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Promoting the rights of persons belonging to national minorities

Report¹

Committee on Equality and Non-Discrimination

Rapporteur: Mr Viorel Riceard BADEA, Romania, Group of the European People's Party

Summary

Protecting persons belonging to national minorities is crucial for ensuring the equality of all people, preserving social and political stability and democratic security and promoting the diversity of cultures in Europe. The Framework Convention for the Protection of National Minorities provides a legally binding yet flexible tool for protecting the rights of persons belonging to national minorities through a multilateral, human-rights-based approach that allows for the expression and acknowledgement of difference while promoting equal access to rights and resources and strengthening societal interaction and inclusion.

Whether or not States consider any national minorities to be present within their territory, and even if they are already Parties to separate bilateral agreements, it is in the interests of all persons belonging to national minorities in Europe, and of all Council of Europe member States, for the Framework Convention to be ratified by all of them. Conversely, the absence of ratification of the Framework Convention by some States weakens the overall protection it can provide.

This report seeks to provide a constructive basis for further dialogue and steps forward by the eight member States that are not yet Parties to the Framework Convention. It calls on these States, and on all States not yet Parties to Protocol No. 12 to the European Convention on Human Rights, to complete the processes of signature and ratification of these treaties.

1. Reference to committee: [Doc. 14251](#), Reference 4283 of 10 March 2017.



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A. Draft resolution²

1. The rights of persons belonging to national minorities form an integral part of the international human rights framework, as recognised by the Framework Convention for the Protection of National Minorities (ETS No. 157, "the Framework Convention"). The Parliamentary Assembly emphasises that full ratification of the Framework Convention by all member States of the Council of Europe is an important means of promoting the full and equal participation of all members of society, promoting the diversity of cultures and languages in Europe and guaranteeing stability, democratic security and peace throughout the continent.
2. The Assembly pays tribute to the fundamental role played by the Framework Convention in improving the protection of persons belonging to national minorities and promoting their rights over the twenty years since its entry into force. It moreover welcomes the fact that the multilateral system set up under the Framework Convention provides States with a regular source of expert analysis and early warnings when the structures and channels set up domestically in order to protect and promote the rights of persons belonging to national minorities and facilitate their full participation in society fall short of the aims sought to be achieved.
3. The Assembly recalls its [Recommendation 1766 \(2006\)](#) on the ratification of the Framework Convention for the Protection of National Minorities by the member states of the Council of Europe, in which it called on the four States that have signed the Framework Convention but not ratified it – Belgium, Greece, Iceland and Luxembourg –, and on the four others that have neither signed nor ratified it – Andorra, France, Monaco and Turkey –, to sign and/or ratify the Framework Convention as soon as possible, without reservations or declarations. It deplores the fact that little or no progress appears to have been made towards ratification by these States since then.
4. The Assembly once again reiterates its appeal to all member States to respond positively to the needs of persons belonging to national minorities and to safeguard their rights, in particular as set forth in the Framework Convention.
5. It recalls in this context that the principle of equality and non-discrimination constitutes a fundamental human right. While 20 Council of Europe member States have ratified Protocol No. 12 to the European Convention on Human Rights (ETS No. 177), including Andorra and Luxembourg, 27 have not. Eighteen States have signed but not ratified Protocol No. 12, including Belgium, Greece, Iceland and Turkey, which are also not Parties to the Framework Convention. Nine States, including two that have neither signed nor ratified the Framework Convention – France and Monaco – have neither signed nor ratified Protocol No. 12.
6. The Assembly underlines that the ratification of Protocol No. 12 to the European Convention on Human Rights would strengthen the protection of the rights of persons belonging to national minorities, whether or not such minorities are recognised as such.
7. It regrets that, since the Committee of Experts on Issues Relating to the Protection of National Minorities (DH-MIN) ceased functioning at the end of 2011, no forum for addressing these issues has been provided by the Committee of Ministers beyond its periodical exchanges of views with the president-in-office of the Advisory Committee on the Framework Convention.
8. Considering the concerns raised by the Advisory Committee as regards current trends and challenges in the protection of minority rights, echoed at the conference held on 18 and 19 June 2018 to mark the 20th anniversary of the Framework Convention and of the European Charter for Regional or Minority Languages (ETS No. 148), the Assembly underlines the importance of dealing with the rights of persons belonging to national minorities through a multilateral approach, providing collective mechanisms and guarantees.
9. In the light of the above, the Assembly calls on:
 - 9.1. those member States which have not yet done so to sign and ratify the Framework Convention, without reservations or declarations amounting to reservations;
 - 9.2. those member States which have signed but not yet ratified the Framework Convention to ratify this instrument, without reservations or declarations amounting to reservations;
 - 9.3. those States Parties which have ratified the Framework Convention while entering restrictive declarations or reservations to withdraw them.

