

Strasbourg, 27 February 1998  
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**CDL-MIN (98) 1 rev.**  
Or. Eng.

**N° 010/95**

**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**

**SUMMARY REPORT  
ON  
PARTICIPATION OF MEMBERS  
OF MINORITIES  
IN PUBLIC LIFE**

## Introduction

Following the collapse of the socialist regimes in Central and Eastern Europe, the question of minorities became a particularly acute issue and an ongoing concern of the Council of Europe. The idea has gradually gained ground that *national minorities deserve special protection*, and today this protection is regarded as a major component of the new European order in the making.

This principle is generally accepted by European states, but they diverge as to the definition of minorities, the nature and extent of the rights to be secured to them, and the legal force which such rights should have. States are influenced by differences in political and philosophical conceptions, long-standing distrust and new tensions which have grown up in a context of economic crisis and which account for their misgivings. Against the background of this debate on desirable forms for the protection of national minorities today in Europe, the Venice Commission launched its *study on participation of members of minorities in public life*. The idea is to start by surveying existing law on the subject in the various European countries before making an appraisal and suggesting alterations.

The first aspect of the study on participation in public life by members of minorities is identification of the national rules that cater for members of minorities, encouraging their involvement in political affairs. More specifically, the question is how far the existence of national minorities is considered in fixing rules on demarcation of electoral constituencies, choice of polling method and allocation of seats in Parliament. Electoral rules of European states are being surveyed in order to assess *the real involvement of minorities in political affairs, as the subject of a report in preparation*.

Apart from the question of the rightful place of minorities in the machinery by which power is exercised, there is also that of the room given to minorities in other realms of public life. *This paper is intended to survey national rules relating to the participation of minorities in public life other than its political aspects*. The Venice Commission has already published a wide-ranging study on the protection of minorities in general, and specifically in federal and regional states<sup>1</sup>.

Participation of minorities in public life is primarily founded on formal recognition of the principle of equality (1). Consequently, the first point to be considered is the real extent of compliance with the principle of equality. This can be ascertained by trying to determine the existence of indirect forms of discrimination. However, merely securing the principle of equality does not ensure real participation of minorities in public life; special action on their behalf may prove necessary. The second aspect to be considered is therefore the positive measures taken by the European states on behalf of minorities to foster their participation in public life (2).

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<sup>1</sup> See "The protection of minorities" in the collection "Science and Technique of Democracy", No. 9, Collected texts of the European Commission for Democracy through Law.

## 1. The general principle of non-discrimination

The general principle applicable in the matter is, not at all surprisingly, *the principle of non-discrimination*. At the close of the 20th century, the triumph of human rights and of liberal democracy is unquestionable, at least as far as the principles are concerned.

The principle of non-discrimination is thus universally proclaimed, but its scope still needs to be appreciated.

### 1.1 Direct discrimination

Above all, the principle of non-discrimination prohibits any form of *discrimination between individuals*, first and foremost *direct discrimination* ie measures which disadvantage persons solely because of their membership of a minority.

This may consist of measures that openly mete out unfavourable treatment to persons belonging to minorities. Such frank discrimination has now become extremely rare in democratic states.

Direct discrimination may also arise from *similar treatment of fundamentally different situations*. It is generally accepted that the principle of equality does not presuppose the same treatment in all circumstances, but rather *identical treatment for all those in a similar situation* and, conversely, different treatment for persons in different situations<sup>2</sup>. It must nevertheless be established what constitutes a genuinely different situation. The reply cannot be given in general terms but is to be inferred from each specific case. For example, the obligation to use only the majority language in the public sphere, and the fact that education is conducted in that language, may arguably be considered discriminatory, as the measures in question result in similar treatment of persons who are in different situations. Indeed, these measures deprive persons belonging to a minority of the rights secured to members of the majority (right to communicate with the authorities in one's mother tongue; right to be taught, or possibly to be taught in, one's mother tongue). On that basis, measures taken to foster the use of minority languages in the public sphere or in education are to be regarded not as positive measures but as allowing different situations to be treated equally<sup>3</sup>.

### 1.2 Indirect discrimination

*Discrimination* tends, however, to be less and less direct and open in form and more and more *indirect and disguised*.

