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**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**

(VENICE COMMISSION)

**NON-CITIZENS AND MINORITY RIGHTS**

**Background information  
and issues for discussion**

## A. Background

1. The protection of national minorities forms an integral part of the international protection of human rights. While the right to full and effective equality and the prohibition of discrimination are of particular relevance for persons belong to national minorities, it is to be stressed that minority protection goes beyond the granting of fundamental freedoms and the right to equality coupled with the prohibition of discrimination. Indeed, States are also expected to create and promote the conditions necessary for persons belonging to national minorities to maintain and develop the essential elements of their identity.

2. The issue of whether and to what extent non-citizens should benefit from the specific minority protection is a long-debated one. The controversial approach to it depends largely on the absence of a legally-binding and even generally accepted definition of “minority”.

3. Efforts made under the auspices of the United Nations have gradually led to the abandonment of the citizenship requirement as a precondition for the enjoyment of rights that are relevant for persons belonging to minorities. This evolution is, *inter alia*, evidenced by the stance taken in 1994 by the Human Rights Committee of the United Nations. This body pointed out, in the context of its monitoring of the implementation of the International Covenant on Civil and Political Rights, that Article 27 ICCPR,<sup>1</sup> setting out the minority rights, is not limited to citizens. In the same vein, the General Recommendation No 30 on “Discrimination against non-citizens”, adopted by the Committee on the Elimination of Racial Discrimination at its 64<sup>th</sup> session on 12 March 2004, stresses the potential discriminatory effect of the citizenship requirement in a number of fields, including economic, social and cultural rights.

4. The trends observed at the European level seem to go in the same direction. The range of bodies and organisations involved makes it, however, difficult to make a global assessment.

5. In 1991, the Venice Commission prepared a “Proposal for a European Convention for the Protection of Minorities”, which contained a draft definition of the term “minority” making an explicit reference to the citizenship criterion. The opinions issued by the Venice Commission in more recent years, however, show a tendency to abandon the citizenship requirement, although the Commission has not said that such element would be inconsistent with the international rules of minority protection.

6. The Parliamentary Assembly of the Council of Europe (PACE) adopted Recommendation 1201 (1993) on an additional protocol on the rights of national minorities to the European Convention on Human Rights, making an explicit reference to the citizenship criterion is its proposed definition of a “national minority”. The PACE returned to this issue in Recommendation 1492(2000), but it focused on the necessity to reinforce the effectiveness of the Framework Convention

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<sup>1</sup> “In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language”.

in recommendation 1623(2003) rather than on the elaboration of a definition including a reference to the citizenship criterion.

7. The Framework Convention for the Protection of National Minorities, which was adopted in 1995, makes no reference whatsoever to the citizenship requirement. The Advisory Committee, which is tasked to monitor the implementation of this instrument for the Committee of Ministers, has expressed the view that it is important to address the issue of the personal scope of application on an article-by-article basis, and that the implementation of this treaty by the State Parties should not be a source of arbitrary or unjustified distinctions, including as regards the citizenship issue.

8. The Committee of Experts of the European Charter for Regional or Minority Languages also tends to disregard the citizenship requirement in its country-by-country monitoring work since it is mainly concerned with the protection of languages as such.

9. As regards the OSCE, the High Commissioner on National Minorities has always been of the opinion that there is no legitimate basis upon which to make an *a priori* distinction between citizens and non-citizens in terms of their equal enjoyment of human rights, and that any exceptions to the equality principle must be narrowly construed.

#### B. The work of the Venice Commission's working group on this matter

10. In the light of the recent trends and the recurrent discussions on this subject, upon the initiative of Mr Franz Matscher, a group of members of the Commission (Messrs. Matscher, Malinverni and Van Dijk) decided to carry out further reflection on the opportunity of retaining the citizenship requirement in the enjoyment of minority rights.

11. A meeting was consequently held in Strasbourg on 28 May 2004, which was attended, in addition to the members of the Working Group, by Mr Asbjørn Eide, on behalf of both the Advisory Committee on the Framework Convention for the Protection of National Minorities and the Working Group on Minorities within the UN Sub-Commission on Human Rights; Mr Emyr Lewis, on behalf of the Committee of Experts on the European Charter on Regional or Minority Languages; Ms Danielle Coin, on behalf of the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe and Ms Dzenana Hadziomerovic, on behalf of the OSCE High Commissioner on National Minorities.

12. The Sub-Commission on the Protection of Minorities subsequently asked the working group to prepare a study aimed at identifying the specific minority rights and the criterion/a (such as long-standing lawful residence) which could, if appropriate, replace the citizenship one. It was agreed that this work would be carried out in consultation with the above-mentioned international bodies.

### C. Constitutional and legal framework in European States

13. Constitutions of many European states in particular, those of countries of Central and Eastern Europe, refer to “minorities”<sup>2</sup> and “minority rights”. In a number of constitutions, the right to preserve and develop one’s ethnic and cultural identity and language is explicitly guaranteed and construed as a foundation stone for minority rights. It is to be noted that in a number of countries this right is not conditioned by a citizenship requirement.<sup>3</sup> In certain cases, however, specific domestic legislation limits the enjoyment of guaranteed minority rights to citizens.<sup>4</sup> The right to preserve and develop one’s ethnic and cultural identity and language is often followed by the right to preserve religious identity as well, and special rights regarding education.