2. Draft resolution adopted unanimously by the committee on 3 December 2018.

10. The Assembly also calls on:

- 10.1. those member States which have not yet done so to sign and ratify Protocol No. 12 to the European Convention on Human Rights;
- 10.2. those member States which have signed but not yet ratified Protocol No. 12 to the European Convention on Human Rights to ratify this instrument.

B. Explanatory memorandum by Mr Viorel Riceard Badea, rapporteur

1. Introduction

1. Protecting persons belonging to national minorities is crucial for ensuring the equality of all people, preserving social and political stability and democratic security, and promoting the diversity of cultures in Europe. Understanding minority rights as an integral part of human rights was a major step forward in allowing persons belonging to national minorities to participate fully in the societies in which they live, and the Framework Convention for the Protection of National Minorities (ETS No. 157, “the Framework Convention”) constitutes a powerful tool in this respect.

2. In 2006, the Parliamentary Assembly called on the Committee of Ministers to continue its efforts to encourage the full ratification of the Framework Convention for the Protection of National Minorities by all member States, without reservations or restrictive declarations.³ Since then, there have however been no new ratifications – there are still four member States that have signed but not ratified the Framework Convention, and four that have neither signed nor ratified it⁴ – and no declarations or reservations have been withdrawn.

3. In the meantime, the 39 States Parties to the Framework Convention have continued to take steps to strengthen the protection of persons belonging to national minorities within their jurisdiction. The Advisory Committee on the Framework Convention has regularly studied the implementation of the Framework Convention by States Parties and has adopted several thematic commentaries on how the Framework Convention can best be applied in practice.

4. Bearing in mind the importance of the Framework Convention as the first legally binding multilateral treaty for the protection of the rights of persons belonging to national minorities, the motion at the origin of this report, tabled by the Committee on Equality and Non-Discrimination in January 2017,⁵ called on the Assembly to take stock of the implementation of the Framework Convention, engage with member States that are still facing obstacles as regards ratifying it and examine ways of ensuring that the standards and principles stemming from the Framework Convention are applied throughout Europe.

2. Scope of the report

5. This report pursues two main aims. The first responds to the need to depoliticise issues that should instead be dealt with through the lens of universal human rights. Indeed, the Framework Convention was adopted on the basis of the understanding that minority protection could best be achieved through a common commitment by Council of Europe member States to protect persons belonging to national minorities within their jurisdiction, and to accept independent, multilateral monitoring of the situation of these persons.

6. The fact that a small number of States have not taken on this commitment creates a two-speed system in Europe. On the one hand, 39 States – including some States that do not recognise any national minorities as living within their territories – have taken on concrete commitments to further the protection and promotion of the rights of persons belonging to national minorities and to subject the measures taken to regular scrutiny. On the other hand, while States that are not Parties to the Framework Convention do already take at least some measures that may be considered to be in line with the aims of this instrument, there is no monitoring of the adequacy of such measures, or their compatibility with the principles of the Framework Convention.

7. This report therefore looks first of all at the measures that are already in place in the eight States that are not Parties to the Framework Convention, at the obstacles impeding their ratification of this instrument and at the prospects of future ratification by these States.

8. The second aim is to examine how the implementation of the Framework Convention over the past twenty years by the States that are Parties to it can help to throw light on the challenges faced by non-States Parties as regards its ratification. While it is clearly beyond the scope of this report to examine in detail the

3. [Recommendation 1766 \(2006\)](#) on the ratification of the Framework Convention for the Protection of National Minorities by the member States of the Council of Europe.

