



## **OSCE Human Dimension Implementation Conference**

**Warsaw, 25 September- 5 October 2012**

### **Working Session 12: Rights of Persons belonging to national minorities**

#### **Contribution of the Council of Europe**

## **COUNCIL OF EUROPE ACTIVITIES IN THE FIELD OF PROTECTION OF NATIONAL MINORITIES**

### **Introductory Remarks**

The protection of national minorities became a priority concern for the Council of Europe during the early 1990s with the collapse of the communist regimes and the rise of extreme nationalism in certain parts of Europe. The outbreak of inter-ethnic violence and hostility in former Yugoslavia and the former Soviet Union made it all too clear that the protection of national minorities is not only a crucial element of human rights but also essential for stability, security and peace in Europe. The Heads of State and Government of the Council of Europe responded to these developments at their first Summit Meeting, held in Vienna in October 1993, by launching both standard-setting and cooperation activities aimed at protecting persons belonging to national minorities, and combating racism, xenophobia, anti-semitism and intolerance.

The increased attention given to minority issues within the Council of Europe resulted in a range of concrete achievements during the 1990s, including the adoption of the first legally binding minority rights instrument, namely, the Framework Convention for the Protection of National Minorities, as well as the European Charter for Regional or Minority Languages, with effective monitoring mechanisms coupled with targeted co-operation activities. At their Second Council of Europe Summit Meeting, held in Strasbourg on 10-11 October 1997, the Heads of State and Government of the member States reiterated their determination to step up co-operation in respect of the protection of all persons belonging to national minorities. As part of the action plan adopted at the Summit, they resolved to complement the Council of Europe standard setting achievements in this field through practical initiatives, such as confidence-building measures and enhanced co-operation, involving both governments and civil society.

In the Budapest Declaration, adopted on 7 May 1999 on the occasion of the 50<sup>th</sup> anniversary of the Council of Europe, the Foreign Ministers of the Council of Europe's Member States committed themselves to combat the divisive factors constituted by racism and xenophobia, intolerance and discrimination against minorities. They expressed their determination to continue, in the 21<sup>st</sup> century, to contribute to building democratic stability and co-operation in Europe. They also

undertook to seek political and legal solutions to promote peaceful coexistence; in this spirit, reference was made to the implementation of the Council of Europe's contribution to the stability programme for South East Europe.

The prioritisation of minority issues was reconfirmed in the action plan adopted at the Warsaw Summit on 16-17 May 2005, where the Heads of State and Government of the Council of Europe member states called on the Council of Europe "to continue its activities to protect minorities, particularly through the Framework Convention for the Protection of National Minorities and to protect regional languages through the European Charter for Regional or Minority Languages."

### **Council of Europe Action**

Council of Europe action in the field of minority protection and respect for diversity is based on the principle that the protection of persons belonging to minorities is part of the universal protection of human rights.

Action includes standard setting and monitoring, intergovernmental co-operation, activities for the development and consolidation of democratic stability, and confidence building measures in civil society. It extends to many related policy fields and involves, in addition to intergovernmental co-operation, the Parliamentary Assembly and the Congress of Local and Regional Authorities of Europe as well as specialised bodies.

The activities organised in the field of minority protection are continuously evolving.

### **Legal Instruments**

The European Convention on Human Rights, which is the centre piece of the Council of Europe's normative "*aquis*", is of relevance for the protection of minorities because its universally applicable individual rights can also be claimed, individually or collectively, by persons belonging to national minorities. Relevant provisions include the freedom of thought, conscience and religion, the freedom of expression, the ad freedom of assembly and association. Next to the non-discrimination provision of the Convention (Article 14), which prohibits discrimination in the enjoyment of the rights guaranteed by the Convention, Protocol No. 12 to the Convention, which entered into force in April 2005, contains a general prohibition against all forms of discrimination and thereby strengthens the protection afforded under the Convention to individuals belonging to national minorities. The Council of Europe continues to work for the widest possible acceptance of this Protocol amongst all Council of Europe member states (currently 20 states have signed and 17 states have ratified Protocol No. 12).