14. Several constitutions also provide for the rights of minorities to participate in the public life of the state<sup>5</sup>.

15. The constitutions do not, however, attempt a definition of the term “minority”.

16. The countries that have adopted specific laws on minorities attempt to define the term “minority” to varying degrees of specificity.<sup>6</sup> These include: Bosnia and Herzegovina, Croatia, Czech Republic, Estonia, Hungary, Moldova, Serbia and Montenegro and Ukraine. Most definitions, which are sometimes accompanied by a list of the groups protected, use as defining characteristics a combination of the following criteria :

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<sup>2</sup> Terminology used often varies according to the country : in Austria, it is the term “ethnic groups”, in Finland the term “minorities”, in the United Kingdom the term “racial group”, in Hungary the terms “national and ethnic minorities”, in Slovakia, the terms “national minority and ethnic group”. It should be noted that the various terms used to designate a minority are largely synonymous. In some States, no specific term is adopted at all; this is the case in Denmark where the legislation speaks of the rights of the inhabitants of the Faroe Islands and of Greenland, (see the Venice Commission study of the practice of 26 European countries, CDL-MIN(1994)005). Furthermore, Greece uses the term “religious minority”, in “the Former Yugoslav Republic of Macedonia” Constitution and legislation it is the term “communities” that is employed (see the *Results of the exchange of information on the question to which groups the Framework Convention will be applied*, doc. DH-MIN (98) 4 Addendum I). Slovenian legislation uses the term “nationalities” and the Italian constitution the term “linguistic minority”.

<sup>3</sup> This is the case in Albania (Article 20), Azerbaijan (Articles 44 - 45), Belarus (Article 50), Bulgaria (Article 54.1, only with respect to culture), Estonia (Article 49, only with respect to ethnic identity), Finland (Article 17), Latvia (Article 114), “the former Yugoslav Republic of Macedonia” (Article 7 and 48), Romania (Article 6), Russian Federation (Article 26), and Slovenia (Article 61).

<sup>4</sup> Estonia, Russian Federation and Slovenia.

<sup>5</sup> Croatia, Hungary, Montenegro, Slovenia.

<sup>6</sup> Bosnia and Herzegovina (Law on the Protection of Rights of Persons Belonging to National Minorities, of 1 April 2003), Croatia (Constitutional Law on the Rights of national Minorities (no. 155/2002, of 13 December 2002), Czech Republic (Act on the Rights of members of national minorities and amendment of some acts, of 10 July 2001), Estonia (Law on Cultural Autonomy of Ethnic Minorities, of 26 October 1993), Hungary (Law on the Rights of National and Ethnic Minorities, 1993), Moldova (Law concerning the rights of persons belonging to the national minorities and the legal status of the organisations thereof, of 4 September 2001), Serbia and Montenegro (Charter on Human and Minority Rights, March 2003), and Ukraine (Law on National Minorities, no. 2494 of 25 June 1992).

- citizenship
- numerical importance
- territory
- historic link with the country of residence
- ethnic, cultural, linguistic, religious or traditional features or characteristics, which are different from those of the rest of the population
- a will/wish to be considered minority and to preserve and develop their identity, language and culture.

17. A number of other countries are in the process of preparing a framework legislation on protection of the rights of minorities.<sup>7</sup>

18. Some examples of the definition of “minority” established by national legislation are reproduced in Appendix I to this document.

#### D. Analysis of the declarations/reservations under Framework Convention

##### *Overview of existing declarations*

19. The absence of any definition of the concept of “national minority” in the Framework Convention itself<sup>8</sup>, coupled with the particular sensitivity of the issue, prompted many States to enter declarations<sup>9</sup> upon signature or ratification, with a view to giving further precisions on the groups to be protected.<sup>10</sup>

20. Most of these declarations contain a definition of the term “national minority” for the purpose of the Framework Convention and/or a list of the groups protected. A few other declarations neither contain a definition nor list the groups protected, but express a view - at least indirectly - on the citizenship requirement.<sup>11</sup>

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<sup>7</sup> For example, Armenia, Lithuania and Romania. On the other hand, Montenegro and Ukraine are at present working on the revision of the existing legislation.

<sup>8</sup> Paragraph 12 of the explanatory report reads as follows: “*It should also be pointed out that the Framework Convention contains no definition of the notion of “national minority”. It was decided to adopt a pragmatic approach, based on the recognition that at this stage, it is impossible to arrive at a definition capable of mustering the general support of all Council of Europe member States.*”

<sup>9</sup> The term “declaration” is used hereinafter to designate all statements submitted upon signature or ratification of the Framework Convention, irrespective of the terminology used by the States and without distinguishing between “reservations” and “declarations” according to the Vienna Convention on the Law of Treaties.

