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

Report
Committee on Legal Affairs and Human Rights
Rapporteur: Mr Boriss Cilevičs, Latvia, Socialist Group

Summary

The protection of national minorities and the promotion of their rights are among the greatest successes of the Council of Europe and one with which the Parliamentary Assembly is closely associated. They are essential for maintaining social and political stability, for democratic security, and for the prevention of social tensions, as well as for promoting diversity of cultures and languages in Europe.

The Framework Convention for the Protection of National Minorities has been ratified by 38 of the Council of Europe's 46 member states. Four states - Belgium, Greece, Iceland and Luxembourg - have signed but not ratified; four other states - Andorra, France, Monaco and Turkey - have neither signed nor ratified.

In view of the fact that the Assembly's recent recommendations which, in particular, called upon the above-mentioned states to sign and/or ratify the Framework Convention as soon as possible and without reservations and declarations, had not produced any real progress on this front, the Committee on Legal Affairs and Human Rights found it necessary to analyse the obstacles to ratification by those states, in order to gain a clearer picture of the reservations made by them and to clarify the issues at stake. Indeed, the eight member states concerned adopt specific stances or have particular, divergent conceptions of national minorities.

The Committee therefore recommends that the Committee of Ministers continues its efforts in order to encourage those member states which have not yet done so to sign and ratify the Framework Convention, and also that it takes a new look at the Framework Convention itself in the light of experience gathered in its application.

A. Draft recommendation

1. The Parliamentary Assembly recalls its Recommendation 1492 (2001) and Recommendation 1623 (2003), both concerning the rights of national minorities, and pays tribute to the fundamental role which the Framework Convention for the Protection of National Minorities (CETS No 157) (thereafter "Framework Convention") has played over the past eight years in improving the protection of national minorities in Europe and promoting their rights.

2. To date, four states – Belgium, Greece, Iceland and Luxembourg – have signed the Framework Convention but have still not ratified it, and four others – Andorra, France, Monaco and Turkey – have neither signed nor ratified. The Assembly recalls that in Recommendation 1492 (2001), it already called upon the above-mentioned states to sign and/or ratify as soon as possible and without reservations and declarations the Framework Convention. It deplores the derisory progress that has been made with regard to ratification since its last 2003 recommendation was adopted: only three new ratifications – by the Netherlands, Latvia and Georgia – have been recorded.

3. Considering that the protection of minorities is essential to maintaining social and political stability, to democratic security, to the prevention of social tensions and to promoting diversity of cultures and languages in Europe, as well as to ensuring full and effective equality of all people, the Assembly once again reiterates its appeal to all the member states to respond positively to the needs of national minorities and safeguard their rights, in particular as set forth in the Framework Convention.

4. It is important to recall in this framework that the principle of equality and non-discrimination constitutes a fundamental right of the human person. The Assembly is surprised that only 13 states have ratified Protocol No 12 to the European Convention on Human Rights (CETS No 177) and 22 have signed it.

5. The Assembly notes that Andorra, Belgium, France, Greece, Iceland, Monaco and Turkey are persisting in their refusal to sign or ratify the Framework Convention, on the ground that they respect the principle of non-discrimination in their domestic law. It is therefore surprised that they are still not parties to Protocol No 12 and would regard ratification of Protocol No 12 by these seven states as evidence of their desire to match their deeds to their words, and thus ensure effective protection for the rights of persons belonging to national minorities or to minority groups under the authority of the European Court of Human Rights.

6. The Assembly welcomes the fact that its recommendation calling for the reinstatement of the Committee of Experts on Issues relating to the Protection of National Minorities (DH-MIN) has been followed by the Committee of Ministers and underlines the important part which the DH-MIN plays in promoting the existing instruments.

7. Consequently, the Assembly recommends that the Committee of Ministers continues its efforts, in order to encourage:

7.1. those member states which have not yet done so to sign and ratify the Framework Convention, without reservations or restrictive declarations;

7.2. those member states which have signed but not yet ratified the Framework Convention to ratify that instrument, without reservations or restrictive declarations;

7.3. those states parties which have ratified the Framework Convention while entering restrictive declarations or reservations to withdraw the latter.

8. It also requests the Committee of Ministers to continue its efforts to encourage the speedy ratification of Protocol No 12 to the European Convention on Human Rights by those states which are not yet parties to it.

9. The Assembly also requests the Committee of Ministers to revisit the Framework Convention and initiate, where appropriate, the proper procedure to review it in the light of experience gathered in its application, in order to:

9.1. clarify the reasons why some member states have not signed or ratified it or have ratified it with reservations or restrictive declarations;

9.2. make it more legally coherent and responsive to the actual European challenges by, *inter alia*, balancing the rights of minorities with their obligations and with the protection of the cultural diversity, the consolidation of intercultural solidarity, social cohesion and the civil nation's unity.

B. Explanatory memorandum

by Mr Cilevičs, Rapporteur

I. Introduction

1. The protection of national minorities and the promotion of their rights are among the greatest successes of the Council of Europe, and one with which the Parliamentary Assembly is closely associated, having initiated discussion on the matter in the early 1990s.

2. The Framework Convention for the Protection of National Minorities (hereinafter “the Framework Convention”) was adopted by the Committee of Ministers on 10 November 1994 and opened for signature on 1 February 1995; it entered into force three years later on 1 February 1998. To date the Framework Convention has been ratified by 38 of the Council of Europe’s 46 member states. Four states – namely Belgium, Greece, Iceland and Luxembourg - have signed but not ratified; four other states - Andorra, France, Monaco and Turkey - have neither signed nor ratified¹.

3. The Assembly has always been inspired by a clear approach, which it has expressed in several recommendations, and most recently in Recommendation 1492 (2001) and Recommendation 1623 (2003), believing that the ratification and tangible application of the Framework Convention are an indispensable preliminary to the better protection of national minorities in Europe. It supports the idea that the Framework Convention should become a truly universal instrument and that all the member states of the Council of Europe should be parties to it. However, several problems which could undermine the instrument’s long-term efficacy have emerged over time: first, the slow-down in the number of ratifications (just three new ratifications have been recorded since the last recommendation adopted by the Assembly, in 2003), and secondly, the fact that declarations entered by some states are interpreted as veritable reservations.