Since the mid-1990s, an increasing number of cases concerning the situation of minorities have come before the European Court of Human Rights. In some cases concerning Roma, the Court held that there had been a violation of Article 14 on non-discrimination alongside other substantive provisions of the Convention.<sup>1</sup> Considering the fact that Protocol No. 12 of the Convention is in force, the number of cases before the Court concerning persons belonging to minorities is likely to increase further.

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<sup>1</sup> Nachova and Others v. Bulgaria, Application No. 43577/98, Grand Chamber Judgment, 6 July 2005; Moldovan and Others v. Romania (no.2), Application Nos. 41138/98 and 64320/01, Chamber Judgment, 12 July 2005; and D.H. and Others v. the Czech Republic, Application No. 57325/00, Grand Chamber Judgment, 13 November 2007.

The Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages are the two Council of Europe conventions with direct relevance to the protection of national minorities, one as an individual rights instrument, the other as a tool for the protection and promotion of regional or minority languages as part of Europe's cultural heritage.

### **Framework Convention for the Protection of National Minorities**

The Framework Convention for the Protection of National Minorities of 1994 entered into force on 1 February 1998. Thirty-nine States are currently Party.<sup>2</sup>

Although not the only instrument to be developed within the Council of Europe relevant to the protection of national minorities, the Framework Convention for the Protection of National Minorities is the most comprehensive document in this area and the first ever legally binding multilateral instrument devoted to the protection of persons belonging to national minorities in general.

#### *Content*

The Framework Convention sets out principles to be respected as well as goals to be achieved by the Contracting Parties, in order to ensure the protection of persons belonging to national minorities, whilst fully respecting the principles of territorial integrity and political independence of States. The principles contained in the Framework Convention must be implemented through national legislation and appropriate governmental policies. It is also envisaged that some provisions may be implemented through bilateral and multilateral treaties.

The main operative part of the Framework Convention is section II, containing specific principles on a wide range of issues, *inter alia* :

- non-discrimination;
- promotion of effective equality;
- promotion of suitable conditions regarding the preservation and development of the minority culture and the preservation of religion, language and traditions;
- prohibition of forced assimilation;
- freedom of assembly, association, expression, thought, conscience and religion;
- access to and use of media;
- use of the minority language in private and in public as well as its use before local administrative authorities;
- use of one's own name;
- display of information of a private nature;
- topographical names in the minority language; -
- learning of and instruction in the minority language;
- freedom to set up educational institutions;
- effective participation in economic, cultural and social life;
- effective participation in public affairs;
- crossborder contacts;
- international and transfrontier co-operation.

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<sup>2</sup> Parties to the Framework Convention: Albania, Armenia, Austria, Azerbaijan, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, the Czech Republic, Denmark, Estonia, Finland, Georgia, Germany, Hungary, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Malta, Moldova, Montenegro, the Netherlands, Norway, Poland, Portugal, Romania, the Russian Federation, San Marino, Serbia and Montenegro, the Slovak Republic, Slovenia, Spain, Sweden, Switzerland, "the former Yugoslav Republic of Macedonia", Ukraine and the United Kingdom. Belgium, Greece, Iceland, and Luxembourg are signatories to the Framework Convention.

## *Monitoring of the implementation of the Framework Convention*

### Introduction

The monitoring mechanism of the Framework Convention is based on Articles 24 - 26 of the Framework Convention for the Protection of National Minorities and relevant Committee of Ministers' Resolutions, notably CM/Res(2009) 3 adopted by the Committee of Ministers on 16 April 2009. The monitoring of the implementation of the Framework Convention by the State Parties is carried out by the Committee of Ministers, which is assisted by the Advisory Committee on the Framework Convention, an independent body composed of 18 impartial experts from 18 of the member states appointed by the Committee of Ministers.

Every five years, State Parties are required to submit a report containing full information on legislative and other measures taken to give effect to the principles of the Framework Convention. These State Reports are made public and are examined by the Advisory Committee which will visit the country and speak to minority representatives as well as state, regional and local authorities to obtain a comprehensive picture on the minority rights situation. An Opinion is then prepared by the Advisory Committee and published, jointly with the comments from the respective State. Based on the Advisory Committee Opinion, the Committee of Ministers adopts a binding resolution, containing recommendations in respect of the State Party concerned.

