



## Resolution 1301 (2002)<sup>1</sup>

# Protection of minorities in Belgium

Parliamentary Assembly

1. The Parliamentary Assembly recalls its [Resolution 1172 \(1998\)](#) on the situation of the French-speaking population living in the Brussels periphery and its [Recommendation 1492 \(2001\)](#) on the rights of national minorities.

2. The Assembly reiterates that adequate protection for persons belonging to national minorities and their communities is an integral part of the protection of human rights. It thus considers that all member states of the Council of Europe have an obligation to safeguard the minimum rights of national minorities, as set out in the Framework Convention for the Protection of National Minorities. In this context, the Assembly recalls that, for several years now, a state's willingness to sign and ratify the framework convention and to apply [Recommendation 1201 \(1993\)](#) on an additional protocol on the rights of national minorities to the European Convention on Human Rights has been a precondition for the granting of membership of the Council of Europe. The founding states of the Council of Europe bear a particular responsibility to fulfil the obligations they expect new member states to adopt.

3. The Assembly also considers that Protocol No. 12 to the European Convention on Human Rights on the general prohibition of discrimination can play an important role in this field, as it will enable individual claimants to have their right not to be discriminated against judicially enforced, once the protocol enters into force.

4. The Assembly therefore welcomes the signature by the Kingdom of Belgium of Protocol No. 12 on 4 November 2000 and of the framework convention on 31 July 2001. By virtue of these steps the Belgian authorities have underlined their conviction that respect for the rights of minorities constitutes an integral part of respect for human rights. The Assembly therefore regrets that the Belgian authorities deemed it necessary to accompany the signature of the framework convention by such a broad reservation that it risks undermining most of the convention's provisions. If the Kingdom of Belgium decided to uphold upon ratification of the convention the reservation it made upon signature, it might be considered as a violation of the Vienna Conventions on the Law of Treaties which do not allow countries to enter reservations upon ratification of treaties which void them of their meaning.

5. By ratifying the framework convention, states reaffirm the importance of the protection of national minorities in safeguarding democratic stability and peace within their borders. The freedom to use one's own language is a prerequisite for the benefit of other freedoms guaranteed by the European Convention on Human Rights, such as freedom of thought and of expression. The use of a minority language constitutes the most important way for its speakers to safeguard and express their identity.

6. The framework convention itself does not define the term "national minorities". However, the Parliamentary Assembly did so in its [Recommendation 1201 \(1993\)](#) on an additional protocol on the rights of national minorities to the European Convention on Human Rights, a definition which still remains valid today:

7. "For the purposes of this Convention, the expression "national minority" refers to a group of persons in a state who:

a. reside on the territory of that state and are citizens thereof;

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1. Assembly debate on 26 September 2002 (30th Sitting) (see [Doc. 9536](#), report of the Committee on Legal Affairs and Human Rights, rapporteur: Mrs Nabholz-Haidegger). Text adopted on 26 September 2002 (30th Sitting).



- b. maintain longstanding, firm and lasting ties with that state;
- c. display distinctive ethnic, cultural, religious or linguistic characteristics;
- d. are sufficiently representative, although smaller in number than the rest of the population of that state or of a region of that state;
- e. are motivated by a concern to preserve together that which constitutes their common identity, including their culture, their traditions, their religion or their language.”

8. In [Recommendation 1492 \(2001\)](#) on the rights of national minorities, the Assembly reaffirmed this definition, and condemned “the denial of the existence of minorities and of minority rights in several Council of Europe member states and the fact that many minorities in Europe are not afforded adequate protection.” The Assembly singled out Belgium as one of the countries which “have significant minorities, which ought to be protected, and whose rights are not officially recognised.”

9. It is in the interest of the Belgian state that all minorities in the country which fulfil the conditions of [Recommendation 1201 \(1993\)](#) be adequately protected. Belgium is a federal state made up of three communities, three regions, and four linguistic regions (three monolingual, one bilingual). Competence for many policy areas has – by common accord – been transferred to different federal entities of the Belgian state. In most of the areas which have the potential to directly affect minorities, such as culture and education, this competence has been transferred from the federal centre to the three communities (Flanders, the French-speaking community and the German-speaking community).

10. Belgium’s regions and communities are invested with legislative power. In many areas, sole authority to legislate by “decrees” having the force of statute throughout the territory for which they are responsible lies with the communities and the regions. Decrees may repeal, amplify, amend or replace prevailing statutory provisions in the allocated areas of responsibility, and are placed under the sole control of the Court of Arbitration. The communities have responsibility for cultural affairs, education, personalised services, and the use of languages in administrative matters, education, and industrial relations between employers and their employees. The responsibility of the regions includes, inter alia, land use and planning, environment, water and agricultural policy, housing, economic and employment policy, public works and transport.

11. The fact that the communities and regions have exclusive responsibility for many policy areas, including those touching on the protection of minorities, has been confirmed by one of the highest Belgian courts, the Court of Arbitration. In its judgment No. 54/96, the court held that “it is the duty of each legislator, within the limits of its competence, to ensure the protection of minorities”, and made Flanders responsible for protecting the rights of the “French-speaking minority established” in the Flemish communes where facilities for French-speakers are provided.

12. Because of this transfer of power from the federal centre to Belgian federal entities, the Framework Convention for the Protection of National Minorities would have to be ratified by the seven competent parliamentary assemblies (including the Flemish parliament and the parliaments of the French-speaking and German-speaking communities), for it to come into effect in Belgium.