4. Observing that the latest recommendations had not produced any real progress on this front and that, regrettably, a number of Council of Europe member states had consistently evaded the question of ratifying the Framework Convention, I thought it important to place the matter back on the agenda. Accordingly, in 2004 I took the initiative of tabling a new motion for a resolution². On 8 October 2004, the question was referred to the Committee on Legal Affairs and Human Rights for report. It appointed me rapporteur on 18 November 2004.

5. It strikes me as important that, three years after its latest report on the subject, the Assembly should reassert its firm resolve that the Framework Convention should be a truly universal instrument in every European country, and should pursue its efforts to promote it by once more inviting those Council of Europe member states which have not yet done so to ratify it without further delay.

6. It is no easy matter to move thinking on this question forward. We are faced with eight Council of Europe member states which have not signed or not ratified the Framework Convention and which adopt specific stances or particular, divergent conceptions of national minorities. It has therefore proved unavoidable to examine the reasons why those states are still reluctant to ratify the Framework Convention, in order to give them, where appropriate, all the help they may need to speed up ratification.

7. The intention is to clarify the questions at issue and, in particular, to analyse the obstacles to ratification in the states which are still not parties, to gain a clearer picture of the reservations held by those states, and to decide what they might do to speed up the ratification process.

8. To that end, the Committee decided on 27 January 2005 to send a questionnaire to the national parliamentary delegations of states which had not ratified the Framework Convention (see Appendix II). It also decided to hold a hearing on the question; that hearing took place on 22 November 2005³.

¹ <http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=157&CM=7&DF=6/9/2006&CL=ENG>

² Doc 10289.

³ The programme of the hearing appears in Appendix II. The minutes of the hearing [doc. AS/Jur (2005) 57] have been approved and declassified and are obtainable from the committee Secretariat upon request.

II. Analysis of obstacles in the way of ratification of the Framework Convention

9. To date, eight member states of the Council of Europe are not parties to the Framework Convention: Belgium, Greece, Iceland and Luxembourg have signed but not ratified; Andorra, France, Monaco and Turkey have neither signed nor ratified.

10. It should be noted that these states, with the exception of Andorra and Monaco, were members of the Council of Europe when the instrument was unanimously adopted by the Committee of Ministers (on 10 November 1994); they took part in the process of drafting the Framework Convention and thus voted in favour of its adoption.

11. At the time when the Committee decided to send a questionnaire to the national parliamentary delegations of states which had not ratified the Framework Convention, eleven states were concerned (Georgia, Latvia and the Netherlands have since ratified the Framework Convention). The Committee received replies from eight delegations: Andorra, Belgium, France, Greece, Latvia, Luxembourg, Monaco, the Netherlands). I wish of course to express my keen gratitude to those delegations, while regretting that the delegations of Georgia, Iceland and Turkey, despite two reminders, did not see fit to send me their replies.

12. Analysing the question of ratification of the Framework Convention means going beyond the oversimplification that there are just two categories of state – those which have ratified and those which have not. For example, in the case of the four states which have signed but not ratified the Framework Convention, we shall look into the reasons why the ratification process in the states concerned has been stalled and has lasted several years. As regards those states which are not even signatories, we shall identify the specific problems of micro-states; other, larger states with far bigger populations argue either on the basis of their constitutional status or that there are no national minorities on their territory, or else that they are working on a policy of integration of the various population groups and endeavouring to promote the principle of non-discrimination.

13. Lastly, as the present report is based on the replies received to the questionnaire and on what was said at the hearing organised by the Committee on Legal Affairs and Human Rights on 22 November 2005, it does not contain substantive, detailed information on the situation in the countries in question. The rapporteur therefore invites the reader to refer to the reports adopted by the European Commission against Racism and Intolerance (ECRI) which review problems of discrimination in the states concerned including as regards national minorities⁴.

i. France, Greece, Turkey

14. These three states – France, Greece and Turkey – present similarities: first as regards their constitutional and legal systems, and secondly because they do not recognise the existence of national minorities on their territory.

a. France: the constitutional argument that the nation is indivisible

15. Both in its reply to the questionnaire and at the hearing, the fundamental standpoint of France was clearly stated: France does not recognise the existence of minority groups enjoying rights exercisable in its judicial system. That system is founded on principles rooted in history and laid down in the constitution:

- the principle of equality of rights for all citizens in law, which implies non-discrimination;
- the principle of unity and indivisibility of the nation, which is set out in Article 2 of the constitution and relates both to territory and to population;
- the principle that sovereignty is indivisible.

16. There is a conception of society which entails recognising non-discrimination and protecting equality among citizens. So collective rights enjoyed by groups are not recognised. France considers that the application of human rights to all a state's nationals, on the basis of equality and non-discrimination, affords them, whatever their situation, the full and entire protection to which they are entitled.

17. France's constitutional order is thus an obstacle to ratification of the Framework Convention. France cannot accede to international legal instruments which recognise the existence of a group, or make it

⁴ See the ECRI's internet site and the country-by-country reports : http://www.coe.int/t/e/human_rights/ecri/1-ecri/2-Country-by-country_approach/

identifiable, on the ground of its race, religion, sex, ethnic background etc. When the question of France's ratification of the European Charter of Regional or Minority Languages arose, the *Conseil d'Etat* handed down an opinion in 1995 restating the principles of unity of the nation and the indivisibility of the Republic, and the principle that the French people comprises all citizens regardless of origin, race or religion. The *Conseil constitutionnel*, in its decision of 9 May 1991 on the law establishing the territorial community of Corsica, recalled the twin pillars of the French legal order. With regard to a clause in the law referring to the Corsican people as a component of the French people, it recognised that "*the legal concept of "French people" has constitutional force*". The indivisible nature of the Republic is reflected in that of the French people, which cannot include within itself peoples recognised as such.