### *Where do we stand?*

The first cycle of monitoring started in 1998 and, as of September 2012, the Advisory Committee has adopted 39 first cycle Opinions which are all public and on which the Committee of Ministers has adopted 38 resolutions. This means that agreement within the Committee of Ministers could not be found with regard to the resolution on one country.

The second cycle of monitoring started in February 2004 with the first receipt of a second cycle state report: to date, 36 such reports have been received. As of September 2012, the Advisory Committee has adopted 35 second cycle Opinions, which are all public. Committee of Ministers resolutions have been adopted with regards to 33 countries.

The third cycle of monitoring started in 2009: to date 31 state reports have been received and 25 visits carried out. As of September 2012, the Advisory Committee has adopted 25 opinions, 21 of which have been made public. Seventeen third cycle Committee of Ministers resolutions have been adopted

An agreement was reached between the United Nations Interim Administration Mission in Kosovo (UNMIK) and the Council of Europe in November 2005, following which the Advisory Committee adopted a specific Opinion on the implementation of the Framework Convention in UNMIK-governed Kosovo.<sup>3</sup> A second Opinion on Kosovo was adopted in November 2009, and the corresponding CM resolution in May 2011. The third cycle of monitoring will be commencing with the submission of the third report by UNMIK.

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<sup>3</sup> All reference to Kosovo, whether to the territory, institutions or population, in this text shall be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo.

## Publicity of the Opinions

Since April 2009, Advisory Committee Opinions are published within four months after their transmission to the member state , unless it submits a reasoned objection to the Secretariat. In this case, the Opinion is published at the latest one year after its submission, jointly with the comments of the member state.

## Follow-up to the monitoring

Most of the countries concerned welcome the Opinions of the Advisory Committee and provide constructive comments to them, in many cases indicating that the Opinion has already prompted increased action to address specific shortcomings in the implementation of the Framework Convention. The Opinions stimulate fresh rounds of inter-departmental discussions within governments and in some cases have prompted an immediate dialogue with national minorities on the issues raised. Often this is assisted with the organisation of a 'follow-up seminar' in the country concerned. These seminars allow for a national discussion of the findings contained in a given Advisory Committee Opinion and will provide a platform to discuss concretely how best to implement its recommendations. Follow-up seminars have become a standard feature of the Advisory Committee's work and are highly welcome by civil society representatives as an occasion to discuss constructively with various levels of authority, in the presence of experts who know the situation in the country. The Advisory Committee continues to encourage all States to organise such seminars at the end of each monitoring cycle.

To increase their accessibility, States are encouraged to translate the Advisory Committee Opinion into the local language and minority languages concerned, together with the government comments.

In all resolutions on the implementation of the Framework Convention adopted so far, the Committee of Ministers has asked the country concerned to "continue the dialogue in progress" with the Advisory Committee and to keep the Advisory Committee regularly informed of the measures taken in response to the Resolutions and Recommendations of the Committee of Ministers.

## Impact of the monitoring mechanism

The monitoring mechanism of the Framework Convention has, in many cases, been a central catalyst for improved dialogue between governmental agencies and national minorities and for concrete improvements in legislation and practice in diverse subjects. It has also prompted the adoption of new laws devoted to the protection of national minorities and encouraged States to improve their non-discrimination legislation and practice.

The Framework Convention and the Opinions of the Advisory Committee have emerged as a central reference in the work of other international bodies, including the OSCE High Commissioner on National Minorities and the European Commission, which relies heavily on the Framework Convention when it examines the implementation of the Copenhagen criteria on national minorities in candidate countries.

## *Thematic work*

While the adoption of country-specific opinions forms the backbone of the Advisory Committee's work, participants of the fifth anniversary conference held in October

2003 encouraged the Advisory Committee to engage in thematic analyses as well. The first results of the more thematic reflection appeared in March 2006 with the publication of the Advisory Committee's commentary on the Framework Convention's provisions relating to education. This commentary formed the basis for an international conference on 18 October 2006 in Strasbourg entitled "International Legal Guarantees for the Protection of National Minorities and Problems in their Implementation, with a special focus on minority education".

The Advisory Committee adopted its second thematic commentary on the effective participation of persons belonging to national minorities in socio-economic and cultural life and in public affairs in February 2008, which has become a widely cited reference document on the important topic of minority participation. Following increased attention within Europe to the issue of language and language rights in relation to minority protection, the Advisory Committee began in late 2009 to work on a third thematic commentary relating to the linguistic rights of persons belonging to national minorities which was adopted in May 2012.