<sup>10</sup> The following 15 countries have made declarations on the personal scope of application of the Framework Convention: Austria, Belgium, Denmark, Estonia, Germany, Liechtenstein, Luxembourg, Malta, the Netherlands, Poland, Russian Federation, Slovenia, Sweden, Switzerland and “the former Yugoslav Republic of Macedonia”.

<sup>11</sup> This is the case of the declaration entered by the Russian Federation, which takes the view that State Parties are not entitled to include a definition of the term “national minority” in their declarations, especially when such declarations result in the exclusion from the scope of the Framework Convention of non-citizens who have been arbitrarily deprived of the citizenship of their state of residence; see also the declaration of Malta, which reserves its right not to be bound by the provision on effective participation (article 15 FCNM) of persons belonging to national minorities insofar as it entails the right to vote or to stand for election, a right which is reserved to Maltese citizens.

21. Out of the 13 declarations containing a definition and/or listing the groups protected, 7 explicitly mention the citizenship (or the nationality) of the state of residence as a condition for persons belonging to national minorities to enjoy the protection of the Framework Convention.<sup>12</sup> The other 6 declarations, however, do not make any reference to the citizenship requirement.<sup>13</sup>

22. Among the States that have entered a declaration making an explicit link to the citizenship requirement, some of them have thereby simply echoed an already existing condition entrenched in their constitutional legal order.<sup>14</sup> For some others, restricting minority rights to citizens is not dictated by the actual wording of their Constitution: this step is rather inspired by relevant provisions of their legal order and/ or is simply part of a general policy towards national minorities formulated in the context of the implementation of the Framework Convention.<sup>15</sup>

23. When considering the text of the declarations, it is also important to bear in mind that an explicit reference to the citizenship criterion does not necessarily fully reflect the practice followed by the State concerned in the different fields covered by the Framework Convention. In the context of its monitoring work, the Advisory Committee has on occasions noticed that despite the official approach of their Government, some authorities were not too strictly relying on the citizenship requirement when dealing with persons belonging to national minorities in their concrete sphere of competences.<sup>16</sup>

24. Another element inviting to take the wording of declarations with caution is that even in States that have given their own definition of the term “national minority” and/or a list of the groups protected without mentioning the citizenship criterion, an analysis of the related practice may indeed reveal that most rights and facilities are *de facto* available to citizens only.<sup>17</sup>

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<sup>12</sup> These are: Austria, Estonia, Germany, Luxembourg, Poland, Switzerland and “the former Yugoslav republic of Macedonia”

<sup>13</sup> These are: Belgium, Liechtenstein, Malta, the Netherlands, Slovenia, Sweden

<sup>14</sup> See, for example, Article 35, paragraph 1, of the Constitution of Poland; Article 7 of the State Treaty of 1955 re-establishing an independent, democratic Austria

<sup>15</sup> See, for example, the case of Germany and that of Switzerland

<sup>16</sup> See, for example, the first Opinion on Estonia (paragraph 17), adopted on 14 September 2001, where the Advisory Committee welcomes that as regards the citizenship criterion, the Government *de facto* appears to take a considerably more inclusive approach to the protection of national minorities than that suggested in the declaration

<sup>17</sup> See, for example, the case of Slovenia, where the “autochthonous” character of the three minorities protected practically means that only persons holding Slovenian citizenship may benefit from the protection of the Framework Convention (see paragraphs 16-20 of the first Opinion on Slovenia adopted on 12 September 2002); see also the case of Denmark, where the importance placed “on the deep historic ties” of the German minority with the Kingdom of Denmark actually means that only Danish citizens from this minority can rely on the protection offered by the Framework Convention (see paragraph 16 of the first Opinion on Denmark adopted on 22 September 2000, as well as the numerous references made to the Danish citizens of the German minority in the first and second State Reports)

*Position of the States that have not entered declarations*

25. In order to have a meaningful overview of the State practice pertaining to the citizenship requirement under the Framework Convention, it is necessary to briefly examine whether those States that have not entered a declaration on the personal scope of application have nevertheless expressed a view on this issue. This is all the more important that the majority of State Parties to the Framework Convention have not submitted any declaration.

26. A first groups of States is made up of those which have unequivocally indicated they considered the Framework Convention to be applicable to citizens only. Such statements have been made already in the first State Reports<sup>18</sup> or in the subsequent stages of the monitoring procedure.<sup>19</sup> Here again, some of the States concerned have thereby simply reiterated what is already enshrined in their constitutional legal order.<sup>20</sup> For some others, restricting minority rights to citizens only does not seem to result from the wording of their Constitution.<sup>21</sup>

27. A second group of States is composed of those which have not stated that they considered the Framework Convention to be applicable to citizens only. While it is rather certain that some of these States do not intend to make any difference between citizens and non-citizens when it comes to granting rights and facilities to persons belonging to a national minority,<sup>22</sup> the situation is less clear in some other States which have not formulated a position of principle on the issue. While it may be argued that some of them tend to disregard the citizenship criterion in practice,<sup>23</sup> others seem to rely on this criterion at least in sectoral fields, depending on the various rights and facilities at stake.<sup>24</sup>

*Preliminary findings*

28. This overview of the position taken by the States signatories to the Framework Convention as regards the citizenship criterion clearly shows that there is a great variety of approaches by the different States. These approaches may in some cases be dictated by clear constitutional criteria, but appear more frequently guided by the

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<sup>18</sup> See, for example, paragraph 19 of the first Report of Armenia; paragraph 1 under Article 3 of the first Report of Serbia and Montenegro

<sup>19</sup> See paragraphs 21-22 of the comments of the Russian Government on the first Opinion on the Russian Federation; see also Second Report of Croatia under “from the Report of the Ministry of Justice”.