4. Respectively Belgium, Greece, Iceland and Luxembourg and Andorra, France, Monaco and Turkey.

5. Doc. [14251](#). In line with the decision taken by the committee at its meeting in June 2017, the motion for a resolution tabled by Mr Talip Küçükcan (Turkey, EC) and other members of the Assembly on “Safeguarding the fundamental rights and freedoms of the Turkish Muslim Minority in Western Thrace, Greece” (Doc. [14043](#)) has also been taken into account in the preparation of this report.

situation as regards the rights of persons belonging to national minorities within each of the 39 States Parties, my analysis is based on the insights that can be gained both from the monitoring work of the Advisory Committee⁶ and from its thematic commentaries.⁷

3. Situation as regards member States that have not ratified the Framework Convention

9. In 2006, when the Assembly last examined the ratification of the Framework Convention in depth, the Advisory Committee was part-way through its second monitoring cycle, and only one thematic commentary on the Framework Convention existed. Now there are four such commentaries, covering education, participation and language rights under the Framework Convention, and its scope of application, as well as a considerable body of analysis in the Advisory Committee's opinions, with the fourth monitoring cycle well under way. Yet in most States that are not already Parties to the Framework Convention, minorities – if they are discussed at all – are only discussed in a domestic context, ignoring both the comparative aspect and best practices that emerge from the ongoing monitoring of the convention's implementation by States Parties. I consider it important to encourage States to take advantage of these resources.

10. Moreover, the process of dialogue is itself important and fully within the Assembly's role. I have therefore sought, both in my previous capacity as chairperson of the Sub-Committee on the Rights of Minorities and as rapporteur for this report, to establish a dialogue with member States that are not Parties to the Framework Convention.

3.1. Working methods

11. At its meeting held in Paris on 27 October 2016, the Sub-Committee on the Rights of Minorities held a preliminary exchange of views on the ratification of Council of Europe treaties with respect to minority rights, in the presence of the President and then Vice-President of the Advisory Committee. It requested the chairpersons of the national delegations of the eight States not Parties to the Framework Convention to assist it in identifying suitable interlocutors. Two members of the Greek delegation to the Parliamentary Assembly, as well as a member of the Permanent Representation of Belgium to the Council of Europe, attended the meeting.

12. Following the reference of this matter to the committee for report, on 19 May 2017, the committee adopted a questionnaire, addressed to the eight member States that are not Parties to the Framework Convention. We received replies from five of these States, which were examined by the Sub-Committee on the Rights of Minorities at its meeting in Strasbourg on 12 October 2017.

13. At the meeting of the sub-committee held in Bucharest on 21 November 2017, all eight States that are not Parties to the Framework Convention were invited to send a representative to an exchange of views in the presence not only of the sub-committee but also of the President of the Advisory Committee. Only Greece – which had not replied in writing to our questionnaire – sent a representative, with whom we were able to hold an extensive exchange of views (see further below).

14. In the process of preparing this report, I have also held several bilateral meetings with minority representatives from Western Thrace (see further below, section 3.2.4).

3.2. Replies from non-States Parties to the committee's questionnaire

3.2.1. Andorra

15. Andorra noted in its reply to the questionnaire that there were no constitutional obstacles preventing the country from ratifying the Framework Convention, although institutional links with the Catholic Church (one of Andorra's two co-princes being the Bishop of Seu d'Urgell) might raise issues regarding equality of religions that would warrant political and societal debate. The principle of equality before the law and non-discrimination was a principle of the highest order in Andorra's legal system, and Andorra had ratified an extensive list of key human rights treaties. The government had moreover adopted a progressive strategy to ensure equality for vulnerable groups. Andorra pointed to the fact that its nationals were numerically in the minority in their own

6. As set out notably in its ninth, tenth and eleventh activity reports, covering the period from 1 June 2012 to 31 May 2018.

7. See in particular Advisory Committee on the Framework Convention (2016), "The Framework Convention: a key tool to managing diversity through minority rights. Thematic commentary No. 4: The scope of application of the Framework Convention for the Protection of National Minorities", adopted on 27 May 2016.

country, but noted that since it had become easier to acquire Andorran nationality, the proportion of the population holding Andorran nationality had increased, making it more likely that this State might one day ratify the Framework Convention. Andorra had moreover agreed to consider the possibility of ratification as part of the United Nations' Universal Periodic Review process.⁸ It is also worth noting that Andorra is a Party to Protocol No. 12 to the European Convention on Human Rights (ETS No. 177), which lays down a general prohibition on discrimination.