A. *One form of indirect discrimination results from ostensibly non-discriminatory measures nevertheless having a proportionally greater impact on members of a group (a national minority is a case in point) or being proportionally more favourable to the members of another*

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<sup>2</sup> Benn and Peters, *Social principles and democratic State*, London, George Allen and Unwin, 1959, p. 110. This principle is even considered a dictate of reason: Lucas, *On justice*, Oxford, Clarendon Press, 1980.

<sup>3</sup> Concerning rules of this kind, see, for example, "The protection of minorities" in the collection "Science and Technique of Democracy", No. 9, *Collected texts of the European Commission for Democracy through Law*, p. 58 et seq.

group.

*Such measures are only acceptable if they serve an overriding public interest. Otherwise, they constitute indirect discrimination.*

Most states participating in this study answered no to the question whether there were national rules and practices criticised by minorities as causing indirect discrimination. However, leaving aside certain rather exaggerated and easily refutable criticisms<sup>4</sup>, there is *one rule often mentioned as potentially entailing discrimination: the obligation to know the country's official language in order to hold an appointment in the public administration*. As this is an issue that frequently arises, especially in the recently democratised countries of Eastern Europe, it may be useful to raise some discussion points.

In order to ascertain whether or not conditions for appointment to the civil service are a source of indirect discrimination against minorities, one must enquire whether *the requisite ability is objectively essential or useful to the discharge of the function in question*. The degree of subjectivity vitiating this assessment of expediency accounts for the comparative uncertainty that prevails when it comes to determining the existence of disguised discrimination. In the present case, one might at first be tempted to reply that knowledge of the majority language is essential to the proper functioning of the service as regards relations not only between staff members but also between them and the public.

This opinion must, however, be qualified, *having regard to the scope of the obligation to be proficient in the official language*. Indeed, as argued in a similar context<sup>5</sup>, thorough knowledge of the official language may be considered a means of indirect discrimination where it is not essential for performing the function in question. Especially where manual work is concerned, it is not unreasonable to consider that minimal knowledge of the official language could suffice<sup>6</sup>.

Further, it is necessary to *take into account the fact that the official language may not necessarily be that of the absolute majority of the population*. This is especially true of certain recently democratised states which, in realising their aspirations to national identity, have declared their national language the sole official language. In countries where Russian is spoken by the bulk of the population, the requirement of fluency in the national language may appear a means of excluding the Russian-speaking minorities from the administration. Certain countries must thus be commended for the efforts made to temper their determination to assert their national identity with regard for the need to respect the rights of minorities. In Ukraine, for instance, knowledge of the official language is mandatory only for very senior appointments<sup>7</sup>.

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<sup>4</sup> See for example the case of Denmark where there was criticism of the minimum height requirement for admission to the police and armed forces, *Replies to the questionnaire on the participation of members of minorities in public life* (CDL-MIN (97) 1), p. 83. It does not seem unreasonable, however, to contend that such a requirement is of some relevance to the functions to be performed by members of the police and armed forces.

<sup>5</sup> "The Work of Strangers: a Survey of International Labour Migration", ILO no. 4/1994, p. 99.

<sup>6</sup> Cf. Article 3 of Council Regulation EEC/1612/68 on freedom of movement of workers within the Community, OJ L 257 of 19 October 1968, p. 24, mentioning the "linguistic knowledge required by reason of the nature of the post to be filled".

<sup>7</sup> *Replies to the questionnaire on the participation of members of minorities in public life*, p. 246.

and the same applies to Lithuania<sup>8</sup>, where moreover the national language proficiency requirement was introduced only gradually so as to create the right conditions for the presence of minorities in public office.

Furthermore, where a minority language enjoys national-wide status as an official language, its native speakers are theoretically not disadvantaged compared with members of the majority group as regards access to the national civil service (Finland<sup>9</sup>, Switzerland<sup>10</sup>), even if members of the minority are in general more commonly required to be proficient in the majority language than members of the majority in the minority languages. The same applies when a minority language shares official language status at regional level, as in Italy in Bolzano Province, where civil servants must know Italian and German, or in Valle d'Aosta<sup>11</sup>.

