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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

**POSSIBLE GROUPS OF PERSONS
TO WHICH THE FRAMEWORK CONVENTION
FOR THE PROTECTION OF NATIONAL MINORITIES
COULD BE APPLIED IN BELGIUM**

Some preliminary observations by

Mr Pieter VAN DIJK (member, Netherlands)

The fact that the Framework Convention does not contain a definition of "national minority" does not mean that the Contracting Parties are free to determine for themselves whether there exists any "national minority" in the sense of the Convention on their territory, and if so, which group or groups are to be considered as a "national minority" and which are not. In addition to any relevant domestic law and case-law on the matter (constitutional, federal, regional), States have to take into account the purpose and rationale of the Framework Convention and any future international practice under the Framework Convention, as well as the wording and interpretation of other international standards concerning minorities and any case-law pertaining to these standards.

Some of the most important elements of the concept of "national minority" appear to be the following (see the *Rapport du groupe d'experts*, and the study of UN-rapporteur Capotorti):

- a) numerical minority;
- b) sub-dominant position;
- c) ethnic, religious, cultural or linguistic characteristics different from those of the majority;
- d) common wish to maintain the identity of the group.

The *Rapport* also lists possession of the nationality of the home state (as does, indeed, the definition proposed by the Venice Commission on a previous occasion). The two recommendations of the Parliamentary Assembly, mentioned in Annex 1 of the *Rapport* also include citizenship among the elements of the definition. I think, however, that this is still very much under debate. Moreover, it is not supported by the OSCE High Commissioner on National Minorities and is not in conformity with the international practice related to Article 27 of the International Covenant on Civil and Political Rights. In any case, I do not think that the word "national" as part of the concept of "national minority" refers to the link of nationality. If it had been the intention of the drafters to restrict the protection to those members of minorities who are nationals of the home state, they would, in my opinion, have expressed that in a more clear and explicit way. The issue is not central to the question put before us here, but the Venice Commission has to take a clear stand on it sooner or later.

The same holds true for the question whether - possibly as an alternative - the element of a long-standing, stable link with the home state should be added. I think that this is necessary to keep the implementation of the Framework Convention practically possible and politically and legally acceptable.

In view of the elements listed above, in particular those under a) and b), it is of the utmost importance, in the Belgian situation, whether one takes exclusively the Belgian territory as a whole into consideration, or in addition pays attention to the territories of the separate communities and regions. In Belgium as a whole neither the French-speaking nor the Dutch-speaking group can be said to be sub-dominant. Consequently, although the French-speaking group constitutes an absolute and relative numerical minority (40% as compared to 60% for the Dutch-speaking group), I do not think that the group meets the criteria of a "national minority" in the sense of the Framework Convention.

This is different for the German-speaking group; the group is not only numerically a very small minority (67.000), but evidently also sub-dominant in its legal and political position. Therefore, it would seem to meet the criteria of "national minority" and the Convention is applicable, if and to the extent that the members of the group wish it to be so.

I find it difficult to share the opinion expressed by Ergec, Lejeune, Neycken and Scholsem in Annex 4 of the *Rapport* that in a multi-lingual society such as Belgium with two or more groups which are equally dominant, each of these groups should enjoy the protection as regulated in the Framework Convention. Of course, it is the sovereign power of a Contracting State to enlarge the scope of the protection provided by a treaty to those under its jurisdiction, but to state that such a large scope of protection follows from the interpretation of "national minority" in the Framework Convention would not do justice to the purpose and rationale of the Convention. It would make the regime of the Convention, which is based on a distinction between the majority and one or more minorities, applicable to practically the whole population.

The situation is essentially different if one takes the communities and regions of Belgium into account as separate territories. In Flanders, both the French-speaking and German-speaking groups are numerically and in terms of domination linguistic minorities, while in Wallonia the same can be said for the Dutch-speaking and the German-speaking groups. The mere fact that the Framework Convention speaks of "*national* minorities" does not exclude this regional approach. In my opinion, the purpose and rationale of the Convention would seem to favour such a regional approach, *if and to the extent that the communities and regions concerned have legislative and/or executive and/or judicial powers which determine rights and obligations covered by the Framework Convention*. In that context I find it difficult to understand why the competent regional authorities should not extend the protection of the Convention, to which the state has obliged itself, towards those groups which are numerically a linguistic minority within their region and have a sub-dominant position in that region. The debate in Belgium about ratification, and in particular the recommendations to make a reservation or include an interpretative declaration, seems to start from the recognition that the Convention might also apply to regional situations. And Resolution 1172(1998)¹ of the Parliamentary Assembly speaks of "French-speaking minority in Flanders". However, I am aware of the fact that this issue is still highly disputed and requires further study and debate.

So far, reference is only made to the issue of linguistic minorities. There may, of course, be other national minorities in Belgium, like religious minorities (Jews, Muslims) and ethnic minorities (Africans). Here, the criterion of a long-standing and stable link with the home state may be of importance. However, this question is not specific to Belgium.