3.2.2. Belgium

16. Belgium did not reply to the questionnaire, nor did it send a representative to the hearing in Bucharest. Belgium's Inter-Ministerial Conference on Foreign Policy set up a working group in 2002 to draw up a definition of national minorities in the Belgian context. However, little progress has been made since then. In reply to recent questions from two parliamentarians, the Minister for Foreign Affairs stated on 17 July 2018 that the working group had last met in June 2016 and that, shortly afterwards, its chairperson had resigned. The process of appointing a new chair was under way. Once appointed, the new chair's first task would be to ensure that the decisions previously taken by the working group were appropriately followed up.⁹ The Belgian press reported, however, that several members of this working group had not attended its June 2016 meeting, and that those present had wondered whether there was any added value in continuing their work. They had considered that it might nonetheless be useful to hold a meeting in Brussels with the Advisory Committee on the Framework Convention, in order to discuss the possible implications of ratification of the Framework Convention on the use of languages in administrative matters in Belgium.¹⁰

3.2.3. France

17. France referred to constitutional issues that prevented it from ratifying the Framework Convention, emphasising that the constitutional concepts of equality and non-discrimination and of the unity and indivisibility of the nation (both its territory and its population) precluded it from recognising collective rights for any group defined by a common origin, culture, language or belief. The *Conseil d'Etat* had, in its opinion of 6 July 1995, considered that the Framework Convention was by its very purpose contrary to Article 2 of the French Constitution, and the authorities did not intend to amend the Constitution. However, France drew attention to the extensive efforts that were made to combat discrimination and hate crimes, including through strong criminal legislation, the work of the Interministerial Delegation for Combating Racism, Anti-Semitism and anti-LGBT Hate (DILCRAH) and government-run national awareness-raising campaigns. In addition, bearing in mind that learning French was crucial but that should not be to the exclusion of other languages, it drew attention to the fact that 14 regional languages or groups of languages were also taught in mainland France and French overseas *départements*, regions and communities. France has however not signed Protocol No. 12 to the European Convention on Human Rights.

3.2.4. Greece

18. At the hearing in Bucharest, Ms Marina Telalian, Head of the Legal Department at the Ministry of Foreign Affairs of the Hellenic Republic, recalled that Greece was a Party to the Treaty of Lausanne. Greece officially only recognised one minority, that being the religious (Muslim) minority residing in western Thrace. Even though the Framework Convention allowed scope for States to define the national minorities within their jurisdiction that were covered by its provisions, it was difficult for Greece to ratify this treaty as the recognised religious minority in Greece included three components, namely persons of Turkish, Pomak and Roma origin, who shared the common element of religion. Regarding persons wishing to be recognised as a Macedonian minority, individuals were free to identify as belonging to such a minority – this was their individual right to self-identification. However, in the authorities' view, the objective criteria that might allow the State officially to recognise the existence of a national minority did not exist. Greece considered that there was no need for it to ratify the Framework Convention in view of the fact that advanced legislation was already in place, which went beyond the requirements of the Lausanne Treaty, and a wide variety of tools to protect minority rights already existed. Ms Telalian set out at length the measures taken by Greece as regards the freedoms of religion, association and expression, participation in public life, the right to education, cultural diversity, the appointment and role of muftis, dialogue with civil society and non-discrimination legislation.¹¹ In the light of

8. See United Nations documents A/HRC/30/9/, paragraph 84.24, and A/HRC/30/9/Add.1.

9. Chambre des représentants of Belgium, Verbatim record with a translated summary record of interventions, External Relations Committee, Tuesday 17 August 2018 afternoon, [CRIV 54 COM 952](#), pp. 2-5.

10. *Le Vif* (2018), "Minorités: recherche président depuis 18 mois", 1 August 2018.