It can be said in conclusion that to ascertain whether or not the stipulation of knowledge of the official language constitutes a form of indirect discrimination against minorities, what must be considered is first whether or not the minority language shares official language status, second the required level of command of the language, and furthermore how gradually the requirement is imposed, and the possible application of programmed measures to prevent the exclusion of members of minorities from public appointments. It is therefore clear that upholding the principle of equality, however important this may be, is not always enough to protect the rights of minorities.

*B. Other forms of indirect discrimination apply directly to the group while the individual is affected solely via the group.*

Numerous provisions protecting minorities have the aim or the effect of freeing persons who belong to minorities from discrimination against the groups of which they are members. The most typical case is the recognition of minority religious communities, enabling them to obtain special legal protection such as may be granted to the majority religious community. The same applies to minorities' entitlement to an allocation of air time on national television or radio networks to produce programmes in their languages, and to subsidies granted to the minority press or for minority cultural foundations in the same way as to the majority group's productions<sup>12</sup>.

Compliance with this aspect of the principle of non-discrimination, however, does not appear to have any real influence on participation in public life and public appointment in particular. The question arises rather in relation to positive measures, the next topic.

## **2. Positive measures on behalf of minorities**

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<sup>8</sup> Replies to the questionnaire on the participation of members of minorities in public life, p. 142.

<sup>9</sup> Replies to the questionnaire on the participation of members of minorities in public life, pp. 97-98.

<sup>10</sup> Replies to the questionnaire on the participation of members of minorities in public life, p. 231.

<sup>11</sup> Replies to the questionnaire on the participation of members of minorities in public life, pp. 110-111.

<sup>12</sup> Cf. "The protection of minorities" in the collection "Science and Technique of Democracy", No. 9, Collected texts of the European Commission for Democracy through Law, pp. 68-70.

Minorities' adequate representation, advancement and even existence are not always fully secured by applying the principle of non-discrimination between individuals or even between groups. This is where the issue of positive measures arises; such measures waive the formal equality between individuals and, where minorities are concerned, fall into three categories:

1. *Substantive enforcement of the right to maintain one's existence or at least one's cultural, linguistic and religious distinctiveness.*
2. *Measures to ensure equality of results between the various groups (particularly in the numerical composition of certain bodies)*
3. *Measures to ensure genuine equal opportunity for members of minority groups.*

*2.1 Substantive enforcement of the right to maintain one's existence or at least cultural, linguistic and religious distinctiveness is among the most important rights for minorities.*

This carries the specific obligation for the state to finance teaching of or in the minority language and its use in public administration<sup>13</sup>, and to finance bodies responsible for representing and furthering the interests of minorities. Where such measures do no more than treat the minority group on a par with the majority group, they lack "positive" force and pertain to prohibition of mediate discrimination as described in the foregoing paragraph. On the other hand, when they go further, for example by giving certain minority bodies or productions specific financial support, they are genuine positive measures. A very full study of these questions has already been carried out by the Venice Commission<sup>14</sup>. It is only in respect of financial support given by governments to bodies representing the interests of minorities that further clarifications can be made to the previous study.

In fact the authorities in a number of countries have embarked on a policy of material support to national minorities by funding associations or bodies designed to represent their interests. For instance, in Austria and Denmark<sup>15</sup>, the government provides substantial financial support for organisations representing minorities and responsible for promoting their interests.

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<sup>13</sup> *By instituting a bilingual administration or making interpreters available to the public.*

<sup>14</sup> See "The protection of minorities" in the collection "Science and Technique of Democracy", No. 9, Collected texts of the European Commission for Democracy through Law, p. 43 et seq.

<sup>15</sup> See Replies to the questionnaire on the participation of members of minorities in public life, p. 84.

In Finland<sup>16</sup>, alongside elected bodies mandated to represent minorities in politics there are other semi-official bodies without any decision-making power but which are designed to further the interests of minorities and are financed by the state. In Russia<sup>17</sup>, the Constitution of the Federation includes in the collective rights secured to minorities the fulfilment of economic needs and interests by budgetary subsidies, together with the creation of special assistance and development funds.

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<sup>16</sup> See *Replies to the questionnaire on the participation of members of minorities in public life*, p. 98.

<sup>17</sup> See *Replies to the questionnaire on the participation of members of minorities in public life*, p. 182.

