities or their members do not by definition restrict individual rights, but can— and in most cases must—complement each other for ‘effective’ diversity management in order to overcome structural inequalities or to guarantee institutional equality. Much more important for the effectiveness of human and minority rights is thus a country-, culture- and context-specific mix of individual and group-related rights” (page 276).

60. Article 5 implies for States Parties an obligation “to promote the conditions necessary for persons belonging to national minorities to maintain and develop their culture and to preserve the essential elements of their identity, namely their religion, language, traditions and cultural heritage” in order to guarantee effectively their right to identity. As the Explanatory Report to the Framework Convention points out, States could promote – in the framework of their constitutional systems – several measures such as certain consultative mechanisms, the involvement of the minorities in the preparation, implementation and assessment of national and regional development plans and programmes likely to affect them directly. The involvement of these persons in the decision-making processes and in elected bodies both at national and local levels, autonomous or decentralised or local forms of government (national and local levels) is pointed out, too. As an example the Swedish Assembly of Finland (Folktinget), a cross-political body, can take part in law-drafting when related to the interests of Swedish-speakers. In Serbia, national minority councils were established with a view to allowing minorities to exercise their rights in the fields of culture, education and information.²⁵ States in certain cases should establish additional institutions and measures in order to be able to guarantee the right of persons belonging to national minorities to effective participation in political and public life. “The relation between Article 15 and Articles 4 and 5 is, in this context, particularly important. In fact, Articles 15, 4 and 5 can be seen as the three corners of a triangle which together form the main foundations of the Framework Convention”.²⁶

²² See the Commentary of the Advisory Committee on the Framework Convention for the Protection of National Minorities on the Effective Participation of Persons belonging to National Minorities in Cultural, Social and Economic Life and in Public Affairs. Para 17.

²³ The Effective Participation on Persons Belonging to National Minorities in Cultural, Social, and Economic Life and Public Affairs, Adopted on 27 February 2008, by the Council of Europe

²⁴ “The Law and Politics of Diversity Management: A Neo-institutional Approach”, p. 260.

²⁵ There are 19 councils in total, 13 of them are based in the Autonomous Province of Vojvodina (Ashkali, Bunjevac, Croatian, Czech, Egyptian, German, Hungarian, Macedonian, Romanian, Ruthenian, Slovak, Slovenian and Ukrainian) and 6 in other parts of Serbia (Albanian, Bosniak, Bulgarian, Greek, Romani, Vlach).

²⁶ The Effective Participation on Persons Belonging to National Minorities in Cultural, Social, and Economic Life and

61. States, in certain cases, should create - by legal and any other proper means - the democratic framework of the political and public life of minorities within which the diversity of views among members of a minority community could be represented. According to a recommendation that was adopted by the Parliamentary Assembly of the Council of Europe in 2001, democratic legitimacy requires equal participation by all groups of a society in the political process.²⁷ This statement is also true within the minority community (minority society) itself.

62. There are several ways both in theory and in practice to solve the problem of democratic legitimacy within a minority community. Non-territorial and territorial models of a kind of minority self-governance or even minority autonomy can also serve this aim. According to the Advisory Committee “the Framework Convention does not provide for the right of persons belonging to national minorities to autonomy, (...) nonetheless they (i.e. autonomies) can foster a more effective participation of people belonging to national minorities in various areas of life.”²⁸ In its Resolution 1334 (2003) on the “Positive experiences of autonomous regions as a source of inspiration for conflict resolution in Europe”, the Parliamentary Assembly of the Council of Europe rightly pointed out that “*with a view to relieving internal tensions, central government must react with understanding when minority groups, particularly when they are sizeable and have lived in an area for a long period of time, demand greater freedom to manage their own affairs independently. Autonomy is considered by several national minority councils based in Vojvodina as a guarantee for the protection of their rights. At the same time, the granting of autonomy must never give a community the impression that local government is a matter for that community alone.*”²⁹ Furthermore the Forum on Minority Issues of the United Nations in its 2009 Thematic recommendation on minorities and effective political participation stated “[W]here minorities are concentrated geographically, consideration should be given in appropriate circumstances to devolving power, creating autonomous or other sub-State divisions (...)”.³⁰ As power sharing being a constitutive element of democracy, the establishment and the operation of an autonomous entity can be regarded as the part of a given state’s democratisation process,³¹ since “*democracy is an ongoing, never-ending process.*”³² “Autonomy can be considered as a tool for minority protection, if understood as a tool for territorial management”, stressed Mr Francesco Palermo, First Vice-President of the Advisory Committee on the Framework Convention for the Protection of National Minorities during my fact-finding visit to Italy.³³