11. See document [AS/Ega/Min \(2017\) PV 04](#).

these measures, Greece considered that there were no gaps in the legislative protection afforded to minorities in Greece. The lack of ratification did not mean that Greece placed no importance on this instrument; rather, the question of ratification needed to be considered in the light of the specific situation of Greece, including the question of the existence or not of certain minorities. Greece did not reject the possibility of ratifying the Framework Convention in the future. It moreover sought to ensure that minority protection issues were not based on reciprocity or on inter-State relationships, since relying on a bilateral approach meant that the quality of minority protection became directly dependent on the quality of the bilateral relationship.

19. In their exchanges with me, minority representatives from Western Thrace expressed concerns as regards the possibility of free self-identification of persons belonging to minorities and with respect to hate speech and hate-motivated attacks committed against Muslims living in Greece, as well as about difficulties in exercising the right to freedom of association¹² and restrictions on and lack of autonomy as regards exercising the freedom of religion. While pilot projects for Turkish-speaking children in State-run kindergartens in Western Thrace were welcomed, concerns were also raised regarding the right to education, in particular as regards a decrease in the number of schools providing education in Turkish and as regards the quality of education available in schools where Turkish-language education is provided.

3.2.5. Iceland

20. Iceland did not reply to our questionnaire, nor did it send a representative to the hearing in Bucharest.

3.2.6. Luxembourg

21. Luxembourg noted that 47.7% of its inhabitants were not Luxemburgish nationals. It underlined that even the Committee of Experts of the European Charter for Regional or Minority Languages (ETS No. 148) (instrument to which Luxembourg is a Party) had considered that it was pointless to monitor Luxembourg's implementation of the Language Charter, as there were no relevant languages to be covered. In the absence of a definition of national minorities in the Framework Convention itself, Luxembourg interpreted "national minority" within the meaning of the Framework Convention to mean a group of people settled on its territory for numerous generations, holding Luxemburgish nationality and having maintained characteristics that are distinct from an ethnic and linguistic viewpoint. Accordingly, it considered that there was no national minority in Luxembourg and that the Framework Convention could not be applied. Luxembourg, like Andorra, is a Party to Protocol No. 12 to the European Convention on Human Rights, which lays down a general prohibition on discrimination.

3.2.7. Monaco

22. Monaco's reply reiterated that ratification of the Framework Convention was not a priority because its nationals were in fact numerically in the minority in their own country. Monaco has not signed Protocol No. 12 to the European Convention on Human Rights.

3.2.8. Turkey

23. Turkey underlined that all individuals in Turkey enjoy the same constitutional rights and have the same obligations without discrimination. In addition, it drew attention to the fact that the rights of certain non-Muslim minorities were recognised and protected under the 1923 Treaty of Lausanne. Issues related to minorities in Turkey were thus dealt with within the framework of this Treaty. The non-Muslim minorities recognised under the Treaty were, for example, entitled to have their own schools, places of worship, foundations, hospitals and media organisations. Turkey considered that improvements had been achieved in legislation concerning issues related to minorities, including property, places of worship and the training of clergy, and that positive steps had been taken in the field of education and culture for non-Muslim citizens and their community life needs.

3.3. Summary of the current situation

24. I welcome the information provided by six of the eight States contacted regarding the likelihood of ratification of the Framework Convention in the foreseeable future, although I regret that five of these States chose to respond only in writing. It is regrettable that neither Belgium nor Iceland replied to our repeated

12. See also the ongoing examination by the Committee of Ministers of the execution of the *Bekir Ousta v. Greece* group of judgments.

invitations to engage in dialogue on this important issue. Iceland also refused to engage with the Assembly when it last examined the ratification of the Framework Convention; at the time, the rapporteur considered that this might be because Iceland was known to be a linguistically and ethnically homogeneous country.¹³

25. As regards Belgium, I note that the federal government has recently taken a step towards creating the conditions under which dialogue and reflection could be resumed at domestic level as regards the definition of national minorities in the Belgian context. I welcome this step, as dialogue is the only means of moving forward, and I hope that these discussions will soon begin to bear fruit.