<sup>20</sup> See, for example, Article 5 of the Constitutional Law on the Rights of National Minorities of Croatia which provides for a definition of the term “national minority” mentioning the citizenship criterion.

<sup>21</sup> See, for example, the case of Armenia.

<sup>22</sup> See, for example, paragraph 16 of the first Opinion on Sweden adopted on 20 February 2003; paragraph 14 of the first Opinion on the United Kingdom adopted on 30 November 2001; paragraph 20 of the first Opinion on Norway adopted on 12 September 2002.

<sup>23</sup> See, for example, the cases of Azerbaijan, Albania and Italy.

<sup>24</sup> See paragraphs 18-20 of the first Opinion on Lithuania, adopted on 21 February 2003; paragraph 17 of the first Opinion on Ukraine, adopted on 1 March 2002.

existence of relevant legislative provisions and/ or the formulation of a general policy towards national minorities.

29. An analysis of the declarations entered upon signature or ratification of the Framework Convention indicates that several states clearly consider the citizenship requirement a precondition for persons belonging to national minorities to benefit from the protection offered by this instrument. A roughly equal number of States, however, have made no link whatsoever to citizenship in their declarations. Moreover, it should be borne in mind that the majority of State Parties to the Framework Convention have not entered any declaration, although they may have taken a clear position or at least followed a certain approach in favour or against the citizenship requirement in the context of the monitoring work.

30. A closer examination of national situations, as is done in the context of the monitoring under the Framework Convention, would probably reveal that even for States that have taken a clear position on the citizenship requirement, be it in a declaration or not, that position is not always consistently reflected in practice. Indeed, domestic authorities may appear more flexible *vis-à-vis* the citizenship requirement when dealing with practical cases in their concrete sphere of competences.

31. The present overview therefore makes it difficult to identify a dominant trend under the Framework Convention as regards the position taken by the States on the citizenship criterion since a meaningful pattern of national examples exist in both directions. In addition, it must be borne in mind that this topic is under constant evolution. The monitoring of the Framework Convention indeed shows that certain States have reconsidered their approach on the issue on the basis of the results of the first cycle and this shall become more apparent in the subsequent stages of the monitoring.

#### D. Issues to be discussed

32. There appears to be a growing consensus, at the international level, on the fact that the citizenship requirement should not be included in domestic provisions dealing generally with the scope of application of minority protection instruments: such a requirement could, instead, be contained only in some specific provisions dealing with issues where citizenship may be deemed essential.

33. It is proposed that the following issues be discussed within the sub-commission :

- 1) Are there strong arguments against the enjoyment by all persons, irrespective of their citizenship, of the right to preserve and develop one's ethnic and cultural identity?
- 2) Depending on the meaning given to it, the concept of cultural rights may cover a range of rights and facilities in the fields of:
  - Education (right to minority language and/or culture teaching);



- Media (right to have access to state-run media, right to create and use private media);
- Use of a minority language in private and in public life (including right to make use, under certain conditions, of a minority language in relations with certain authorities).

Among these so-called cultural rights, which ones should be open to all persons belonging to national minorities, irrespective of the citizenship criterion?

- 3) Under the heading “effective participation in public affairs”, a number of rights and mechanisms may be covered:
  - Political rights (right to vote and stand for elections, both at the state and local level);
  - Right to be consulted through appropriate structures (minority councils, minority self-governments, advisory bodies, etc.);
  - Civil service (right to access civil service so as to reach an adequate representation).

Although it is often considered admissible to restrict political rights to citizens only, is there anyhow a need to distinguish between the state and local level? As regards participatory rights other than the right to vote and stand for elections, should the citizenship criterion have the same relevance?

- 4) For those rights for which the citizenship criterion should not be retained, what element/s could be used instead? (long-standing lawful residence?)
- 5) As a general point concerning the enjoyment of minority rights and the relevance of the citizenship criterion, is there a need to make a distinction between the situation of foreigners and that of non-citizens in that the latter would need a stronger protection?
- 6) Should the prohibition of discrimination between EU citizens have an impact on the debate on the relevance of the citizenship criterion for the enjoyment of minority rights?
- 7) Would it be useful to elaborate guidelines as regards the citizenship criterion in the enjoyment of minority rights so as to help States to avoid making arbitrary or unreasonable distinctions? What form would these guidelines take? Would it be possible/useful to elaborate them together or in consultation with the other international bodies dealing with minority protection?