### **European Charter for Regional or Minority Languages**

The European Charter for Regional or Minority Languages is the only legally binding instrument in the world for the protection and promotion of languages used by traditional minorities.

The Charter was opened for signature in November 1992 and entered into force on 1 March 1998. It has been ratified so far by Armenia, Austria, Bosnia and Herzegovina, Croatia, Cyprus, the Czech Republic, Denmark, Finland, Germany, Hungary, Liechtenstein, Luxemburg, Montenegro, the Netherlands, Norway, Poland, Romania, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, Ukraine and the United Kingdom. A further eight States have signed the Charter. Six States have committed themselves to ratification when joining the Council of Europe but have not yet done so (Albania, Azerbaijan, Georgia, Moldova, Russian Federation, "the former Yugoslav Republic of Macedonia").

The purpose of the Charter is to protect and promote the various regional and minority languages spoken in the different countries of Europe. The Charter provides for a definition of the languages covered by this treaty (Article 1): these are the languages which have been traditionally used within a given territory of a State by nationals of that State who form a group numerically smaller than the rest of the State's population and are different from the official language(s) of that State. The definition explicitly excludes the languages of migrants and the dialects of the official language(s) of the State. The protection of regional or minority languages must respect the territorial integrity of each State without interfering with the development of the official language(s) of that State.

Part II of the Charter lays down the aims and principles for all the languages spoken on a given territory which are to be the States' long term policy targets. These aims and principles include, inter alia, the recognition of the regional or minority language as an expression of cultural wealth, the respect for the geographical area in which each language is spoken, the facilitation and/or encouragement of the use of regional or minority languages, in speech and writing, in public and private life, and the teaching and study of these languages at all the appropriate stages. In addition, States are required to eliminate discrimination in respect of the use of regional or minority languages. Although the Charter is principally concerned with languages which are historically identified with a particular territory of the State, it was

considered necessary to grant “non-territorial languages” protection as far as possible, and they are therefore subject to the protection under Part II of the Charter.

Part III contains more specific provisions for the languages identified thereunder by the States at the time of ratification. The undertakings entered into by the States under Part III require the latter to adopt concrete positive measures for the protection and promotion of regional or minority languages in several fields: education, justice, dealings with the administrative authorities and public services, media, cultural activities and facilities, economic and social life and transfrontier co-operation. However, the extent of the protection can vary according to the situation of each language (e.g. the number of speakers) provided that the State applies at least 35 paragraphs or sub-paragraphs of the Charter to each language that it has selected under Part III. This contributes to a minimum standard of protection.

The Charter foresees a system of monitoring its implementation by an independent Committee of Experts. Each Party is required to present a first report within the year following the entry into force of the Charter with respect to it, in which the Party states its policy and measures taken in order to fulfil its obligations under the Charter. Other periodical reports are to be presented thereafter at three yearly intervals. These reports are made public by the State Party. The Committee of Experts, established in accordance with the Charter's provisions, has already started considering the third periodical reports presented by the longest-standing States Parties.

After a first examination of the State report, the Committee of Experts may decide to visit the relevant State in order to meet with representatives of the users of the various regional or minority languages and to consult with the authorities on the contents of the information that the Committee of Experts has received.

In the context of the fact-finding process, the Committee of Experts can be approached by bodies or associations legally established in the respective State Party wishing to supply additional information or to give their views on specific situations relating to the implementation of the Charter. The Charter itself does not pose any limitations as to the nature of these bodies or associations, other than the requirement that they have to be established in the State concerned in accordance with national legislation. Accordingly, they can be cultural, political bodies, or any other association which has an interest in the promotion of regional or minority languages in their country.

After this process of information gathering, the Committee of Experts adopts a report which is then sent to the Committee of Ministers of the Council of Europe together with proposals for the recommendations to be addressed by the Committee of Ministers to the State concerned.

Additionally, the Secretary General of the Council of Europe is required to report every two years to the Parliamentary Assembly concerning the implementation of the Charter.