26. Three countries – Andorra, Luxembourg and Monaco – raised the matter of their nationals being in the numerical minority. Andorra considered that this situation might change, as more people become entitled to Andorran citizenship, and that this could make ratification by Andorra easier in the future. Monaco expressed no interest in ratifying the Framework Convention. Luxembourg put forward a definition of national minorities according to which no such minorities existed in Luxembourg. In the absence of a generally agreed definition of the concept of national minorities, a range of options can be noted, with some States opting for a more restrictive approach while others have opted for a broader one. In any case, even where no national minorities are recognised, Article 6 of the Framework Convention applies.

27. Greece and Turkey both pointed to their constitutional guarantees of equality and non-discrimination and underlined the protection already granted to religious minorities within their jurisdiction, in accordance with the Treaty of Lausanne. Turkey, in its written reply to our questionnaire, did not address the question of the possible recognition of other groups as minorities. The Sub-Committee on the Rights of Minorities had the opportunity to raise this issue with the Greek authorities at the hearing in Bucharest, but the latter did not consider objective criteria to exist that would enable the recognition as a minority of the persons referred to in that exchange of views. Neither Greece nor Turkey appeared eager to pursue at this stage the possibility of becoming a Party to the Framework Convention in addition to the Treaty of Lausanne. I recognise that there may be good reasons for wishing to avoid taking the risk of disturbing the balance achieved in a peace treaty. Yet it should be underlined that nothing in international law prevents a State that is a Party to one treaty from also becoming a Party to another treaty covering a similar field, provided of course that the State fulfils all of the commitments that it has taken on and that these commitments are not conflicting.

28. Only France considered that constitutional obstacles exist that would prevent it from ratifying the Framework Convention, essentially on the basis that its constitutional order precluded it from recognising collective rights. (On this point, see further below, section 4.2.)

4. Lessons learned from the implementation of the Framework Convention by States Parties

29. The experience of the 39 member States of the Council of Europe that are already Parties to the Framework Convention, and the insights obtained through the monitoring work of the Advisory Committee, can provide valuable guidance to those States that are not Parties to this instrument.

4.1. Implications of the lack of a definition of national minorities and of the absence of groups that may meet such a definition within a State

30. For four of the eight States that have not yet ratified the Framework Convention, a major difficulty experienced regarding ratification appears to be that of defining which persons the convention should cover in their national contexts, and to what extent. Thus, Andorra, Luxembourg and Monaco underline that their nationals are in the numerical minority in their States, and that the notion of national minorities is either difficult to define or would appear to make little sense in their contexts. While Iceland has not replied to our invitations to dialogue, it would seem that one reason for its apparent lack of interest in the Framework Convention to date is that diversity has not so far been considered to be a major issue in Icelandic society. In addition, as regards Belgium, approval at several levels of government is required concerning the definition of national minorities that should apply in the Belgian context. Despite the creation of a working group on this subject 16 years ago, it has not yet proved possible to come up with such an agreed definition.

13. Doc. 10961 on “Ratification of the Framework Convention for the Protection of National Minorities by the member States of the Council of Europe” (rapporteur: Mr Boriss Cilevičs, Latvia, SOC), paragraph 43.

31. The reasons why the Framework Convention does not itself include a definition of national minorities are well known. As indicated when it was adopted, there are a range of different situations and problems to be resolved in Europe. It was recognised when the Convention was adopted that it was impossible at that stage to arrive at a definition capable of mustering the support of all Council of Europe member States, and that a pragmatic approach was needed.¹⁴

32. Nonetheless, as the representatives of the Advisory Committee explained at the hearing held by the Sub-Committee on the Rights of Minorities in Paris on 27 October 2016, the absence of a definition of national minorities in the Framework Convention should not be considered an obstacle to its ratification, as it leaves States a margin of appreciation for adapting this instrument to the situation in their country. When ratifying the Framework Convention, individual States usually indicate through a declaration which groups are covered within their jurisdiction. Some States adopt a definition of national minorities suited to their national context; others choose instead to list the national minorities they recognise, without defining the term; and a third group state that there are no national minorities in their jurisdiction but that they have ratified the Framework Convention in a spirit of solidarity. In any case, the intention of the drafters of the convention was not to limit the application *rationae personae* of the convention. As noted at the Convention's 20th anniversary conference, although at first perceived by some as a weakness, the lack of a definition has in practice increased this Convention's resilience, allowing States to adapt to its requirements at their own pace and in accordance with their specific characteristics.¹⁵