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## **Appendix I: overview of relevant constitutional and legal provisions**

### ***CROATIA***

#### **Constitution**

##### **Preamble**

... the Republic of Croatia is established as the national state of the Croatian nation and the state of the members of autochthonous national minorities: Serbs, Czechs, Slovaks, Italians, Hungarians, Jews, Germans, Austrians, Ukrainians and Ruthenians and the others who are citizens, and who are guaranteed equality with citizens of Croatian nationality and the realization of national rights in accordance with the democratic norms of the United Nations Organization and the countries of the free world.

#### **Constitutional Law**

##### **Article 5**

A national minority in the sense of this Constitutional Law shall be a group of croatian citizens whose members have been traditionally settled in the territory of Republic of Croatia and who have ethnic, linguistic, cultural and/or religious characteristics which are different than those of other citizens and who are guided by the wish for the preservation of those characteristics.

### ***CZECH REPUBLIC***

#### **Constitution (Charter of Fundamental Rights and Freedoms)**

##### **Article 25**

(1) Citizens who constitute national or ethnic minorities are guaranteed all- round development, in particular the right to develop with other members of the minority their own culture, the right to disseminate and receive information in their language, and the right to associate in ethnic associations. Detailed provisions in this respect shall be set by law.

#### **Act on on rights of members of national minorities and amendment of some acts**

##### **Article 2**

(1) A national minority is a community of citizens of the Czech Republic who live on the territory of the present Czech Republic and as a rule differ from other citizens by their common ethnic origin, language, culture and traditions; they represent a minority of citizens and at the same time they show their will to be considered a national minority for the purpose of common efforts to preserve and develop their own identity, language and culture and at the same time express and preserve interests of their community which has been formed during history.

(2) The member of a national minority is a citizen of the Czech Republic who professes other than Czech ethnic origin and wishes to be considered a member of a national minority in common with the others who profess the same ethnic origin.

## ***ESTONIA***

### **Constitution**

Article 49.

Everyone shall have the right to preserve his or her ethnic identity.

Article 50.

Ethnic minorities shall have the right, in the interests of their national culture, to establish institutions of self-government in accordance with conditions and procedures determined by the Law on Cultural Autonomy for Ethnic Minorities

### **Law on cultural autonomy for ethnic minorities**

#### **Article 1.**

This Law considers as national minorities citizens of Estonia who:

- reside on the territory of Estonia;
- maintain longstanding, firm and lasting ties with Estonia;
- are distinct from Estonians on the basis of their ethnic, cultural, religious, or linguistic characteristics;
- are motivated by a concern to preserve together their cultural traditions, their religion or their language which constitute the basis of their common identity

#### **Article 2.**

(1) For the purposes of the present Law, cultural autonomy for national minorities is defined as the right of individuals belonging to a national minority to establish cultural autonomy in order to achieve the cultural rights given to them by the constitution.

(2) National minority cultural autonomy may be established by persons belonging to German, Russian, Swedish and Jewish minorities and persons belonging to national minorities with a membership of more than 3000.

## **FINLAND**

### **Constitution**

#### **Article 17**

The Sami, as an indigenous people, as well as the Roma and other groups, have the right to maintain and develop their own language and culture. Provisions on the right of the Sami to use the Sami language before the authorities are laid down by an Act. The rights of persons using sign language and of persons in need of interpretation or translation aid owing to disability shall be guaranteed by an Act

## ***HUNGARY***

### **Constitution**

#### **Article 68.**

The national and ethnic minorities living in the Republic of Hungary participate in the sovereign power of the people: they represent a constituent factor of the State. (2) The Republic of Hungary shall provide for the protection of national and ethnic minorities. It shall ensure their collective participation in public affairs, the fostering of their cultures, the use of their own languages, education in their own languages and the use of names in their own languages. (3) The laws of the Republic of Hungary shall ensure representation of the national and ethnic minorities living within the country. (4) National and ethnic minorities shall have the right to form local and national self-governments.

(5) A majority of two-thirds of the votes of the Members of Parliament present is required to pass the statute on Act LXXVII of 1993 on the Rights of National and Ethnic Minorities

### Law on the Rights of National and Ethnic Minorities

#### Preamble

/.../ the right to national and ethnic identity as a universal human right, that the special individual and collective rights of national and ethnic minorities are fundamental rights of freedom, which it will respect and enforce in the Republic of Hungary.

In their entirety these rights are neither a gift from the majority nor the privilege of the minority, nor is their basis the numerical proportion of the national and ethnic minorities within the majority nation, but the right to be different, which is based on respect for the freedom of the individual and for social harmony.

#### **Article 1**

(1) This Act applies to all persons of Hungarian citizenship living in the Republic of Hungary who consider themselves members of any national or ethnic minority and to the communities of these people.

(2) For the purposes of the present Act a national or ethnic minority (hereinafter 'minority') is any ethnic group with a history of at least one century of living in the Republic of Hungary, which represents a numerical minority among the citizens of the state, the members of which are Hungarian citizens, and are distinguished from the rest of the citizens by their own language, culture and traditions, and at the same time

demonstrate a sense of belonging together, which is aimed at the preservation of all these, and the expression and protection of the interests of their communities, which have been formed in the course of history.