Several improvements in the situation of minority languages can be attributed to the Charter and recommendations made during the monitoring procedure. Examples include the recognition of minority languages which had previously not enjoyed any status (such as Croatian in Slovenia) or the right to use Frisian family names in the Netherlands. Denmark adopted several special arrangements for its German minority when merging municipalities. In Northern Ireland, a licence for the broadcasting of private radio in Irish was allocated. Norway presented an action plan to ensure the

use of Sámi in hospitals, and Sweden established a right to use Finnish in relations with authorities and courts.

The Charter being a rather complex instrument for States to ratify and implement, information seminars are regularly organised by the Secretariat in those States which are approaching ratification or are facing difficulties in the implementation of the Charter and the recommendations made by the Committee of Ministers and the Committee of Experts.

Non-governmental organisations and local, regional and national authorities are usually also involved in such seminars. In particular, non-governmental organisations have the important role of assisting the authorities in identifying the needs of the languages as to which kind and level of protection is adequate. They also have the role of providing the Committee of Experts with information, after ratification and during the monitoring process, on how the Charter is applied in practice. Local and regional authorities are often the authorities which are in practice confronted with implementing the obligations arising from the Charter, for example in pre-school education, in local and regional assemblies and administration.

The OSCE High Commissioner on National Minorities continues to make reference to the Charter as the legal frame of reference for the protection and promotion of languages used by national minorities. In this context, the secretariats of the Charter and the HCNM regularly exchange information, for example in relation to HCNM country-visits.

**For further information see: <http://www.coe.int/minlang>**

### **European Commission for Democracy through Law (Venice Commission)**

The Venice Commission, created in 1990 as an instrument of constitutional engineering, provides member States of the Council of Europe with assistance in the adoption of constitutions and related legislation that conform to the standards of Europe's constitutional heritage. It has since done so in relation to a variety of constitutional matters, as well as to legislation on constitutional courts, national minorities and elections and other legislation with implications for national democratic institutions.

**From its inception**, the Venice Commission has devoted particular attention to a number of key issues in the field of minority protection. At the request of various governments, the Venice Commission has in particular provided **detailed expertises** of draft legislations on national minorities. It has also prepared **several opinions** at the request of the Parliamentary Assembly of the Council of Europe and come up with a few **thematic studies** on its own initiative. Furthermore, the Commission has organised **scientific events** with a view to helping shed light on the evolving international practice in this field.

[In 2006 and 2007, the Venice Commission has continued its work on minority protection. The main emphasis has been put on the finalisation of a **study on “Non-Citizens and Minority Rights” (CDL-AD(2007)001)**, which was adopted by the Commission at its 69<sup>th</sup> plenary session on 15-16 December 2006. This study aims at determining to what extent the citizenship requirement and/or other criteria are relevant to circumscribe the personal scope of rights, measures and facilities taken by the state authorities on behalf of minority groups and their members. It has been carried out on the basis of discussions held under the auspices of the Venice Commission with representatives of other international bodies dealing with minority



protection, notably the Advisory Committee on the Framework Convention on National Minorities, the Working Group on Minorities within the UN Sub-Commission on Human Rights, the UN Independent Expert on Minority Issues, the Committee of Experts of the European Charter for Regional or Minority Languages, the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe and the OSCE High Commissioner on National Minorities. The report contains a set of practice-oriented conclusions structured in five principles, on which the Commission intends to rely in the future when confronted with issues pertaining to the personal scope of minority rights. The Venice Commission has in particular concluded that *“attention should be shifted from the definition issue to the need for an unimpeded exercise of minority rights in practice. In this context, it needs to be stressed that the universal character of human rights, of which minority rights form part and parcel, does not exclude the legitimate existence of certain conditions placed on the access to specific minority rights. Citizenship should therefore not be regarded as an element of the definition of the term “minority”, but it is more appropriate for the States to regard it as a condition of access to certain minority rights”*.

The Venice Commission also organised a **UniDem seminar on “the participation of minorities in public life” in Zagreb on 18-19 May 2007**, in co-operation with the Croatian Ministry of Foreign Affairs and European Integration, the Constitutional Court of Croatia, the University of Zagreb and the University of Glasgow.