13. At the request of the Committee on Legal Affairs and Human Rights, the European Commission for Democracy through Law (Venice Commission) has analysed which possible groups the framework convention could be applied to in Belgium. The Venice Commission concluded as follows: “In a context of downward transfer of political powers, an increasing number of laws and decisions affecting the rights of persons belonging to national minorities are taken at the regional or local level, not at the state level. In case of territorial sub-divisions, the state might even lose competence in those fields of interest for minorities. While it remains internationally accountable for the respect of its commitments, it must take this decentralization of powers into consideration when deciding the scope of application of the framework convention. ... it is normally the sub-state entities that are competent in respect of the fields of interest to minorities: to exclude the applicability of the framework convention at the sub-state level would thus be contrary to the object and aim of the convention itself.”

14. Thus the existence of national minorities in Belgium at all levels must be assessed in the context of the decentralisation of the Belgian state, and especially of the wide powers of the three communities in the area of minority rights. According to the Venice Commission, this approach is “in line with the spirit of the framework convention, which itself foresees cases in which a minority becomes locally a majority, and stipulates that this local majority will have to ‘respect the rights of others, in particular those of persons belonging to the majority’”. The framework convention does not set out any territorial delimitation of the notion of minority: on the contrary, it “expressly provides for protection of sub-minorities”.

15. The Venice Commission further concluded that: “A teleological interpretation of the framework convention suggests that only those groups of persons that are actually exposed to the risk of being dominated by the majority deserve protection. Numerical inferiority may thus not be a sufficient element, even though a necessary one, for a group of persons to qualify as a “minority” within the meaning of the framework convention. In the commission’s view, it is necessary to exclude from the scope of application of the framework convention those groups of persons that, although inferior in number to the rest or to other groups of the population, find themselves, de jure or de facto, in a dominant or co-dominant position.”

16. The commission is of the opinion “that in Belgium, in the light of the existing equilibrium of powers between the Dutch-speaking and the French-speaking at the state level, French-speakers are in a position of co-dominance and therefore do not constitute a minority within the meaning of the framework convention at this level, despite being numerically inferior to Dutch-speakers. Germanspeakers, instead, are to be considered as a minority in the sense of the framework convention at the state level.”

17. The Venice Commission concluded that, “at the regional level, having regard to the distribution of competences between the various regions and communities and of the territorial division of the country, the commission considers that French-speakers in the Dutch-language region and in the German-language region may be considered as a minority in the sense of the framework convention, as may Dutch-speakers and German-speakers in the French-language region.”

18. The Assembly fully agrees with the analysis, and with the reasoning and conclusions of the Venice Commission. On the basis of the definition of the term “national minorities” in the abovementioned [Recommendation 1201 \(1993\)](#), the Assembly comes to the same conclusion. While, for example, the French-speakers in Belgium might not need the protection of the framework convention on the state level, due to their co-dominant position at that level (and that level only), they are in need of that protection in the whole of Flanders. The longstanding, firm and lasting ties of the Frenchspeakers with Belgium, and indeed with Flanders, cannot be doubted; neither can the firm and lasting ties of Dutch-speakers with Belgium, and indeed with Wallonia, be put into question.

19. The Assembly thus finds that the following groups are to be considered as minorities in Belgium within the context of the framework convention: at state level, the German-speaking community; at regional level, the French-speakers in the Dutch-language region and in the Germanlanguage region, and the Dutch-speakers and German-speakers in the French-language region.

20. The Assembly draws attention to the problems that could arise if the Kingdom of Belgium makes a declaration upon ratification of the framework convention which might seek to exclude from the convention’s scope of protection a group of persons that, although not belonging to a minority at the state level, would be in danger of losing its identity by the operation of democratic institutions at the regional level. Such a declaration would probably have to be understood as a reservation incompatible with the object and purpose of the framework convention itself.

21. The Assembly thus recommends that the Kingdom of Belgium and its respective competent parliamentary assemblies (including those on the level of the regions and the communities):

*ratify the framework convention without further delay, in a spirit of tolerance, ensuring that all minorities identified by the Assembly are duly recognised as such on the state and regional level, and refrain from making a reservation incompatible with the content of the framework convention;*

*ratify Protocol No. 12 to the European Convention on Human Rights in the near future;*

*make the signature and ratification of the European Charter for Regional or Minority Languages a priority.*

22. The Assembly further recommends that effective measures be taken in the Kingdom of Belgium to further tolerance and dialogue between the language groups and their respective cultures. The role of education, of cultural exchange and of the media are thus fundamental, especially as regards the implementation of the aims of the framework convention. In view of this, the Assembly recommends that the official languages of Belgium be taught as a priority in all of the Kingdom’s communities. The Assembly recommends that a cultural co-operation agreement be concluded between the French-speaking and Dutch-speaking communities as a matter of urgency. When moving to another language area, one always has an interest in understanding and speaking the language of that region, and knowledge of the language of the region is essential for full participation in local community life. The authorities of that region should take the necessary measures in order to facilitate this process of learning and of community building.

23. The protection measures provided for in the framework convention, which fall under the international responsibility of the Kingdom of Belgium, must be applied at all levels of the federal state. The ratification as such does not change the state's constitutional order or the existing territorial boundaries.

24. Finally, the Assembly calls on the Kingdom of Belgium to fully implement, without further delay, the judgment of the European Court of Human Rights of 23 July 1968, which, inter alia, stipulated that children of parents not resident in the six municipalities with linguistic facilities in the Brussels periphery should nevertheless be allowed to attend the French-speaking schools in these municipalities.