In a related field, protection of indigenous peoples, the Argentine Constitution<sup>18</sup> requires the Congress to recognise the legal existence of indigenous communities, to respect their possession of the land traditionally occupied by them and also to grant them other land suitable for human development which may be neither transferable nor subject to any charge.

*2.2 Measures to ensure equality of results between the various groups are primarily aimed at equitable distribution of posts in certain bodies, or still more commonly in the civil service, among the various groups.*

Such apportionment is a straightforward means of applying the principle of non-discrimination when it is of a general character and not specific to the minority groups. Proportional sharing of seats among territorial entities or lists of candidates cannot therefore be regarded as a positive measure even if applied – inter alia – to minorities. The situation is different as regards measures designed to secure a definite proportion of civil service appointments to members of minorities. In this case, the apportionment of posts between the majority and the minority or minorities, and their allocation within the majority or the minorities, are in fact governed by different principles.

In Italy<sup>19</sup>, public sector jobs in Bolzano Province must be divided between Italian-speaking and German-speaking appointees according to the relative size of each language group, determined in the light of regional legislative election results. This may seem a rigid approach, but it does allow the balance between the groups and their social and political strength to be preserved<sup>20</sup>.

Belgium<sup>21</sup> has very elaborate machinery designed to ensure the effective participation of the various linguistic groups in public administration. The principle of free and equal access to the civil service is modified by specific measures taking account of the country's multilingual

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<sup>18</sup> See *Replies to the questionnaire on the participation of members of minorities in public life*, p. 11.

<sup>19</sup> See *Supplementary replies to the questionnaire on the participation of members of minorities in public life*.

<sup>20</sup> The idea is that it may prove insufficient to guarantee the use of the respective languages and secure like status to Italian and German, unless the protection is bolstered by a statutory system for apportioning posts among the members of the different groups.

<sup>21</sup> See *Supplementary replies to the questionnaire on the participation of members of minorities in public life*.



makeup<sup>22</sup>. Staff of the Federal administration are distributed according to their linguistic role (French or Flemish). Up to the grade of director, posts are allocated between two language-specific establishments according to the importance of the matters handled in either language by a given department. Above the grade of director, however, posts in Federal administrative departments are divided into three language-specific establishments, viz. French, Flemish and bilingual. 20% of posts are reserved for bilingual officials, and the remaining 80% shared equally between the other establishments. These rules give the French-speaking minority an advantage in that high administrative positions are equally apportioned between the two linguistic roles.

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<sup>22</sup> In Belgium, tension between the Flemish and French communities dates back to the mid-19th century. Flemish speakers, though numerically in the majority, long considered themselves a linguistically and culturally oppressed minority. During the 19th century, a French-speaking minority scattered throughout Flanders dominated the entire political, economic and social life. The Flemish movement arose to combat this cultural domination. In such a context, the enactment of laws on civil service entrance which attempt to take account of the country's multilingual makeup is not surprising.

A similar situation applies in Brussels, but here it operates to the advantage of the Flemish speakers because, where upper-echelon posts are concerned, 20% of appointments are reserved for the bilingual establishment and the remaining 80% are shared between the French and Flemish establishments. Special rules also favour the Flemish establishment in the administration of communes in the Brussels Region. In other communes without a special linguistic regime, knowledge of the regional language is stipulated for all civil service appointments. Furthermore, outside the civil service proper, the Belgian high courts maintain linguistic parity (Court of Cassation, Council of State and Court of Arbitration<sup>23</sup>).

In other states, an individual's membership of a national minority is taken into consideration not as such but via the requisite proficiency in the minority language for employment in the public administration, a requirement which obviously works to the advantage of national minorities. This is so, for example, in Croatia<sup>24</sup>, Estonia<sup>25</sup>, Finland<sup>26</sup> and Slovenia<sup>27</sup>. Elsewhere, knowledge of the minority language or of local law is merely regarded as an additional merit of the candidate but not as an entrance requirement in the strict sense (Austria<sup>28</sup>, Spain<sup>29</sup>), even if such knowledge is actually indispensable for access to certain positions.

### *2.3 Certain positive measures are adopted on behalf of members of a group (in this case a national minority) to afford them real equal opportunity*

As already mentioned, the principle of equality does not presuppose identical treatment in all circumstances, but *identical treatment for persons in a similar situation*.