## ***LATVIA***

### **Constitution**

#### **Article 114**

Persons belonging to ethnic minorities have the right to preserve and develop their language and their ethnic and cultural identity.

## **“THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA”**

### **Constitution**

#### **Preamble**

The citizens of the Republic of Macedonia, the Macedonian people, as well as, citizens living within its borders, who are part of the Albanian people, the Turk people, the Vlach people, the Serb people, the Roma people, the Bosniaks people and others .../.../

#### **Article 48 (amendment 2001 – annex to Ohrid agreement)**

1) Members of communities<sup>25</sup> have a right freely to express, foster and develop their identity and community attributes, and to use their community symbols.

(2) The Republic guarantees the protection of the ethnic, cultural, linguistic and religious identity of all communities.

(3) Members of communities have the right to establish institutions for culture, art, science and education, as well as scholarly and other associations for the expression, fostering and development of their identity.

(4) Members of communities have the right to instruction in their language in primary and secondary education, as determined by law. In schools where education is carried out in another language, the Macedonian language is also studied.

## ***MOLDOVA***

### **Constitution**

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<sup>25</sup> Community have the right to enjoy the guaranteed minority rights when constituting 20% of the population.

**Article 10**

/.../

(2) The State recognizes and guarantees all its citizens the right to preserve, develop and express their ethnic, cultural, linguistic and religious identity.

**Law concerning the rights of persons belonging to the national minorities and the legal status of the organizations thereof****Article 1**

For the purposes of this law, a person belonging to a national minority shall mean any person who resides on the territory of the Republic of Moldova and is a citizen thereof, and is further characterized by ethnic, cultural, linguistic, and religious particularities which distinguish said person from the majority of the population – the Moldovans –, and who considers himself or herself to be of a different ethnic origin.

**Article 2**

Persons belonging to a national minority have the right to choose freely whether they belong to the respective minority. This choice or the exercise of rights in connection therewith shall not place the individual exercising such choice in an unfavorable position.

***STATE UNION OF SERBIA AND MONTENEGRO*****Charter on Human and Minority Rights and Fundamental Freedoms ( March 2003)****Article 7**

Human and minority rights guaranteed by universally accepted rules of international law, as well as by international treaties in force in the state union are guaranteed by this charter and are directly applicable.

**Article 10**

Human and minority rights guaranteed by this charter shall be interpreted in the manner promoting the values of an open and free democratic society and in accordance with the valid international guarantees of human and minority rights and practice of international bodies supervising their implementation.

**Article 47**

The rights of persons belonging to national minorities shall be exercised in accordance with international-legal protection of human and minority rights.

Persons belonging to national minorities shall have individual and collective rights, rights that are exercised individually or in community with others, in accordance with the law and international standards.

Collective rights imply that persons belonging to national minorities shall, directly or through their elected representatives, take part in decision taking process or decide on issues related to their culture, education, information and the use of language and script, in accordance with the law.

For the purposes of exercising their right to autonomy in the fields of culture, education, information and the official use of language and script, persons belonging to national minorities may elect their national councils, in accordance with the law.

In addition to the term "national minorities", other terms established by the constitutions and laws of the member states may be equally used.

#### **Article 48**

Freedom to express national origin shall be guaranteed.  
No one shall be obliged to declare his national origin.

#### ***UKRAINE***

#### **Law on National Minorities (June 1992)**

**Article 3.** To national minorities belong groups of Ukrainian citizens, who are not of Ukrainian nationality, but show feeling of national self-awareness and affinity.

## Appendix II: list of declarations/reservations entered upon signature and/or ratification of the Framework Convention for the Protection of National Minorities

### List of declarations made with respect to treaty No. 157

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

Status as of: 17/5/2005



**Austria :**

**Declaration contained in the instrument of ratification deposited on 31 March 1998 - Or. Engl.**

The Republic of Austria declares that, for itself, the term "national minorities" within the meaning of the Framework Convention for the Protection of National Minorities is understood to designate those groups which come within the scope of application of the Law on Ethnic Groups (*Volksgruppengesetz*, Federal Law Gazette No. 396/1976) and which live and traditionally have had their home in parts of the territory of the Republic of Austria and which are composed of Austrian citizens with non-German mother tongues and with their own ethnic cultures.

**Period covered: 1/7/1998 -**

The preceding statement concerns Article(s) : -



**Azerbaijan :**

**Declaration contained in the instrument of accession deposited on 26 June 2000 - Or. Eng.**

The Republic of Azerbaijan, confirming its adherence to the universal values and respecting human rights and fundamental freedoms, declares that the ratification of the Framework Convention for the Protection of National Minorities and implementation of its provisions do not imply any right to engage in any activity violating the territorial integrity and sovereignty, or internal and international security of the Republic of Azerbaijan.

**Period covered: 1/10/2000 -**

The preceding statement concerns Article(s) : -



**Belgium :**

**Reservation accompanying the signature of the instrument on 31 July 2001 - Or. Fr.**



The Kingdom of Belgium declares that the Framework Convention applies without 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.

