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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

**PROPOSAL FOR CONCLUSIONS
TO THE DRAFT REPORT
ON NON-CITIZENS AND MINORITY RIGHTS¹**

by Mr Sergio BARTOLE (Substitute member, Italy)

**in the light of the proposal for conclusions
by Mr Franz MATSCHER²**

¹ CDM-MIN(2006)002.

² CDL-MIN(2006)003.

In my view, the conclusions which can be drawn from the reasoning developed in the present study lead to a significant change of perspective.

The Venice Commission started its reflection from the query of whether or not citizenship constitutes an *element of the definition of national minority*. This approach presented the risk of challenging the universality of minority rights, to the extent that the entitlement to them could be narrowed or broadened, depending on whether citizenship was considered or not an element of the definition.

The international practice in this respect, well described and codified in Article 1 of the Framework Convention, brings to acknowledge that minority rights are human rights, hence universal rights belonging to every human being.

The universality character of human and minority rights does not exclude the legitimate existence of *conditions for access* to such rights. Similar conditions (legal residence, sufficient number of persons belonging to a certain minority group and so on) are indeed common in the field of minority rights. From this perspective, citizenship could also be seen as a condition for access to minority rights.

This approach is of particular interest in that the identification of the groups to which minority protection is applicable results from a factual examination and does not depend on the discretionary decision of an authority of the State. This overcomes the problematic vicious circle according to which the State might find itself empowered to define the situations in which its obligation to intervene would be applicable.

Citizenship as a condition for the access to a certain minority right, as opposed to an element of the very definition of national minority, is the object of a case-by-case examination, and can vary in time according to different circumstances. The lack of citizenship is no more a general bar from benefiting of all minority rights.

The question of whether and under what conditions, under this approach, a State is allowed to restrict access to certain minority rights on the ground of the lack of citizenship (notably when the applicable international agreements do not foresee such a requirement) would deserve a thorough examination.