The seminar, which was attended by academics, representatives of international organisations, the political world and civil society and public officials, was divided into three thematic sessions. The first session focused on the impact that different constitutional models, in particular unitary and federal or regionalist states, have with regard to the opportunities minorities have to make their voice heard in the domestic decision-making process. The aim of the second session was to take stock of the substantial development, in terms of both quantity and quality, of international standards which foster minority participation and to assess their impact on states' national policies. Finally, the third session focused on the historical origins and current relevance of an old model of minority participation, i.e. non-territorial cultural autonomy. During each of the three sessions, participants frequently made comments on the prevailing situation in the Republic of Croatia. The numerous reports presented during the seminar, which were published in 2008 in the “Science and Technique of Democracy” collection (No. 45), provided very useful input for the discussion on the three above-mentioned themes.]

At its 75<sup>th</sup> plenary session (13-14 June 2008), the Venice Commission adopted the **Report on Dual Voting for Persons Belonging to National Minorities** (CDL-AD(2008)013), on the basis of a request of the OSCE High Commissioner on National Minorities. Its conclusions are as follows: “Dual voting is an exceptional measure, which has to be within the framework of the Constitution, and may be admitted if it respects the principle of proportionality under its various aspects. This implies that it can only be justified if:

- it is impossible to reach the aim pursued through other less restrictive measures which do not infringe upon equal voting rights;
- it has a transitional character;
- it concerns only a small minority.

Given the exceptional nature of dual voting, the fulfillment of the above-mentioned conditions (in particular, those that refer to its functionality as a means of integrating

minorities in the political system and its limited scope) should be periodically reviewed, in order to maintain its transitional character.”

At its 83<sup>rd</sup> plenary session (4 June 2010), the Venice Commission adopted a joint opinion with OSCE/ODIHR on the Draft Law on Amendments and Supplements to the Law on the Election of Councillors and Members of Parliament of Montenegro as amended through July 2006. A multi-party working group in Montenegro had prepared these draft amendments of the electoral law which needs harmonising with the new Constitution. Concerning provisions regarding participation of national minorities, the draft law introduces a rather complex system of “authentic” representation of minorities, which extends affirmative action to all minority groups. In their opinion, the Venice Commission and the OSCE/ODIHR recall that countries have to develop a wide diversity of mechanisms in accordance with their historical and legal traditions, and the political system. Montenegro has developed an original system, which both institutions generally consider in conformity with the European constitutional heritage.

At its 84<sup>th</sup> plenary session (15-16 October 2010), the Venice Commission adopted an opinion on the Act on the State Language of the Slovak Republic. This act imposes the use of the official language in a number of situations, including in contacts with the authorities and in the media and cultural activities. An exception is provided for areas where minorities reach a threshold of 20%. Breaches of this law are sanctioned through fines. The Venice Commission concluded that the protection and promotion of the official language of the state is a legitimate concern common to many European countries, but that it must be balanced against protection and promotion of the linguistic rights of persons belonging to national minorities, in conformity with the principle of proportionality. In cases where the State deems necessary or appropriate or desirable to ensure the use of the state language in addition to minority languages, it should provide adequate facilities and financial means. On this basis, some provisions of the law should be reconsidered in order to comply with the principle of proportionality, in particular concerning the obligation to use the state language in official communication in areas where the minority population does not reach the threshold of 20%.

At its 85<sup>th</sup> plenary session (25-26 March 2011), the Venice Commission adopted an opinion on the draft law on languages in Ukraine.

In its opinion, the Commission found legitimate the aim to establish, as recommended by international monitoring bodies in the sphere of language and minority protection, an up-to-date and modern legislation on language use.

In the light of the specific linguistic situation currently prevailing in Ukraine and of Ukraine’s historical, linguistic and political background, the Commission stressed the need for an appropriate balance between the promotion and development of the Ukrainian language as Ukraine’s constitutionally recognised state language, and the protection of the various regional and/or minority languages in use in Ukraine.

In particular, the specific protection provided by the draft law to the Russian language was mentioned as one of the issues deserving, due to its very sensitive nature, careful consideration and a very cautious approach.

The Ukrainian authorities were therefore invited to make efforts to propose a more precise, consistent and balanced legal framework for the use and protection of Ukraine’s languages. Adequate attention needed to be paid to the rights and needs

of all Ukraine's minorities and their languages, while taking additional measures to confirm the role of Ukrainian as the state language.