33. The fourth thematic commentary of the Advisory Committee, adopted in 2016 and addressing the scope of application of the Framework Convention, throws additional light on this issue.¹⁶ The commentary examines in a comparative perspective, and without taking a normative approach, the positions taken by the Advisory Committee over the four monitoring cycles conducted so far as regards the scope of application of the Framework Convention. This focus was chosen in order to help to clarify who is included within the scope of national minority protection, how, and with respect to which rights. It is particularly valuable for those States that are not yet Parties to the Framework Convention, because it can help them to identify more clearly the consequences that might attach to their ratification of this treaty, in their specific national contexts.

34. A first key point, which is inherent in the text of the Framework Convention itself and which has been consistently underlined by the Advisory Committee, is that acceding to the Framework Convention does not imply taking an all-or-nothing approach, but allows States to apply the Convention to persons belonging to different national minorities on a flexible, article-by-article basis, adapting the protection granted to the specific situation of the different national minorities covered.¹⁷

35. Some of the rights that the Convention sets out apply to everyone, regardless of whether any national minority is officially recognised as existing within a given society. This aspect concerns in particular rights related to the promotion of tolerance, mutual respect and intercultural dialogue among all persons living on a State's territory, and to protection against threats or acts of discrimination, hostility and violence based on ethnic, cultural, linguistic or religious identity (Article 6). Accordingly, the Advisory Committee monitors the implementation of these obligations by all States Parties, even States that claim to have ratified this instrument in a spirit of solidarity despite considering that they have no national minorities.¹⁸

36. Other rights protected under the Framework Convention have a broad (albeit not universal) scope of application, and a third group (e.g. the use of topographical signs in minority languages) have a much narrower scope, applying only to areas traditionally inhabited by a substantial number of persons belonging to a national minority. The Advisory Committee's fourth thematic commentary makes clear – in line with the express wording of the Framework Convention – that the availability of the latter group of rights may be limited to certain areas where persons belonging to national minorities reside traditionally and/or in substantial numbers. Nonetheless, it has repeatedly encouraged States to promote the enjoyment of such rights in situations where the conditions are not formally met but where implementation would serve to promote an open society.¹⁹

14. See paragraphs 12-13 of the Explanatory Report to the Framework Convention for the Protection of National Minorities, dealing with approaches and fundamental concepts.

15. "Minorities and Minority Languages in a Changing Europe", Conference on the occasion of the 20th anniversary of the Framework Convention for the Protection of National Minorities and of the European Charter for Regional or Minority Languages, Council of Europe, Strasbourg, France, 18-19 June 2018, Conclusions and final remarks by the rapporteur of the conference, Mr Philippe Boillat.

16. Advisory Committee on the Framework Convention (2016), "The Framework Convention: a key tool to managing diversity through minority rights", op. cit.

17. Ibid., Part IV, Context-specific article-by-article approach developed by the Advisory Committee.

18. Ibid., Part V, Framework Convention rights applying to all persons, paragraph 52.

37. At the same time, the Advisory Committee has consistently called on States Parties to keep any declarations made upon ratification of the Framework Convention under review. Such a course of action is consistent with the acknowledgement at all times of the diversity within society and at the same time recognises that such diversity is itself dynamic and evolves over time. It thus enables States to address changes occurring in practice, for instance as a result of internal migration of persons belonging to national minorities from rural areas to large cities.²⁰

4.2. The question of collective rights

38. As noted above, France's reluctance to ratify the Framework Convention is based at least partly on the view that doing so may require it to recognise collective rights. As we heard in Bucharest, however, such arguments misinterpret the Framework Convention. Indeed, the explanatory report to the Convention itself makes clear that the possibility of joint exercise of the rights and freedoms recognised under the Convention is distinct from the notion of collective rights. Even though the Framework Convention provides for some rights to be exercised in community with others, it does not envisage or imply the recognition of collective rights.²¹ This logic is in fact no different from reasoning that already enables France to recognise, for example, the freedoms of association, assembly or religion – individual rights of all persons within the jurisdiction of the State that are protected by the European Convention on Human Rights (as well as other international instruments) but that are to a greater or lesser degree exercised in community with others, and that are not perceived as threatening the unity or indivisibility of the nation. It should also be noted that the purpose of the Framework Convention is to provide the appropriate stage for the affirmation of the specific individual rights of persons belonging to national minorities without affecting their integration within the society where they live, with the purpose of preserving social and political stability, democratic security and promoting diversity.