The preceding statement concerns Article(s) : -



**Bulgaria :**

**Declaration contained in the instrument of ratification deposited on 7 May 1999 - Or. Eng./Bulg.**

Confirming its adherence to the values of the Council of Europe and the desire for the integration of Bulgaria into the European structures, committed to the policy of protection of human rights and tolerance to persons belonging to minorities, and their full integration into Bulgarian society, the National Assembly of the Republic of Bulgaria declares that the ratification and implementation of the Framework Convention for the Protection of National Minorities do not imply any right to engage in any activity violating the territorial integrity and sovereignty of the unitary Bulgarian State, its internal and international security.

**Period covered: 1/9/1999 -**

The preceding statement concerns Article(s) : -



**Denmark :**

**Declaration contained in a Note Verbale dated 22 September 1997, handed to the Secretary General at the time of deposit of the instrument of ratification, on 22 September 1997 - Or. Engl.**

In connection with the deposit of the instrument of ratification by Denmark of the Framework Convention for the Protection of National Minorities, it is hereby declared that the Framework Convention shall apply to the German minority in South Jutland of the Kingdom of Denmark.

**Period covered: 1/2/1998 -**

The preceding statement concerns Article(s) : -



**Estonia :**

**Declaration contained in the instrument of ratification, deposited on 6 January 1997 - Or. Est./Engl.**

The Republic of Estonia understands the term "national minorities", which is not defined in the Framework Convention for the Protection of National Minorities, as follows: are considered as "national minority" those citizens of Estonia who

- reside on the territory of Estonia;
- maintain longstanding, firm and lasting ties with Estonia;
- are distinct from Estonians on the basis of their ethnic, cultural, religious or linguistic characteristics;
- are motivated by a concern to preserve together their cultural traditions, their religion or their language, which constitute the basis of their common identity.

**Period covered: 1/2/1998 -**

The preceding statement concerns Article(s) : -



### Germany :

**Declaration contained in a letter from the Permanent Representative of Germany, dated 11 May 1995, handed to the Secretary General at the time of signature, on 11 May 1995 - Or. Ger./Engl. - and renewed in the instrument of ratification, deposited on 10 September 1997 - Or. Ger./Engl.**

The Framework Convention contains no definition of the notion of national minorities. It is therefore up to the individual Contracting Parties to determine the groups to which it shall apply after ratification. National Minorities in the Federal Republic of Germany are the Danes of German citizenship and the members of the Sorbian people with German citizenship. The Framework Convention will also be applied to members of the ethnic groups traditionally resident in Germany, the Frisians of German citizenship and the Sinti and Roma of German citizenship.

**Period covered: 1/2/1998 -**

The preceding statement concerns Article(s) : -



### Liechtenstein :

**Declaration contained in the instrument of ratification deposited on 18 November 1997 - Or. Fr.**

The Principality of Liechtenstein declares that Articles 24 and 25, in particular, of the Framework Convention for the Protection of National Minorities of 1 February 1995 are to be understood having regard to the fact that no national minorities in the sense of the Framework Convention exist in the territory of the Principality of Liechtenstein. The Principality of Liechtenstein considers its ratification of the Framework Convention as an act of solidarity in the view of the objectives of the Convention.

**Period covered: 1/3/1998 -**

The preceding statement concerns Article(s) : 24, 25



### Luxembourg :

**Declaration contained in a letter from the Permanent Representative of Luxembourg, dated 18 July 1995, handed to the Secretary General at the time of signature, on 20 July 1995 - Or. Fr.**

The Grand Duchy of Luxembourg understands by "national minority" in the meaning of the Framework Convention, a group of people settled for numerous generations on its territory, having the Luxembourg nationality and having kept distinctive characteristics in an ethnic and linguistic way.

On the basis of this definition, the Grand Duchy of Luxembourg is induced to establish that there is no "national minority" on its territory.

The preceding statement concerns Article(s) : -



**Malta :**

**Reservation contained in the instrument of ratification, deposited on 10 February 1998 - Or. Engl.**

The Government of Malta reserves the right not to be bound by the provisions of Article 15 insofar as these entail the right to vote or to stand for election either for the House of Representatives or for Local Councils.

**Period covered: 1/6/1998 -**

The preceding statement concerns Article(s) : 15

**Declaration contained in the instrument of ratification, deposited on 10 February 1998 - Or. Engl.**

The Government of Malta declares that Articles 24 and 25, in particular, of the Framework Convention for the Protection of National Minorities of 1 February 1995 are to be understood having regard to the fact that no national minorities in the sense of the Framework Convention exist in the territory of the Government of Malta. The Government of Malta considers its ratification of the Framework Convention as an act of solidarity in the view of the objectives of the Convention.

**Period covered: 1/6/1998 -**

The preceding statement concerns Article(s) : 24, 25



**Netherlands :**

**Declaration contained in a Note verbale from the Permanent Representation of the Netherlands deposited with the instrument of acceptance, on 16 February 2005 - Or. Engl.**

The Kingdom of the Netherlands will apply the Framework Convention to the Frisians.