At its 89<sup>th</sup> plenary session (15-16 December 2011), adopted a new opinion on language policy in Ukraine was adopted, in which the Venice Commission examined a draft law on the principles of the state language policy of Ukraine.

The Commission found that the second Draft Law, clearly based and largely drawing on the provisions of the 2010 "Draft Law on Languages in Ukraine", represented, in general, an improved and more balanced text compared to the 2010 draft, and the amendments introduced were going into the right direction. While the aim of strengthening the position of the Russian language was maintained, the actual modality foreseen was to increase its protection as part of a more general move towards improved protection of all Ukraine's minority languages. While welcoming this approach in principle, the Commission expressed its concern that this would pose serious issues of feasibility and would only be beneficial to Russian and several other minority languages which would fulfill the specific conditions required by the draft law. Moreover, this would not solve related divisions within society as question remained whether, having regard to the specific situation in Ukraine, there were sufficient guarantees, in the new Draft, for the consolidation of the Ukrainian language as the sole State language, and of the integrative role it has to play in the Ukrainian multilingual society.

The Commission was thus of the view that more substantial changes to the normative content of the Draft and increased guarantees were necessary in order to ensure a fair balance between the protection of the rights of minorities and their languages, including Russian, and the protection of the Ukrainian language as the State language.

In its opinion on the new Constitution of Hungary, adopted during its 86<sup>th</sup> plenary session (17-18 June 2011), the Venice Commission also addressed issues relating to minority protection, touching upon both the protection of persons belonging to national minorities living in Hungary and the support provided by the Hungarian Government to Hungarians abroad.

The Venice Commission also adopted, at its 91<sup>st</sup> plenary meeting (15-16 June 2012) an opinion on Hungary's new Act on the Rights of Nationalities, an organic law adopted as part of the implementation of the new Hungarian Constitution.

In the Commission's view, the Act confirmed Hungary's internationally recognised commitment to ensure adequate protection to its minorities, based on the relevant international standards and in accordance with national context. The Act indeed guaranteed rights to its thirteen recognised nationalities and their members in the main areas of interest for the protection of their identity (education, culture, private and public use of the mother tongue, access to media and participation) and endeavoured to improve the specific institutional arrangements available for nationality self-government.

While the 100-year residency condition for the recognition of a group as nationality was rather restrictive, the possibility for future widening of the scope of the law to groups other than the 13 recognised nationalities was welcomed.

The Commission stressed that the new legal framework provided by the Act was particularly complex and excessively detailed, while sometimes it lacked legal clarity on important issues. The status of the Act as a cardinal law could also be a source of difficulties in the context of possible future amendments.

The Venice Commission has pursued a constructive and fruitful co-operation with the office of the HCNM during the preparation of the above-mentioned opinions.

### **European Commission against Racism and Intolerance (ECRI)**

ECRI being the Council of Europe's independent monitoring body in the field of combating racism, xenophobia, antisemitism and intolerance, its work is particularly relevant to the protection of minorities. ECRI deals with various minority issues in its country monitoring reports and General Policy Recommendations. As part of its programme on civil society, ECRI maintains regular contacts with NGOs working in the field of minority protection and it involves them in the various activities carried out thereunder (e.g. national roundtables and meetings of organs specialised in the fight against racism and related discrimination and intolerance). ECRI's action is described in more detail in the Council of Europe's contribution on "Combating Intolerance and Discrimination and promoting mutual respect and understanding: a Council of Europe Priority".

### **Parliamentary Assembly**

In the past, the Parliamentary Assembly contributed to standard setting for the rights of minorities by adopting Recommendation 1201(1993) on an additional protocol on the rights of national minorities to the European Convention on Human Rights; a draft protocol forms an integral part of the Recommendation.

Special reference must be made to Article 1 of the draft protocol which contains a rare definition of the term "national minority":

"(...) 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."

Article 11, which reads as follows, is also significant:

"In the regions where they are in a majority the persons belonging to a national minority shall have the right to have at their disposal appropriate local or autonomous authorities or to have a special status, matching the specific historical and territorial situation and in accordance with the domestic legislation of the state."