18. Thus, following the explanations provided, there exists an entire, coherent, legal system which prevents France from ratifying the Framework Convention. In domestic law, several provisions of the Framework Convention are inapplicable. Article 2 of the constitution stipulates that "the language of the Republic is French". So it is the only official language. Similarly, France is a secular republic: religion may not invade the public sphere and is strictly confined to the private sphere. In France, a minority cannot claim the application of specific rules. It is in fact a system that protects everybody, both the majority and all those who belong to various minority groups or have broken away from that group.

19. Nevertheless, France is a party to international legal instruments which prohibit discrimination (the International Covenant on Civil and Political Rights, the International Convention on the Elimination of all forms of Racial Discrimination), and has acquired a legal arsenal with which to combat discrimination in all its forms. It has established systems of derogations based on sex, language or ethnic origin by way of specific measures derogating from the application of the non-discrimination rule and the equality principle. For example, several specific measures have been implemented in the field of school education. The law of 30 December 2004 set in place a supreme authority to combat discrimination and promote equality. Some clauses in the same law are concerned with applying the principle of equal treatment between persons irrespective of race or ethnic origin, thus incorporating Community Directive n°2000/43 of 29 June 2000.

20. France is aware that it only satisfies half the requirements of the Framework Convention, but through its legislation it does implement the non-discrimination principle which underlies it. In the final analysis, the French system is very protective of human rights. The French legal system is very coherent, but is not at all in keeping with the spirit of the Framework Convention. Barring a radical reshaping of the constitutional system, it is probable that France will never ratify it.

b. Greece: favouring the approach to non-discrimination defined by EU instruments

21. Both in their reply to the questionnaire and at the hearing in November 2005, the Greek authorities were keen to point out that the Greek constitutional and legislative framework is fully in conformity with the fundamental principles set forth in international instruments, including the Framework Convention. According to the reply from the Greek parliamentary delegation, there is "*no obstacle of a constitutional, legal or political kind to ratification of the Framework Convention by parliament*", and the delegation is therefore optimistic about the prospect of seeing the Framework Convention ratified in the near future.

22. The Greek constitution fully recognises the principles of equality under the law and non-discrimination; Articles 4 and 5 prohibit discrimination on the basis of belonging to a minority. Several laws exist to preserve and promote the religion, language and cultural heritage of minority groups. The Lausanne Treaty of 1923 secures to the members of the Muslim minority in the Greek territory rights relating to religion, language and education which in some respects go beyond those envisaged in the Framework Convention. The legislation in force ensures the promotion and protection of the rights of minorities, even providing for measures of positive discrimination, especially in the educational sphere. Persons with a specific ethnic, cultural, linguistic or religious identity enjoy freedom of thought, conscience, expression, assembly, association, etc. without restriction. Practice is likewise in accord with international obligations concerning respect for fundamental human rights: for example, there are Turkish-language electronic and print media.

23. At the hearing on 22 November 2005, the Greek government representatives stressed the approach being followed at the present time, which aims to strengthen the legislative framework in order to ensure strict respect for the principle of non-discrimination. Two European Union directives on implementation of the principle of equal treatment of all persons irrespective of race or ethnic origin (2000/43/EC), and equal treatment in employment and labour (2000/78/EC), were incorporated into Greek law in 2005. The new legislation seeks to give effect to the principle of equal treatment whatever a person's racial or ethnic origin, religious or other beliefs, handicap, age or sexual orientation; it also establishes institutions to promote equal treatment.

24. The Greek government considers that the kind of protection afforded by Community law is far more substantial for the persons concerned, first because it tackles the most fundamental problem facing the members of minority groups – discrimination – and secondly because the inflexible supervision exercised by the Community organs really guarantees that the relevant domestic legislation is passed in time and actually applied. Moreover, the Greek representatives at the hearing emphasised that this broader approach made it possible to include the problems of the new minorities whose members, in Greece, make up a far bigger proportion of the population than persons claiming to belong to minority groups.

c. Turkey: promoting application of the principle of non-discrimination laid down in the European Convention on Human Rights

25. It is regrettable that the Turkish parliamentary delegation did not reply to the questionnaire sent to states which have not ratified. However, the delegation was represented at the hearing in November 2005 and so had an opportunity to make its views known. They are very close to the position expressed by the Greek delegation, claiming application of the principle of non-discrimination laid down in the European Convention on Human Rights. Its representatives also pointed to the basic shortcoming of the Framework Convention which, by focussing on national minorities only, takes no account of the new minorities resulting from immigration. From their point of view, it is in particular paramount to promote and protect the rights of millions of Turkish citizens living in western Europe, for whom the Framework Convention is irrelevant.

26. Reference is therefore made here to the stance taken by the Assembly and expressed in Resolution 1380 (2004) on the honouring of commitments and obligations by Turkey, in which it invites Turkey to ratify the Framework Convention⁵.

ii. Andorra and Monaco: the case of micro-states where the native population is a minority in its own country

a. Andorra

27. Andorrans are in a situation of numerical inferiority in their own country. Between 1940 and 2004 the population of Andorra increased 18-fold, but the Andorran population only 8-fold. In no other state in Europe has there been such a development. In 1940 the country's population breakdown was 83% Andorran and 17% foreigners; in 2004 it was 37% Spanish, 35% Andorran, 12% Portuguese, 6.6% French and other. Catalan, the "official language of the state", is in a weak position in Andorra, being in second place to Spanish in terms of use. The specific nature of the situation in Andorra means that examination of the Framework Convention is part of a long-term process.