63. In the best case scenarios, permanent institutionalised inter-cultural dialogue mechanisms already exist in order to include national minority representatives in the political and social process of implementing the Framework Convention as well as in other political processes. This can be either through various types of autonomy, or political representation at all levels.³⁴ In some cases, claims related to identity rights go beyond mere *protection*, the members of the group demanding the promotion of their identity. The conditions for the development and promotion of identity require often special measures intended to facilitate maintenance, reproduction and further development of the culture of minorities.³⁵ Whilst a minority group needs to be able to preserve its own culture and promote its own identity, it also needs to be able to participate in the public life of the state, particularly with regard to matters affecting its culture, identity and institutions. The way this right can be organised and exercised depends, to a large extent, on the kind of minority group concerned. For example, large and closely-knit minorities having a special interest in participation in the affairs of the country as a whole and in matters affecting the group. At the same time, smaller or more dispersed groups are mainly concerned with effective participation in decisions on matters concerning them. The Sámi

Public Affairs, Adopted on 27 February 2008, by the Council of Europe.

²⁷ Recommendation 1500 (2001) Paragraph. 4.

²⁸ See the Commentary of the Advisory Committee on the Framework Convention for the Protection of National Minorities on the Effective Participation of Persons belonging to National Minorities in Cultural, Social and Economic Life and in Public Affairs. Paragraphs 133-134.

²⁹ Resolution 1334 (2003) Paragraph 16.

³⁰ Recommendations of the second session of the Forum on Minority Issues on minorities and effective political participation.

³¹ Inspired by the presentation delivered by Mr. Andreas Gross, Swiss MP and Member of the Parliamentary Assembly of the Council of Europe at the Conference: ‘Territorial Autonomies in Europe: Solutions and Challenges’ held in Budapest on 8 and 9 of April 2013.

³² The crisis of democracy and the role of the State in today’s Europe. A report by Andreas Gross (Doc. 12955) para.48.

³³ Meeting with Mr Francesco Palermo, Senator, First Vice-President of the Advisory Committee on the Framework Convention for the Protection of National Minorities, Head of the Institute for Studies on Federalism and Regionalism, Bolzano, 10 May 2013.

³⁴ Conference: Enhancing the Impact of The Framework Convention, Report prepared by Tove Malloy, Roberta Medda-Windischer, Emma Lantschner and Joseph Marko, Indicators for Assessing the Impact of the Framework Convention for the Protection of National Minorities in its States Parties, Council of Europe, 9 - 10 October 2008 Palais de l’Europe, Strasbourg, p 36.

³⁵ Idem p.38.

Parliament's main objective is to protect and promote the language and culture. Its members can make proposals to the authorities in this regard. In Serbia, the five percent threshold for national minority parties and coalitions of national minority parties was abolished in 2004 which contributed to improve minority representation in parliament.

64. In these contexts, the form of settlement in which the minority group lives is also relevant: in the case of historical minorities living compactly, forms of territorial autonomy can be the best solution to be negotiated, whereas, where minorities live dispersed among the majority, not forming a majority in any substantial area, other forms of institutionalisation of these rights are required, which may well include non-territorial, functional variants of autonomy. Obviously, effective participation in public life includes not only participation in political life and how an adequate representation should be devised, but also participation in cultural, social and economic life.³⁶ So, territorial decentralisation and the participation of minorities in political and public life are twins' and they have a common soul, namely power sharing.

65. Without doubt, the right to autonomy exists only as an immanent part of the peoples' right to self-determination. Ms Schuster in her report rightly pointed out: "*Self-determination of minority groups should be realised rather by way of participation in the government of the state as a whole, and by the devolution of power through the development of regional autonomy, namely self-government in matters such as education, culture, etc., falling short of independence.*"³⁷ In addition, practicing this right to 'internal self-determination' does not interfere with the States' right to territorial integrity, so that the possible conflict between territorial integrity and self-determination can be solved by means of the phenomenon of internal self-determination. The more mature a society is, the more democratic it is, the more extended is decision making at lower levels. Thus, there is a greater chance for the traditional national minorities to manage their own affairs by themselves. As an example, the Åland Islands have their own administration with the right to legislate and provide state services in the fields of education, health care, culture and local administration.