The Assembly considers that Recommendation 1201(1993) is still valid today as an important reference text. Several international treaties expressly refer to it and some new member States accepted to adopt legislation on national minorities in line with Recommendation 1201(1993). A further Recommendation 1492 (2001) was adopted on 'Rights of National Minorities' by the Parliamentary Assembly in January 2001.

On 13 June 2002, the Committee of Ministers adopted its reply to the Parliamentary Assembly Recommendation 1492 (2001): Rights of national minorities - Parliamentary Assembly Recommendation 1492 (2001) (REC\_1492 (2001), GR-

H(2002)CB8). This reply explicitly refers to the related opinion adopted by the Advisory Committee on 14 September 2001. (<http://www.humanrights.coe.int/minorities/news/2002%20juin/news68ter.htm>)

The Assembly promotes the ratification and implementation of the Framework Convention for the Protection of National Minorities and the European Charter on Regional or Minority Languages.

The Assembly has held debates and adopted texts on specific minorities.

The question of national minorities is also addressed in the Assembly's monitoring of compliance with obligations and commitments, in particular the state of ratification of the relevant Council of Europe instruments and aspects of non-discrimination, citizenship legislation, status of and education in minority languages.

The Assembly Committee on Legal Affairs and Human Rights decided in April 2005 to set up a Sub-committee on Rights of Minorities.

The last reports considered by the Council of Europe Parliamentary Assembly led to the adoption of the following resolutions and recommendations concerning national minorities:

[Recommendation 1623 \(2003\)](#) on the rights of national minorities

[Resolution 1335 \(2003\)](#)

Preferential treatment of national minorities by the kin-state: the case of the Hungarian Law on Hungarians Living in Neighbouring Countries ("Magyars"2) of 19 June 2001

[Recommendation 1609 \(2003\)](#)

Positive experiences of autonomous regions as a source of inspiration for conflict resolution in Europe.

[Recommendation 1766 \(2006\)](#)

Ratification of the Framework Convention for the Protection of National Minorities by the member states of the Council of Europe

[Recommendation 1773 \(2006\)](#)

The 2003 guidelines on the use of minority languages in the broadcast media and the Council of Europe standards: need to enhance co-operation and synergy with the OSCE

[Recommendation 1772 \(2006\)](#) and Resolution 1527 (2006)

Rights of national minorities in Latvia

[Recommendation 1735 \(2006\)](#)

The concept of "nation"

[Resolutions 1547 \(2007\)](#) and [Recommendation 1791 \(2007\)](#)

State of human rights and democracy in Europe

[Resolution 1632](#) (2008) and [Recommendation 1845](#) (2008)

The situation of national minorities in Voivodina and of the Romanian ethnic minority in Serbia

[Resolution 1704](#) (2010) Freedom of religion and other human rights for non-Muslim minorities in Turkey and for the Muslim minority in Thrace (eastern Greece)

[Resolution 1713](#) (2010) Minority protection in Europe: best practices and deficiencies in implementation of common standards

[Recommendation 1904](#) (2010) Minority protection in Europe: best practices and deficiencies in implementation of common standards

[Recommendation 1924](#) (2010) The situation of Roma in Europe and relevant activities of the Council of Europe

[Recommendation 1944](#) (2010) The European Charter for Regional or Minority Languages

### **Congress of Local and Regional Authorities of Europe (CLRAE)**

In 2006 the Congress decided to analyse the national reports (as well as the reports of the Committee of Experts) foreseen by *The European Charter for Regional or Minority Languages*, in order to formulate common goals and minimum standards for the teaching and learning of regional or minority languages (in terms of article 8 –Education- of the Charter). In order to support the implementation of the Charter, the Congress decided to provide a description of conditions and provisions required to establish minimum standards for the teaching of minority language. Hence, in 2007 the Congress adopted *Recommendation 222 (2007) on Language education in regional or minority languages*. Through the recommendation the Congress introduced detailed descriptions of the educational models for regional or minority languages, for making more concrete the implementation of the Charter and consolidate and develop regional or minority language teaching.

In March 2010 at its 18<sup>th</sup> session the Congress discussed the report on “Minority languages: an asset for regional development” and approved a resolution and a recommendation on this issue.

On 22 September 2011 the Congress organised the Summit of Mayors “Building mutual trust at the grassroots”, the main aim of which was to set up a coalition of cities and regions for Roma inclusion.