**Period covered: 1/6/2005 -**

The preceding statement concerns Article(s) : -

**Declaration contained in a Note verbale from the Permanent Representation of the Netherlands deposited with the instrument of acceptance, on 16 February 2005 - Or. Engl.**

The Government of the Netherlands assumes that the protection afforded by Article 10, paragraph 3, does not differ, despite the variations in wording, from that afforded by Article 5, paragraph 2, and Article 6, paragraph 3 (a) and (e), of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

**Period covered: 1/6/2005 -**

The preceding statement concerns Article(s) : 10

**Declaration contained in the instrument of acceptance deposited on 16 February 2005 - Or. Engl.**

The Kingdom of the Netherlands accepts the Framework Convention for the Kingdom in Europe.

**Period covered: 1/6/2005 -**

The preceding statement concerns Article(s) : 30



**Poland :**

**Declaration contained in a Note Verbale, handed at the time of deposit of the instrument of ratification on 20 décembre 2000 - Or. Fr.**

Taking into consideration the fact, that the Framework Convention for the Protection of National Minorities contains no definition of the national minorities notion, the Republic of Poland declares, that it understands this term as national minorities residing within the territory of the Republic of Poland at the same time whose members are polish citizens.

**Period covered: 1/4/2001 -**

The preceding statement concerns Article(s) : -

**Declaration contained in a Note Verbale, handed at the time of deposit of the instrument of ratification on 20 décembre 2000 - Or. Fr.**

The Republic of Poland shall also implement the Framework Convention under Article 18 of the Convention by conclusion of international agreements mentioned in this Article, the aim of which is to protect national minorities in Poland and minorities or groups of Poles in other States.

**Period covered: 1/4/2001 -**

The preceding statement concerns Article(s) : 18



**Russia :**

**Declaration contained in the instrument of ratification deposited on 21 August 1998 - Or. Rus./Engl./Fr.**

The Russian Federation considers that none is entitled to include unilaterally in reservations or declarations, made while signing or ratifying the Framework Convention for the Protection of National Minorities, a definition of the term "national minority", which is not contained in the Framework Convention. In the opinion of the Russian Federation, attempts to exclude from the scope of the Framework Convention the persons who permanently reside in the territory of States Parties to the Framework Convention and previously had a citizenship but have been arbitrarily deprived of it, contradict the purpose of the Framework Convention for the Protection of National Minorities.

**Period covered: 1/12/1998 -**

The preceding statement concerns Article(s) : -



## Slovenia :

**Declaration contained in a Note Verbale from the Permanent Representation of Slovenia, dated 23 March 1998, handed to the Secretary General at the time of deposit of the instrument of ratification, on 25 March 1998 - Or. Engl.**

Considering that the Framework Convention for the Protection of National Minorities does not contain a definition of the notion of national minorities and it is therefore up to the individual Contracting Party to determine the groups which it shall consider as national minorities, the Government of the Republic of Slovenia, in accordance with the Constitution and internal legislation of the Republic of Slovenia, declares that these are the autochthonous Italian and Hungarian National Minorities. In accordance with the Constitution and internal legislation of the Republic of Slovenia, the provisions of the Framework Convention shall apply also to the members of the Roma community, who live in the Republic of Slovenia.

**Period covered: 1/7/1998 -**

The preceding statement concerns Article(s) : -



## Sweden :

**Declaration contained in the instrument of ratification deposited on 9 February 2000 - Or. Eng.**

The national minorities in Sweden are Sami, Swedish Finns, Tornedalers, Roma and Jews.

**Period covered: 1/6/2000 -**

The preceding statement concerns Article(s) : -



## Switzerland :

**Declaration contained in the instrument of ratification deposited on 21 October 1998 - Or. Fr.**

Switzerland declares that in Switzerland national minorities in the sense of the framework Convention are groups of individuals numerically inferior to the rest of the population of the country or of a canton, whose members are Swiss nationals, have long-standing, firm and lasting ties with Switzerland and are guided by the will to safeguard together what constitutes their common identity, in particular their culture, their traditions, their religion or their language.

**Period covered: 1/2/1999 -**

The preceding statement concerns Article(s) : -

**Declaration contained in the instrument of ratification deposited on 21 October 1998 - Or. Fr.**

Switzerland declares that the provisions of the framework Convention governing the use of the language in relations between individuals and administrative authorities are applicable without prejudice to the principles observed by the Confederation and the cantons in the determination of

official languages.

**Period covered: 1/2/1999 -**

The preceding statement concerns Article(s) : -



**the former Yugoslav Republic of Macedonia :**

**Declaration contained in a letter from the Minister of Foreign Affairs, dated 16 April 2004, registered at the Secretariat General on 2 June 2004 - Or. Engl.**

Referring to the Framework Convention, and taking into account the latest amendments to the Constitution of the Republic of Macedonia, the Minister of Foreign Affairs of Macedonia submits the revised declaration to replace the previous two declarations on the aforesaid Convention:

The term "national minorities" used in the Framework Convention and the provisions of the same Convention shall be applied to the citizens of the Republic of Macedonia who live within its borders and who are part of the Albanian people, Turkish people, Vlach people, Serbian people, Roma people and Bosniac people.

**Period covered: 2/6/2004 -**

The preceding statement concerns Article(s) : -