28. Andorra does not recognise the existence of any minority on its territory, and consequently its constitution and legislation do not accord specific rights to foreigners. The Andorran delegation supplied an extremely detailed reply to the questionnaire, explaining that legislation and practice guarantee full respect for the fundamental principles laid down in the Framework Convention. The principle of equality under the law, the prohibition of "discrimination on grounds of birth, race, sex, origin, opinion or any other personal or social condition", and the duty of the public authorities to promote real, effective equality and freedom for individuals are set out in Article 6 of the constitution. Andorra's constitution guarantees freedom of opinion, religion, worship, freedom of expression, communication and information, freedom of assembly and peaceful demonstration and freedom of association; these rights are freely exercised by foreigners lawfully residing in the principality. The public broadcasting legislation lays down as one of the general principles of the public radio and television service "respect for the principles of equality and non-discrimination by reason of birth, race, sex or any other personal or social circumstance". As regards the language question, the law of 16 December 1999 on use of the official language is fully compatible with the provisions of the Framework Convention. The same is true of Andorran legislation on educational and cultural rights which, for example, promotes knowledge of Catalan (the official language) and of foreign languages – Spanish, French and English.

⁵ See paragraph 21 of Resolution 1380 (2004) : "Nevertheless, [the Assembly] considers that the first steps have been taken towards recognising the cultural rights of members of different ethnic groups and notably of persons of Kurdish origin. The constitution has been revised and no longer bans the use of languages other than Turkish; it is now possible to open language schools for studying the Kurdish language or languages, radio and television broadcasts are now authorised in Kurdish and parents may choose Kurdish first names for their children. The Assembly strongly encourages the Turkish authorities to continue promoting cultural and linguistic diversity, and hopes that the measures will have a real impact on the daily lives of those concerned, particularly their access to the judicial and administrative authorities and the organisation of health care."

b. Monaco

29. According to Monaco's reply to the questionnaire sent by the Committee to states which have not ratified the Framework Convention, "*the question of Monaco's possible accession to this Convention is not a priority for the government of the principality, since no national minorities within the meaning of the Convention exist on the territory of the principality*". Monaco has no national minorities; on the contrary, its 7500 citizens constitute a minority within their own country. At the present time, no domestic debate on these matters is under way in Monaco.

30. It is interesting to note that Opinion No 250 (2004) on the request for accession to the Council of Europe by the Principality of Monaco contains no binding requirement that Monaco ratify the Framework Convention. The authorities have nevertheless declared their readiness to re-examine the question and resume discussions with the Council of Europe in the longer term.

iii. *The specific case of Belgium*

31. It is realised that the question of signing and ratifying the Framework Convention is a sensitive issue for Belgium. The question has already been covered by the Assembly in a very comprehensive report presented by Mrs Nabholz-Haidegger in 2002 on behalf of the Committee on Legal Affairs and Human Rights⁶, which contains a detailed, precise account of the institutional and linguistic situation in Belgium.

32. Resolution 1301 (2002) on protection of minorities in Belgium recommends that "*the Kingdom of Belgium and its respective competent parliamentary assemblies (including those on the level of the regions and the communities) ratify the framework convention without further delay, in a spirit of tolerance, ensuring that all minorities identified by the Assembly are duly recognised as such on the state and regional level, and refrain from making a reservation incompatible with the content of the framework convention*", observing that "*the founding states of the Council of Europe bear a particular responsibility to fulfil the obligations they expect new member states to adopt*".

33. On this question, the Assembly furthermore received a petition on 29 April 2004 on the effects of non-ratification by Belgium of the Council of Europe Framework Convention for the Protection of National Minorities. On 13 December 2004 the Bureau, considering the proposals of the Committee on Legal Affairs and Human Rights, which had given the question preliminary consideration at its meeting on 18 November 2004, decided to refer the principal question raised in the petition to the Committee, for it to deal with in the context of the present report.

34. The case of Belgium is specific because it is based on a complex, sophisticated system of balancing mechanisms between the regional, local and federal entities, the outcome of a lengthy pursuit of compromise. The Framework Convention therefore calls for a very flexible examination. For the Framework Convention to be applied in Belgium in the internal system of the country's entities, the assent of all the parliamentary assemblies (that of the federal state and those of the federated entities) is required, once it has been ratified by the federal government. So there are fears that ratification might damage these compromises and endanger the delicate balance which exists.

35. At the root of Belgium's reluctance to ratify the Framework Convention and the reservation it entered at the time of signature lies its fear that the principle of territoriality, which constitutes the organic principle of Belgium's federal structure, would be incompatible with the Framework Convention. This principle entails, on the one hand, the division of Belgium into four language zones, three of which are unilingual (Dutch-speaking, French-speaking and German-speaking) and one bilingual (Brussels-Capital), which are the basis of the two types of sub-states (communities and regions) and, on the other hand, that in principle all public acts in the unilingual zones are implemented solely in the language of that zone. With the exception of the bilingual zone of Brussels-Capital where Dutch and French are on an equal footing, and the recognition of 27 communes with facilities for the linguistic minorities, the choice has come down in favour of homogeneous linguistic zones and the assimilation of the linguistic minorities. The territorial principle was recognised as valid by the European Convention on Human Rights in the Belgian linguistic case and in the case of *Mathieu-Mohin and Clerfayt v. Belgium* (1987).

36. Belgium signed the Framework Convention on 31 July 2001, and at the time of signature entered a reservation stating that "*The Kingdom of Belgium declares that the Framework Convention applies without*

⁶ See Doc. 9536 on *protection of minorities in Belgium* and Resolution 1301 (2002); see also the report presented by Mrs Cliveti on *Language problems in access to public health care in the Brussels-Capital region in Belgium* (Doc. 10648) and Resolution 1469 (2005).

prejudice to the constitutional provisions, guarantees or principles, and without prejudice to the legislative rules which currently govern the use of languages. The Kingdom of Belgium declares that the notion of national minority will be defined by the inter-ministerial conference of foreign policy."