The application of special linguistic and cultural measures to members of minorities is warranted by an intrinsic feature of their minority status, while different treatment of different situations complies with the principle of equality.

When special treatment is unrelated to an intrinsic feature of the group concerned, the situation is different; it is a case of *affirmative action* (in the strict sense), sometimes called "positive discrimination" (improperly, since the term "discrimination" should denote unacceptable distinctions only).

Opponents of such measures believe that they infringe the principle of equality. Indeed, if it constitutes arbitrary discrimination to invoke irrelevant personal attributes as grounds for

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<sup>23</sup> Where the Court of Arbitration is concerned, this stipulation of linguistic parity is made by a special law and is regarded as an important factor in the balance of this court, which acts as a constitutional court in Belgium.

<sup>24</sup> See *Supplementary replies to the questionnaire on the participation of members of minorities in public life*.

<sup>25</sup> See *Replies to the questionnaire on the participation of members of minorities in public life*, p. 89.

<sup>26</sup> See *Replies to the questionnaire on the participation of members of minorities in public life*, p. 98.

<sup>27</sup> See *Replies to the questionnaire on the participation of members of minorities in public life*, p. 209.

<sup>28</sup> See *Replies to the questionnaire on the participation of members of minorities in public life*, p. 21.

<sup>29</sup> See *Replies to the questionnaire on the participation of members of minorities in public life*, p. 224.

treating certain persons differently, it would not be morally defensible to rely on the same attributes as justification for another difference in treatment, positive though it may be, towards these persons. *A ground for different treatment, once judged irrelevant is always irrelevant*<sup>30</sup>, at least other than in cases where something inherent in minority status is at issue.

Proponents of affirmative action on behalf of minorities retort that affirmative action is founded on the desire to redress the damage caused to members of national minorities<sup>31</sup>. Members of minorities are often placed in an unfavourable position, so preferential treatment to remedy this would be warranted in certain cases.

*Difference in treatment, far from infringing equality on the pretext of promoting it, is thus seen as founded on a morally justified criterion: the wish to make reparation to the victims of discrimination.* This, however, raises a problem: *these measures may benefit members of national minorities who have not suffered any unfavourable treatment without benefiting other persons who have been discriminated against*<sup>32</sup>. However, in this day and age individuals are to a large extent treated on the basis of group parameters<sup>33</sup>. All group systems involve striking a balance between effectiveness and fairness, and some group systems are more controversial than others. The legitimacy of these systems is a matter of public interest, so the state should decide whether it is expedient to accept certain specific groups<sup>34</sup>.

Debate over affirmative action on behalf of minorities also divides economists. Generally speaking, those in favour of the market economy are against affirmative action by the state on behalf of certain persons. *As discrimination is considered both inefficient and expensive, it would presumably be phased out of the system*<sup>35</sup>. But according to other economists, *the persistence of the phenomenon of discrimination proves the unfoundedness of this argument*, regarded as expressing an idealised perception of the market. These economists note that economic agents are also people, who cannot be severed from their culture and prejudices. The inefficiency of the market prompts the conclusion that the state must intervene to correct this market dysfunction<sup>36</sup>.

It is further claimed that the cost of a policy on behalf of minorities is high while *the results are*

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<sup>30</sup> Goldman, *Justice and reverse discrimination*, Princeton, Princeton University Press, 1979, p. 67. See also Gross, *Discrimination in reverse*, New York, New York University Press, 1978, p. 381.

<sup>31</sup> Nickel, "Should reparations be to individuals or to groups?" in Gross editions, 1977, p. 314.

<sup>32</sup> Cowan, "Inverse discrimination", in Gross editions, 1978, p. 291.

<sup>33</sup> For instance, most car insurance schemes impose a higher premium on young drivers. This arrangement is generally recognised as acceptable and effective, despite the fact that it may be unfair to individuals who belong to this category but are not dangerous drivers. It also means that certain equally dangerous and irresponsible drivers evade the obligation to pay a higher premium because they are of the prescribed age.

<sup>34</sup> Taylor, "Reverse discrimination and compensatory justice", in Gross editions, 1977, p. 296.

<sup>35</sup> Becker, *The economics of discrimination*, Chicago, Chicago University Press, 1971.