66. The European Charter of Local Self-Government, drawn up within the Council of Europe is the first multilateral legal instrument to define and safeguard the principles of local autonomy, one of the pillars of democracy. It is the Council of Europe's function and role to defend and develop it. It may be hoped that it will thus make a substantial contribution to the protection and enhancement of common European values.³⁸ As of 30 October 2013, the Charter had been ratified by all Council of Europe member States. The Charter lays down the principles of the democratic functioning of communities, and is the first treaty to establish the principle of the transfer of competences to local communities. This principle, known as the principle of subsidiarity, allows for the decentralisation of power towards the level closest to the citizens.³⁹ According to the Charter, "*States undertake to respect a core of basic principles to which no reservation is possible, such as: the right of citizens to participate in managing public affairs; the key rights of communities to enjoy autonomy and self-government, elect their local bodies and to have their own competences, administrative structures and financial resources; or the right to judicial recourse in case of interference from other levels.*"⁴⁰ The Charter's substantive provisions seek to protect what are presumed to be the essential components of local autonomy. According to Article 2 of the Charter, the principle of local self-government is to be recognised in domestic legislation and, where practicable, in the constitution. Through these core principles, the Charter seeks to ensure the compatibility of the diverse structures of local communities in the Council of Europe member states. However, the final aim remains the respect of all of the Charter's provisions.⁴¹ According to Article 7 of the draft European Charter of Regional Self-Government, member States must fully respect [...] "*what has been achieved through the European Charter of Local Self-Government.*"

67. According to Professor Wolff, territorial self-governance arrangements on their own reduce the odds of violent territory-centred intrastate conflict by approximately 50% compared to other state structures, whereas territorial self-governance arrangements in combination with a parliamentary form of government and a proportional representation election system reduces the odds of violent territory-centred intrastate conflict by more than 70% compared to all other institutional combinations.⁴² Of 12 states in Western Europe that are host to national minorities who have made claims to territorial self-governance, only one (Greece) has denied this claim; while 10 states (Belgium, Denmark, Finland, France, Italy, Portugal, Spain, Sweden, Switzerland,

³⁶ Ibid p 39.

³⁷ National sovereignty and statehood in contemporary international law: the need for clarification. A report by Ms Marina Schuster (Doc. 12689.) para. 26.

³⁸ Charter of Local Self-Government and explanatory report, p 32.

³⁹ European Charter of Local Self-Government and explanatory report, Introduction, p 9.

⁴⁰ Ibid, p 10.

⁴¹ Ibid, p 11.

⁴² Stefan Wolff, *Territorial Autonomy and Political Participation of National Minorities*, printed summary of the research by Stefan Wolff shared on the hearing of Committee on Equality and Non-Discrimination of the Parliamentary Assembly of the Council of Europe held in Strasbourg 1 October 2013.

and the United Kingdom) provide territorial self-governance to at least one claimant group, even though they may be denying it to another.⁴³ In Western Europe, the granting of territorial self-governance is the norm regardless of the combination of legacy factors.⁴⁴

12. Challenges to the situation and rights of traditional national minorities

12.1. Demography

68. Demography is a key issue for all European societies, and even more crucial for the survival of traditional national minorities. Where no forms of autonomy exist, there is a general phenomenon that individuals belonging to a minority adjust their individual life strategies to the easier models, e.g. to accept better schooling in the state language or to abandon minority mother tongue when educating their children. It means that besides the policies of certain states of discouraging the use of the minority language, a large number of children belonging to the minority or mixed couples, schooled in state language institutions, identify themselves with the majority population. This phenomenon is tangible especially in urban areas and in areas with less than 30% of minority population. In some cases⁴⁵ a demographic collapse is foreseen in the near future. I note that state integration policies aimed towards individuals easily lead to individual assimilation while integration policies for communities would result in a harmonious coexistence of the majority and minority population.

69. Some demographic decline factors also affect the majority society, like emigration and low birth rates, but emigration to the kin state is an additional factor in the case of a person belonging to a minority. On the other hand, although nativity may be similar for the two communities, when becoming an adult, many persons belonging to a minority declare themselves to be members of the majority community.

70. In addition to low birth rates, assimilation, cultural homogenisation, migration to kin states or elsewhere has an impact on the size of a traditional national minority. States should facilitate national minorities and communities within their territories to remain in their birthplaces, to prosper and progress there.