37. At the hearing in November 2005 the representative of Belgium informed Committee members of the state of progress in the work of the CIPE (Inter-ministerial Conference on Foreign Policy). The CIPE set up a committee of experts at the end of 2001 to study this question, which reported back to the CIPE in July 2003. That report embodies two joint positions, that of the French-speaking and German-speaking experts and that of the Dutch-speaking experts. The CIPE examined the report on 15 March 2005 and found several points of convergence in it, in particular concerning a common concept of national minority, the finding that Recommendation 1201 (1993), laying down the five criteria for defining a national minority, and Resolution 1301 (2002 on the protection of minorities in Belgium, constitute a common frame of reference, and recognition that the states parties to the Framework Convention possess a certain margin for manoeuvre and interpretation. In fact, the remaining differences within the working party relate less to the definitions themselves than to their application to the specific situations in Belgium. The CIPE chair closed the March 2005 meeting by instructing the working party to write a final report, drafted in a technically accurate and as neutral as possible a manner, based on the above-mentioned findings and in particular the finding that a number of regional and community governments wish to bring about the conditions for ratification; that one regional and community government does not wish to do so at this stage; and that a consensus exists on certain technical definitions. The working party will probably submit its final report during the first half of 2006, thus enabling the CIPE to make suggestions as to what action the Kingdom of Belgium should take on the Framework Convention.

38. As was emphasised at the hearing, Belgium has ratified the International Covenant on Civil and Political Rights, Article 27 of which, concerning the rights of minorities, has direct effect. That direct effect was implicitly confirmed by The Belgian Court of Arbitration (constitutional court) in December 1994 (case No 90/94) and in October 1996 (case No 54/96)⁷. Belgium also adopted in 1992 the Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities, adopted by the United Nations General Assembly in Resolution 47/135 of 18 December 1992. As a state participating in the meeting of the conference on the human dimension of the CSCE in June 1990, Belgium also signed the "Copenhagen Document", section IV of which sets out the undertakings of the participating states with regard to the rights of minorities. Belgium signed the Paris Charter for a New Europe of November 1990, in which the participating states undertake to improve the situation of national minorities and which recognises that the rights of persons belonging to national minorities must be fully respected as part of universal human rights.

39. In its reply to the questionnaire, the Belgian parliamentary delegation said that "*in the light of these factors and having regard to the present political climate, it is hard to determine precisely within what time span Belgium might ratify the Framework Convention*". The Belgian authorities promise that they are doing their utmost to find an appropriate answer, based on consensus, to the question of ratification of the Framework Convention.

iv. Luxembourg

40. The reply sent by the Luxembourg delegation states that there are no national minorities in Luxembourg. Article 10bis of the Luxembourg constitution establishes the principle that Luxembourgers are equal in law.

41. Luxembourg is *de facto* a multicultural country. 39% of residents are not Luxembourg citizens. A 1984 law recognises Luxembourgish as the national language and the existence of two other official languages, French and German.

42. The parliamentary delegation states that the country pursues "*a policy of promoting the spirit of tolerance and intercultural dialogue, while seeking to preserve the essential elements of each person's identity, viz. his/her religion, language, traditions and cultural heritage*", as well as a "*policy of combating any discrimination on grounds of the ethnic, cultural and religious identity of persons residing on its territory*".

⁷ The Belgian Court of Arbitration confirmed in case No 54/96 of 3 October 1996 that "it is for every legislator, within the limits of his powers, to ensure the protection of minorities guaranteed *inter alia* by Article 27 of the International Covenant on Civil and Political Rights".

v. *Iceland*

43. As I have said, the Icelandic delegation did not see fit to send a reply to the questionnaire, nor indeed to take part in the hearing organised by the Committee on Legal Affairs and Human Rights in November 2005. It is therefore difficult for me to offer any explanation of the reasons which are preventing Iceland from ratifying the Framework Convention. One reason might be that Iceland is known to be from a linguistically and ethnically point of view a homogenous country.

III. Promoting the Framework Convention vis-à-vis the reluctant states

44. The Framework Convention for the Protection of National Minorities, drafted and adopted in the Council of Europe, is the very first legally binding instrument devoted to the protection of national minorities. Its importance in setting standards in the field of protection of minorities makes it a truly indispensable instrument today. It is therefore appropriate in the context of the present report to stress once again the great importance of this innovative instrument in the protection of minorities and the promotion of their rights.

45. There are consequently several arguments that may be employed to persuade the eight states concerned to ratify:

i. The Framework Convention for the Protection of National Minorities: an irreplaceable frame of reference

46. The Framework Convention is the first legally binding instrument to translate into legal principles the political undertakings which states have given in other fields (CSCE) to protect national minorities. The Framework Convention is of considerable importance, not only in terms of those principles but also because it constitutes a legal frame of reference for the implementation by States of legislations and policies concerning national minorities.

a. The importance of the Framework Convention

47. The importance of the Framework Convention, as an essential instrument in the Council of Europe's system of human rights protection, has been restated by the Assembly in numerous texts. The Declaration of the Vienna Summit, calling on the Committee of Ministers to draw up a framework convention, stated that national minorities "should be protected and respected so that they can contribute to stability and peace". Similarly, the preamble to the Framework Convention notes that "the upheavals of European history have shown that the protection of national minorities is essential to stability, democratic security and peace in this continent". Article 1 then explains how "[t]he protection of national minorities and of the rights and freedoms of persons belonging to those minorities forms an integral part of the international protection of human rights, and as such falls within the scope of international co-operation." Minority issues remain an extremely sensitive issue at national level in most if not all Council of Europe member states, on a multilateral level within various groups of states and consequently also of legitimate concern for the Council of Europe.

48. The Framework Convention contains provisions designed to ensure that fundamental human rights principles are applied to the specific situation of minorities, and in particular:

- equality before the law and equal protection of the law;
- protection against discrimination;
- promotion of the conditions necessary for maintaining and developing minority culture and prohibition of forced assimilation;
- tolerance and inter-cultural dialogue;
- rights to freedom of assembly, association, expression and thought, conscience and religion;
- the right to education, including in the minority language;
- linguistic rights and freedoms, including in relation to personal and place names and in communications with administrative authorities;
- the right to effective participation in cultural, social and economic life and public affairs;

- a prohibition on altering the proportions of the population in areas inhabited by persons belonging to national minorities with the aim of restricting the rights and freedoms flowing from the principles of the Framework Convention;
- the right to make trans-frontier contacts, in particular with persons sharing the same minority identity or a common cultural heritage.