<sup>36</sup> Arrow, "The theory of discrimination", in *Discrimination in labour markets*, Princeton, Princeton University Press 1973, p. 3.

*slim*. This is borne out by the very limited success of the integration of the American black minority into senior administrative or corporate positions, despite the systematic measures applied for some decades on behalf of this minority<sup>37</sup>. However, there is no way of knowing what level of integration the black minority would have attained had there never been such action programmes on behalf of minorities.

As can be seen, debate concerning the expediency of affirmative action on behalf of minorities is not over yet. The principle of such action is not firmly established; little wonder then that it is so limited in Europe.

*The principle of affirmative action has a limited application in Europe.* Specific action programmes on behalf of minorities are encountered principally in countries like the United States, Australia, India or Canada<sup>38</sup>. These are vast countries with many ethnic and religious minorities. In Western Europe, whose political geography has been predominantly, though not exclusively, founded on the principle of the nation state, the problem of minorities presents itself in a different framework since the emphasis is on the issue of *national minorities*. *After the disappearance of the Soviet Union and the advent of new democracies in the countries of Eastern Europe, the problem of minorities, kept under the lid of totalitarianism for decades, has re-emerged as a crucial issue.*

The centuries-long coexistence of different nations and ethnic groups in the Tsarist Empire, then in the Soviet Union, did nothing to further the convergence of state and nation. Thus the transition to democracy has reactivated old ethnic demands, which is why it is essential to introduce stronger minority rights safeguards in these countries to avert a situation where applying the principle of self-determination of peoples may lead to aggressive separatism and a spate of interethnic conflicts now that the Soviet "policeman" has gone<sup>39</sup>. In this context, it might be considered helpful to start discussing whether it would be expedient to adopt special measures on behalf of minorities aimed at rounding out enforcement of the principle of non-discrimination. To accept diversity also means making it possible and viable<sup>40</sup>. Another reason is that *the problem of minorities is a question of mutual trust between majority and minorities*. Measures on behalf of minorities can thus spell out the message of the majority to the minorities that it does not intend to oppress them by virtue of its numerical strength.

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<sup>37</sup> "Affirmative action: But some are more equal than others", *The Economist*, vol. 335, no. 7910, 15 April 1995, p. 19.

<sup>38</sup> Faundez I., *Affirmative Action: International perspectives*, ILO 4/94, 1994.

<sup>39</sup> As Mr Jean-Marc Boulgaris very aptly remarked, *there are thousands of minorities in the world and not all can set up their own state. Twenty new states have been constituted over the last few years in Central and Eastern Europe, yet the percentage of minorities has barely diminished. More than half these states contain minorities in proportions varying between 20% and 50%. The repercussions of ethnic conflicts extend well beyond the frontiers of the states concerned. The floods of refugees and the humanitarian problems which result represent a major challenge to the international community.* – See "Local self-government, territorial integrity and protection of minorities" in the collection "Science and Technique of Democracy", No. 16, Council of Europe publications, p. 6.

<sup>40</sup> Roca Junyent Miquel, "The situation in Spain", "Local self-government, territorial integrity and protection of minorities" in the collection "Science and Technique of Democracy", No. 16, Council of Europe publications, p. 73.

As regards participation of minorities in political affairs, there are arrangements to allow them a genuine role despite their numerical inferiority. A report in preparation will present all measures taken in this respect by the European states<sup>41</sup>. Here it will suffice to *round off the overview of this affirmative action on behalf of minorities with a description of measures taken to ensure fuller participation of minorities in public life outside the political sphere.*

Among the states which answered the questionnaire, few have resorted to affirmative action (in the strict sense), whereby formal equality is waived to ensure equitable representation of minorities, for example in the civil service or higher education.

Some of these are Greece<sup>42</sup>, Canada<sup>43</sup>, and "the former Yugoslav Republic of Macedonia"<sup>44</sup>, where the clear measures taken to help members of minorities to enter university or an occupation bear a variety of names: quotas, numerical objectives or equitable programmes.