12.2. Impact of the economic crisis on the protection of traditional national minorities

71. Minorities contribute significantly to the economy of the country where they live. Per-capita GDP is much higher than the EU average in Greenland, Catalonia, Scotland, Basque Country, Alto Adige/Südtirol, the Faroe Islands and the Åland Islands, which are regions enjoying a certain level of autonomy.⁴⁶ The most efficient tool of autonomy is the control of the distribution of assets and the structure of the tax regime. For example Catalonia represents 16 percent of the population of Spain,⁴⁷ while 20 percent of the country's GDP is produced in the autonomous community.⁴⁸ Scotland also causes the EU average to skew upwards: the per-capita GDP in Scotland is higher than not only the EU averages but also the GDP of the UK. In Alto Adige/Südtirol, 90% of the tax collected goes back to the province, where the distribution of resources is decided by the provincial government. Each resident has to declare to which linguistic group he/she belongs. The allocation of posts in public administration and of funding for cultural programmes corresponds to the percentage of persons who declared belonging to one group or the other.⁴⁹

72. There are professions which are closely linked to the identity of a national minority. This is the case of the indigenous Sámi people living in Northern Finland. The Declaration on the Rights of Indigenous Peoples (UNDRIP) adopted by the General Assembly of the United Nations on 13 September 2007 and the International Labour Organisation's Indigenous and Tribal Peoples Convention, 1989 (No. 169) ensure the protection of professions related to the identity of indigenous peoples. Finland has not ratified this Convention yet which has led to some disagreements over land issues between the Finnish authorities and the Sámi people. The right for the Sámi people to practice traditional livelihoods is guaranteed by the Constitution of Finland.

⁴³ Idem.

⁴⁴ Ibid.

⁴⁵ Serious decline can be perceived by comparing some of the 1991 and 2011 census figures; like in Košice (SK) 4.58% to 2,65% for Hungarians, Sighetu Marmăției (RO) 3,55% to 2,3% for Ukrainians and 21,17% to 13% for Hungarians, Vilnius (LT) 19% to 16,5% for Poles.

⁴⁶ Regional GDP per capita in the EU in 2010: eight capital regions in the ten first places, EUROSTAT News release, 21 March 2013, http://epp.eurostat.ec.europa.eu/cache/ITY_PUBLIC/1-21032013-AP/EN/1-21032013-AP-EN.PDF

⁴⁷ Idescat, Statistical Yearbook of Catalonia, 2013, www.idescat.cat/pub/?id=aec&n=245&lang=en

⁴⁸ Figures of Catalonia 2013, www.idescat.cat/cat/idescat/publicacions/catalog/pdfdocs/xifresct/xifres2013en.pdf (page 3)

⁴⁹ Meeting with Dr Luis Durnwalder, Landeshauptmann, 10 May 2013, Bolzano/Bozen.

73. Europe cannot be built on accepting individual, particular solutions as single measures that evolve along power interests, arising from certain concrete situations. Working along democratic traditions, Europe should realise that solutions that were already proven to be successful in certain situations (e.g. autonomy) should be accessible to all groups of people in a similar situation. The first step is that these solutions become part of the pan-European political arena as legitimately pursuable political objectives.

74. The development of certain regions also serves the economic interests of the majority society. Through historical and cultural ties, traditional national minorities establish formal and informal relations with their kin-states, which will facilitate the development of the given territory, in an economic sense as well.

75. Traditional national minorities have been particularly affected by the economic and financial crisis. The economic crisis may have an impact on some levels of autonomy, since there might be possibilities for more interventions of the central government in the future. Minorities are usually under-represented in the more competitive professions, and they have often less access to adequate education. Namely, it is the majority society that decides for the traditional national minority how many people should receive educational resources, for which vocations and on what levels.

13. Conclusions

76. It is important that European states recognise and acknowledge the fact that the protection of the rights of national minorities brings peace, stability, economic prosperity and development of the majority too. This means that the majority state gains more on the expansion of these rights than the disadvantages it assumes or perceives on the basis of an image of the state rooted in the 18-19th century. Europe risks its future security and stability unless the protection of the rights of traditional national minorities is ensured. All are interested in stability, security, peace and the growth of the European strength. That was also the dream of Robert Schumann.

77. The majority and minority nations of Europe should join forces to safeguard human dignity, collective and individual rights and freedoms. The Advisory Committee of the Framework Convention has concluded that the enjoyment of certain rights has a collective dimension. In fact, some rights, including the right to use a minority language in public, can be effectively enjoyed only in community and when interacting with others. During the fact-finding visit to Italy (Alto Adige/Südtirol), local authorities and researchers confirmed the complementarity between individual rights and some group rights, notably for the use of one's language. "Stronger minority rights are for the benefit of all", stressed Eva Biaudet, Ombudsman for Minorities in Finland.⁵⁰

78. In my view, the main law-making task is to match the right to self-determination and state integrity, national sovereignty in a way that waters down hatred, dissolves tensions and transforms intolerance into tolerance. In this context, Parliamentary Assembly Resolution 1832 (2011) "National sovereignty and statehood in contemporary international law: the need for clarification" is the way forward. The task of the leading political groups is, also, to match responsiveness of majority society with its long-term interests.