49. If we refer to the replies given by the eight states which are not parties to the Framework Convention, we cannot but find that all of them already respect, in their legislation or practice, the principles listed above. It is hard to understand how the latter could themselves present an obstacle to ratification by these states.

b. Taking states' interests into account

50. The interests of states are accommodated by the following provisions:

- the requirement that persons belonging to national minorities shall respect national legislation;
- the stipulation that nothing in the Framework Convention may be interpreted "as implying any right to engage in any activity or perform any act contrary to the fundamental principles of international law and in particular of the sovereign equality, territorial integrity and political independence of States";
- the statement that the rights and freedoms flowing from the principles of the Framework Convention shall be understood as conforming to any corresponding provisions in the ECHR or its protocols.

c. A monitoring mechanism based on dialogue

51. In the framework of the monitoring mechanism which has been put in place, the states parties to the Framework Convention engage in various processes of cooperation and dialogue with the Advisory Committee and the Committee of Ministers at various levels.

52. The Advisory Committee is a wholly independent body: no political considerations come into play, nor are different standards applied. It currently consists of eighteen members with recognised expertise in the field of the protection of national minorities, who serve in their individual capacity and must be impartial.

53. The position of the authorities of the state concerned is taken into account at every stage of the procedure: in the national report which is examined by the Committee of Ministers, in the opinion adopted by the Advisory Committee, and of course in the comments which it may present and which are also examined by the Committee of Ministers before it formulates its conclusions and, where appropriate, adopts recommendations to the party concerned. These recommendations are not binding. It is interesting to note that in virtually every case the Committee of Ministers goes along with the Committee's opinion and endorses the points and recommendations made in it. The opinions adopted by the Advisory Committee are precise and detailed, and offer states a firm working foundation for the implementation of the Framework Convention.

54. The mechanism as a whole can be regarded as an ongoing process of constructive dialogue, facilitated by the Advisory Committee and encouraged by the Committee of Ministers.

ii. The flexibility argument

55. Whilst being the most comprehensive instrument in the field of protection of minorities, the Framework Convention offers contracting parties a certain degree of flexibility in its application. Flexibility is the very essence of the Framework Convention, because it lays down a set of principles which may be applied in various ways by the states parties. The parties are thus allowed a margin of appreciation and, as a result, there is not a unique standard for the protection of national minorities.

a. Flexibility in the scope of application

56. The Framework Convention does not contain any definition of 'national minority'. As a result, several states, including Austria, Denmark, Estonia, Germany, Latvia, Liechtenstein, Luxembourg, Malta, the Netherlands, Poland, Slovenia, Switzerland and the former Yugoslav Republic of Macedonia, have made interpretative declarations on signing, acceding to or ratifying the Framework Convention. These declarations fall mainly into three categories: those which give a general definition of the concept of 'national minority'; those which list the groups considered to qualify as 'national minorities'; and those which state that no national minorities exist on their territory. This flexibility is seen in the terminology employed, which is another aspect of the margin of appreciation left to states, since they use the terms "minorities", "communities" and "groups" indiscriminately.

57. Consistent with principles of international law on the interpretation of treaties, however, this latitude, although part of the overall flexibility of the Framework Convention, is subject to certain limits. As the Advisory Committee has stated:

"[I]n the absence of a definition in the Framework Convention itself, the Parties must examine the personal scope of application to be given to the Framework Convention within their country... Whereas on the one hand Parties have a margin of appreciation in this respect in order to take the specific circumstances prevailing in their country into account, on the other hand this must be exercised in accordance with general principles of international law and the fundamental principles set out in Article 3. In particular, the implementation of the Framework Convention should not be a source of arbitrary or unjustified distinctions."

58. Article 5 of the Framework convention lists essential elements of the identity of a national minority, namely their religion, language, traditions and cultural heritage.

b. Flexibility in interpretation of the substantive provisions

59. The Framework Convention does not recognise collective rights, but individual rights enjoyed by persons belonging to national minorities. These rights may be exercised in common. Alongside restatement of the basic human rights principles applied to the specific situation of national minorities – in particular, the prohibition on discrimination – the Framework Convention contains 'programme-type' provisions which set clear objectives, whilst leaving considerable discretion to states as regards their implementation, having regard to the diverse social, constitutional and political circumstances peculiar to the states parties.

60. The provisions of the Framework Convention define certain objectives which the states parties undertake to pursue. Thus a margin of appreciation is left to the states in their policies on national minorities, as regards their pursuit of these objectives; this is clearly apparent from Articles 10.2 (use of the minority language will in no way affect the status of the official language or languages of the country concerned), 11.3 (the possibility of using the minority language for local names, street names and other topographical information intended for the public may be applied with due account taken of the specific conditions and the legislative system) and 14.2 of the Framework Convention (this provision, concerning the teaching of and in the minority language, was also worded very flexibly, leaving a wide margin of appreciation to the states parties).

c. The right to choose to be treated as a member of a minority

61. The same margin of appreciation is left to the members of minority groups, who have the right, in accordance with Article 3, to choose freely whether or not to be treated as persons belonging to a national minority.

iii. Positive examples in Council of Europe member states

62. Lastly, the fact that states consider that they do not have any national minorities is not in itself a valid reason for continuing not to ratify. The states concerned could therefore model themselves on certain states parties which, while asserting that there are no national minorities on their soil, declare that they observe the spirit and objectives of the Framework Convention.