In most countries, though, there does not seem to be any affirmative action, in the strict sense, on behalf of individuals as members of national minorities. The idea is nevertheless taking hold at international level. The Council of Europe's Framework Convention for the Protection of National Minorities<sup>45</sup> provides that "The Parties undertake to adopt, where necessary, adequate measures in order to promote, in all areas of economic, social, political and cultural life, full and effective equality between persons belonging to a national minority and those belonging to the majority. In this respect, they shall take due account of the specific conditions of the persons belonging to national minorities"<sup>46</sup>. Such measures "shall not be considered an act of discrimination"<sup>47</sup>. In other words, the Framework Convention acknowledges the legitimacy of positive measures, whether they aim at equality of results between the various groups or at true equal opportunity<sup>48</sup>.

## Conclusion

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<sup>41</sup> *In Switzerland, for instance, minorities are numerically over-represented in public bodies: see Jean-Marc Boulgaris in "Local self-government, territorial integrity and protection of minorities" in the collection "Science and Technique of Democracy", No. 16, Council of Europe publications, p. 10. Mr Joseph Voyame remarks (ibid., p. 93) that majorities are often magnanimous and grant minorities more than the law of proportions would allow; this is why there has been no serious conflict in Switzerland for several decades.*

<sup>42</sup> *See Supplementary replies to the questionnaire on the participation of members of minorities in public life.*

<sup>43</sup> *See Replies to the questionnaire on the participation of members of minorities in public life, p. 46.*

<sup>44</sup> *See Replies to the questionnaire on the participation of members of minorities in public life, p. 237.*

<sup>45</sup> ETS 157.

<sup>46</sup> Article 4, para. 2.

<sup>47</sup> Article 4, para. 3.

<sup>48</sup> *Cf. Explanatory report to the Framework Convention for the Protection of National Minorities, para. 38 et seq. See also Article 4, para. 2 of the Venice Commission's proposal for a convention for the protection of minorities, "The protection of minorities", in the collection "Science and technique of democracy", No. 9, Collected texts of the European Commission for Democracy through Law, p. 9 et seq., pp. 30-31 (for the relevant passage of the explanatory report).*

On balance, positive measures on behalf of minorities applied in the states of Europe to aid the participation of minorities in public life remain rather limited. Admittedly certain countries such as Belgium, Italy and Switzerland make visible endeavours to allow for linguistic and cultural diversity in the organisation of civil service and conditions of access to it, but these countries remain comparatively isolated. Furthermore, it even appears that in some countries the special measures taken on behalf of minorities raise certain problems (Finland<sup>49</sup>, Italy<sup>50</sup>).

This situation should not cause any surprise. The principle of positive measures on behalf of minorities is not fully established, at least when it comes to affirmative action to bring about "real" equal opportunity; even the pioneer countries in this field now seem dubious about the expediency of such a policy<sup>51</sup>. The trend favouring affirmative action on behalf of minorities now seems to be on the wane in its very homeland, the United States. California, after pioneering affirmative action, was the first to challenge the principle of such action on behalf

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<sup>49</sup> See *Replies to the questionnaire on the participation of members of minorities in public life*, p. 97.

<sup>50</sup> See *Replies to the questionnaire on the participation of members of minorities in public life*, p. 111.

<sup>51</sup> The principle of "affirmative action" introduced in the United States by President Johnson in an effort to remedy the historical discrimination against the black community by granting its members priority in employment and education was not spared from the deep soul-searching of the 1990s. See "Les Etats-Unis s'interrogent sur leur politique d'intégration raciale", Sylvie Kaufman, *Le Monde newspaper*, 26 September 1997, p. 2.

of minorities<sup>52</sup>. The fact remains that the issue of "positive discrimination" towards minorities is of great immediacy. *More probing reflection on the subject should therefore be undertaken in Europe, where the problem of minorities has become acute since the breakup of the Soviet Union and where protection of the rights of minorities appears the best way to secure regional security and stability.*

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<sup>52</sup> *After nine months of wrangling before the courts, Proposal 209 passed in November 1996 at referendum came into force. For the first time, an American state adopted a law abolishing racial preference in recruitment to state positions, award of public contracts and state education. The Federal administration did take a more moderate line of action. Bill Clinton's slogan here is, "mend it but don't end it". See "Les Etats-Unis s'interrogent sur leur politique d'intégration raciale", Sylvie Kaufman, Le Monde newspaper, 26 September 1997, p. 2.*