79. Providing adequate education for traditional national minorities in their mother tongue is no longer an option but a legal obligation for the Council of Europe's members that have ratified the FCNM and the ECRML. These instruments set out the obligation to respect the right to minority language education and to avoid measures preventing it. However, the monitoring practice of the committees of experts under the two latter documents has explicitly indicated that while the rhetorical value of many educational policies is high, the potential for implementation of such policies remains rather precarious at state level. There is a further need for consistent and qualitative improvement of the system of minority language education in some European states.

80. A Europe of security and prosperity must be a Europe of diversity. Diversity of cultures, languages, religions but by no means a diversity of rights: no first and second-class citizens. A prosperous Europe must secure and preserve its diversity to ensure its stable and long-term unity.

81. The future rests with the promotion of a peaceful co-existence for traditional minority communities with the majority. The co-existence of peoples, especially between traditional national minorities and majority population, is an art of living together rather than just next to each other. There is a real need for traditional national minorities to have their cultural identity acknowledged by the majority to enable them to feel entirely at home. "*The stability of our society depends on the rights of national minorities*", stated Ms Gordana

⁵⁰ Meeting with Ms Eva Biaudet, Ombudsman for Minorities, Helsinki, 7 November 2013.

StameniĆ, State Secretary at the Serbian Ministry of Justice and Public Administration during our meeting.⁵¹ During my fact-finding visit to Alto Adige/Südtirol I was told that the Italian-German cohabitation had the following stages: after the Second World War it could be labelled as “one against the other”. This was followed by “one next to the other”. Now it is in the stage of “one together with the other”. The next, very desired and expected stage will be “one for the other”.⁵² I am sure that Europe can win the global competition if we all reach at least the stage “one together with the other”.

82. On 31 October 2013, the Congress of Local and Regional Authorities adopted a resolution on Regions and territories with special status in Europe, acknowledging that the special status enjoyed by regions of some European states had brought stability and prosperity to those regions and states.⁵³ The resolution highlights that the future peaceful and prosperous development of European States will depend on making greater progress in conflict prevention and resolution. This will require political will to pursue peaceful political dialogue and to move forward on negotiating legal and constitutional solutions, in order to develop sufficient models of decentralised democratic governance for regions with specific identities.

83. Much has been done in the field of protection of traditional national minorities up to now, even by States which did not sign the Framework Convention but the experience shows that still much has to be done because non-discrimination is not enough to prevent assimilation. Human and European cultural values which represent the richness of Europe might be lost and the well-known European diversity might fade away.

84. The legal status and protection of traditional national minorities must be settled both on the European and national levels. We should look to the future as partners, ready to cooperate in full solidarity for the sake of our children and our nations. We should all be interested in a long-term solution within the European context and frame. I am convinced that this would be possible if the European states and nations realised at last that without tolerance, partnership, solidarity and cooperation there will be no future for any of us.

⁵¹ Meeting held on 13 December 2013 in Belgrade.

⁵² *Idem.*

⁵³ Resolution 361 (2013) on Regions and territories with special status in Europe adopted by the Congress on 31 October 2013.

Appendix

Dissenting opinion by Ms Tülin Erkal Kara (Turkey, EDG),⁵⁴ member of the committee

This report contains a number of gaps and the proposals it makes need to be reconsidered.

Firstly, there is no unanimous definition of the terms “minorities”. It would therefore be all the more difficult to agree on a definition for the term “traditional national minorities”.

Secondly, the report does not take into consideration, the fact that there are different legal systems in Europe. For example, in Turkey, the word “minorities” refers only to groups defined as such by the international treaties recognised by Turkey.

In this context, the rights of minorities in Turkey are governed by the Treaty of Lausanne (1923), which refers only to “non-Muslim minorities”. Turkey did not therefore fall within the context of this report.

Lastly, the draft resolution calls on member states to grant collective rights to the communities concerned. As in other countries, there are no collective rights in the Turkish judicial system. The Turkish constitutional system is based on the equality of all citizens before the law, and rights are individual while respecting differences.

⁵⁴ Rule 49.4 of the Assembly’s Rules of Procedure: “The report of a committee shall also contain an explanatory memorandum by the rapporteur. The committee shall take note of it. Any dissenting opinion expressed in the committee shall be included therein at the request of their authors, preferably in the body of the explanatory memorandum, but otherwise in an appendix or footnote.”