63. The eight states concerned could take advantage of the experience of certain states which, despite their initial reluctance to ratify the Convention, have overcome their misgivings. As regards longstanding member states of the Council of Europe which were represented on the Committee of Ministers when the

Framework Convention was adopted, the example of the Netherlands shows that some factors that used to be seen as obstacles to ratification can be overcome if there is real political will.

IV. The question of reservations and declarations

64. Of the 38 states which have ratified the Framework Convention, 17 have entered declarations. A distinction is drawn between, for example, those which have made a declaration identifying the groups or national minorities to whom it will apply, those which have made a declaration stating that they have no national minorities on their territory, those which declare that they have no minorities but express solidarity in order to promote the objectives of the Framework Convention, etc.

65. Furthermore, reservations have been made in some cases by states which have ratified the Framework Convention.

66. The questions would require fuller treatment, and probably a specific Assembly report.

V. Conclusions

67. Behind the debate about ratification of the Framework Convention lies the fundamental issue of its universality and permanence. In 1995 it was adopted unanimously by the Committee of Ministers. Ten years later we see that consensus waning. Yet there is not a single example of ratification of the Framework Convention or granting rights to national minorities having caused conflict. On the contrary, it is non-recognition of their existence that has caused conflict. A state cannot, by arguing political or historical reasons, reject the claims of certain groups to be recognised as a national minority. Mention shall be made here to the advisory opinion of the Permanent Court of International Justice in 1930 regarding the Greco-Bulgarian "communities" stating that the existence of a minority is a matter of fact and not of law.

68. Admittedly, the Framework Convention is not immune to criticism. Several speakers at the hearing in November 2005 argued that the Framework Convention is not the only instrument, nor the most suitable instrument, for protecting the rights of persons claiming to belong to minority groups. It does not supply a definition of national minority and it offers a set of disparate criteria. Many people believe that the European Convention on Human Rights, because it contains a fundamental non-discrimination clause, is a more effective instrument. The Framework Convention is seen as duplicating most of the latter's provisions. The monitoring mechanism for the Framework Convention centres in principle on intergovernmental cooperation, unlike that of the European Convention on Human Rights, which is in the hands of the Court and consequently considered more effective. The crux of the matter is the criticism, both from the states which hesitate to commit themselves and from minority groups themselves in certain countries, and even more from groups emerging from the "new minorities", that this instrument does not offer a response to every expectation and that, in any event, a different approach – the promotion of other instruments for equal rights and non-discrimination – would seem more effective.

69. Moreover, it is an approach which the Parliamentary Assembly supports, in parallel, when it seeks to promote ratification of Protocol No 12 to the European Convention on Human Rights. Even so, those same states, which are so ready to criticise, must prove themselves above reproach and be parties to the Protocol. One may therefore legitimately wonder why countries such as France, Greece or Turkey have still not ratified Protocol No 12 on non-discrimination.

70. However, since its provisions allow states parties to offer different treatment where necessary to ensure full and effective equality, the Framework Convention is, thus, in fact a non-discrimination instrument. Therefore, states should not hide behind the non-discrimination argument as a justification for refusing to ratify the Framework Convention.

71. For the time being, the rapporteur hopes that the members of the Committee who belong to the delegations of member states which have not yet ratified the Framework Convention will continue to raise the question in their national parliaments, basing themselves on the contents of the present report. Many of the parliamentary delegations concerned have shown a very positive willingness to move forward on this matter.

72. Furthermore, it seems important to develop complementarity among the instruments that exist within the various organisations, in particular the European Union, whose directives, and especially Directive 2000/43, are transposed into domestic law. In this context, and as many speakers emphasised at the hearing organised by the Committee, the Assembly could examine the idea of bringing in a different procedure for promoting the rights of minorities, in particular based on promotion of the principle of equality

and non-discrimination. As regards the policy of the European Union, one can only regret the line taken by certain states who argue that, because they are members of the Union and it has found nothing to criticise, that means that there is no problem of minorities in the country. This reference to the European Union alone is not a constructive approach. The Union has not the slightest competence in respect of the rights of minorities; it possesses its own rhetoric, adopts political declarations, but has neither the relevant expertise nor instruments, particularly since the collapse of the draft European constitution. The only instrument that exists is the Council of Europe's Framework Convention⁸.

73. Several speakers mentioned the need for a differentiated approach in each country to the problem of minorities. States have a wide range of ways and means of ensuring protection of the rights of persons belonging to national minorities or to minority groups. The diversity of countries' legal, social and political situations makes it necessary to favour "tailor-made" approaches and practical solutions in this matter. The Framework Convention itself gives states a certain margin of appreciation and makes this flexible approach possible.

74. We must therefore continue explaining the situation to those states which have not ratified the Framework Convention, emphasising that ratification, far from obstructing or duplicating existing domestic legislation in the field of non-discrimination, is a real asset. That role falls naturally to the Assembly, but even more to the Committee of Ministers and to the specialised committees working under its aegis – the Advisory Committee at first and also the Committee of Experts on Issues relating to the Protection of National Minorities (DH-MIN).

⁸ Reference shall also be made here of the hearing organised by the Sub-Committee on Rights of Minorities (of the Committee on Legal Affairs and Human Rights) at its meeting on 17 May 2006 on *The non-discrimination provisions in the European Union law and Council of Europe mechanisms: how can minorities be better protected in Europe?*.

APPENDIX I

Questionnaire addressed to national delegations of member States not having ratified⁹

1. To what extent do legislation and practice in your country already comply with the provisions of the Framework Convention, notwithstanding the fact that you have not yet ratified it?
2. What constitutional, legal, procedural, political or other issues have so far prevented ratification by your country of the Framework Convention?
3. What efforts are currently being made to resolve these issues?
4. In the light of existing compliance with its provisions and efforts to resolve any outstanding issues, what are the prospects for ratification by your country of the Framework Convention in the foreseeable future?

⁹ Approved by the Committee at its meeting on 27 January 2005.

APPENDIX II

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

Programme for the Hearing which took place in Paris on 22 November 2005

11 h 00 **Opening of the Hearing** by Mr Dick MARTY, Chairperson of the Committee on Legal Affairs and Human Rights

11 h 05 **Introduction** by the Rapporteur, Mr Boriss CILEVIČS, Chairperson of the Sub-Committee on Rights of Minorities

11 h 15 **Statements** by:

Mr Detlev REIN, Chairperson of the Committee of Experts on Issues relating to the Protection of National Minorities (DH-MIN)

Mr Alan PHILLIPS, invited expert

Questions

12 h 00 **Statements** by representatives of governments and NGOs of States concerned

- *Representatives of governments* :

. *Andorra* :

Mrs Maria UBACH, First Secretary to the Embassy of the Principality of Andorra in France

Mr Andreu JORDI, multilateral technical expert responsible for questions concerning the Council of Europe in the Ministry of Foreign Affairs, Culture and Cooperation

. *Belgium* :

Mr Baudouin de la KETHULLE, Ambassador

. *France* :

Mrs Catherine JOLY, Legal Affairs Directorate, Ministry of Foreign Affairs

. *Greece* :

Mr Georgios AYFANTIS, Counsellor, Ministry of Foreign Affairs

Mr Elias KASTANAS, Legal Expert, Ministry of Foreign Affairs

. *Monaco* :

Mrs Corinne LAFOREST DE MINOTTY, General Director, Department of External Relations of the Principality of Monaco

- *Representatives of NGOs*:

Mrs Annelies VERSTICHEI, representative of the "Ligue des droits de l'homme" and of the "Liga voor Mensenrechten" (Belgium)

Mr Yves PLASSERAUD, Chairperson of the Minority Rights Group (France)

Mr Arnold STEPANIAN, Chairperson of the Public Movement Multinational Georgia (Georgia)

Mr Panayote DIMITRAS, Spokesperson, Greek Helsinki Monitor (Greece)

Questions and exchange of views

[13 h 00 *Break*]

14 h 30 Continuation of the exchange of views

17 h 00 **Closing of the hearing** by the Rapporteur, Mr Boriss CILEVICIS

Reporting committee: Committee on Legal Affairs and Human Rights

Reference to committee: Doc 10289, Reference No 3003 of 8 October 2004; Petition, Reference No 3043 of 24 January 2005

Draft recommendation unanimously adopted by the Committee on 18 May 2006

Members of the Committee : Mr Dick **Marty** (Chairperson), Mr Erik Jurgens, Mr Eduard **Lintner**, Mr Adrien **Severin** (Vice-Chairpersons), Mrs Birgitta Almqvist, Mr Athanasios **Aletras**, Mr Rafis Aliti, Mr Alexander Arabadjiev, Mr Miguel Arias, Mr Birgir Ármannsson, Mr José Luis Arnaut, Mr Abdülkadir **Ateş**, Mr Jaume Bartumeu Cassany, Mrs Meritxell Batet, Mrs Soledad Becerril, Mrs Marie-Louise Bemelmans-Videc, Mr Giorgi Bokeria, Mrs Olena Bondarenko, Mr Erol Aslan **Cebeci**, Mrs Pia Christmas-Møller, Mr Boriss **Cilevičs**, Mr Domenico Contestabile, Mr András Csáky, Mrs Herta Däubler-Gmelin, Mr Marcello Dell'Utri, Mrs Lydie Err, Mr Jan Ertsborn, Mr Václav **Exner**, Mr Valeriy Fedorov, Mr György **Frunda**, Mr Jean-Charles Gardetto, Mr József **Gedei**, Mr Stef **Goris**, Mr Valery **Grebennikov**, Mrs Gultakin **Hajiyeva**, Mrs Karin Hakl, Mr Nick Harvey, Mr Michel Hunault (alternate: Mr Yves **Pozzo di Borgo**), Mr Rafael Huseynov (alternate: Mrs Ganira **Pashayeva**), Mrs Fatme Ilyaz, Mr Kastriot Islami, Mr Sergei Ivanov, Mr Tomáš Jirsa, Mr Antti Kaikkonen, Mr Uyriy Karmazin, Mr Karol **Karski**, Mr Hans Kaufmann, Mr Nikolay Kovalev (alternate: Mr Yuri **Sharandin**), Mr Jean-Pierre Kucheida, Mrs Darja Lavtižar-Bebler, Mr Andrzej Lepper, Mrs Sabine Leutheusser-Schnarrenberger (alternate: Mr Jürgen **Herrmann**), Mr Tony **Lloyd**, Mr Humfrey Malins, Mr Andrea Manzella, Mr Alberto Martins (alternate: Mr Ricardo **Rodrigues**), Mr Tito Masi, Mr Andrew McIntosh, Mr Murat **Mercan**, Mr Philippe Monfils, Mr Philippe Nachbar, Mr Tomislav **Nikolić**, Ms Ann Ormonde, Mr Rino Piscitello, Mrs Maria Postoico, Mr Christos Pourgourides, Mr Jeffrey Pullicino Orlando, Mr Martin Raguž, Mr François Rochebloine, Mr Armen Rustamyan, Mr Michael Spindelegger, Mrs Rodica Mihaela Stănoiu, Mr Christoph Strasser, Mr Petro Symonenko, Mr Vojtech **Tkáč**, Mr Øyvind **Vaksdal**, Mr Egidijus **Vareikis**, Mr Miltiadis Varvitsiotis (alternate: Mr Theodoros **Pangalos**), Mrs Renate Wohlwend, Mr Krzysztof Zaremba, Mr Vladimir Zhirinovskiy (alternate: Mrs Natalia **Narochnitskaya**), Mr Zoran Žižić (alternate: Mr Ljubiša **Jovašević**, Mr Miomir Žužul (alternate: Mr Slaven **Letica**)

N.B.: The names of the members who took part in the meeting are printed in **bold**

Secretariat of the Committee: Mr Drzemczewski, Mr Schirmer, Mrs Clamer, Ms Heurtin