4.3. Bilateral treaties, inter-State relations and the Framework Convention

39. For those States that do recognise the existence of national minorities in their societies, one of the crucial advantages of the Framework Convention is the fact that it considers the protection of the rights and freedoms of persons belonging to national minorities as an integral part of the international protection of human rights and addresses them in a universal manner. Indeed, the Framework Convention is based first of all on the duty of each State to protect the rights of persons belonging to national minorities within their jurisdiction. Thus, the recognition and protection of the rights of persons belonging to national minorities does not depend on the existence of a "kin"-State. The primary responsibility towards persons belonging to national minorities lies with the State where national minorities live, the adequacy of the measures taken by that State to give effect to the principles of protection being subject to the scrutiny of specific monitoring mechanisms to which the State consented.

40. This approach does not deny the additional contribution that cross-border contacts and good neighbourly relations can bring in advancing the protection of the rights of persons belonging to national minorities, with due respect, however, for the principles of international law. Indeed, this is recognised in the Framework Convention itself (Article 18 read in conjunction with Article 21). Nonetheless, it is commonly known that protecting the rights of persons belonging to national minorities provides the best means of ensuring overall stability, democratic security and peace, through the sharing of information and concerns, the pursuit of interests and ideas, and the further protection of the rights of persons belonging to national minorities on the basis of the consent of the State of residence. Thus, bilateral agreements are best used to support the process of protecting rights of persons belonging to national minorities, rather than as an instrument substituting the obligations of the State of residence. This approach is also taken by the High Commissioner for National Minorities of the Organization for Security and Co-operation in Europe (OSCE).²²

4.4. Ratification of the Framework Convention is not an end in itself

41. Twenty years after the Framework Convention entered into force, a number of changes for the better have been observed as regards the protection of the rights of persons belonging to national minorities across States Parties. These concern in particular the enactment of legislation to protect persons belonging to

19. Ibid., Part VII, Minority rights with a specific scope of application, paragraph 79.

20. See document [AS/Ega/Min \(2017\) PV 04](#).

21. See paragraphs 13, 31 and 37 of the Explanatory Report to the Framework Convention for the Protection of National Minorities, dealing with approaches and fundamental concepts, Articles 1 and 3, paragraph 2.

22. OSCE High Commissioner for National Minorities, Bolzano/Bozen recommendations on National Minorities in Inter-State Relations, June 2008.

national minorities, the strengthening of equality and non-discrimination legislation, and the creation of participatory or consultative structures to facilitate dialogue between persons belonging to national minorities and the State.

42. These findings show that ratifying the Framework Convention is not the end of the story, nor is it an end in itself. Rather, it is part of a process which must be continuous and which involves constant efforts from States. Accepting the standards it sets out and the monitoring mechanism that accompanies them provides States with a regular source of expert analysis and early warnings when the structures and channels set up domestically in order to protect and promote the rights of persons belonging to national minorities and facilitate their full participation in society fall short of the aims sought to be achieved. Full ratification of the Framework Convention by all member States of the Council of Europe is thus not merely a symbolic goal but a means of promoting the full and equal participation of all members of society and of promoting stability, democratic security and peace throughout the continent.

5. Taking dialogue forward

43. The Framework Convention is relevant to all States, regardless of whether they consider any national minorities to be present within their territory, and even if they are already Parties to separate bilateral agreements. It provides three essential pillars that can help States achieve the goals of stability, democratic security and peace that are at the heart of the Framework Convention and indeed of European construction itself. Thus, it allows for the expression and acknowledgement of difference, while at the same time recognising that individual self-identification can be complex, multiple and situational, that minorities themselves are diverse and that situations change over time. It promotes equal access to rights and resources despite differences, and reflects the need for States to take a proactive approach and adopt clear policies in this field. Indeed, as we were reminded in Bucharest, it is not recognition of rights but denial or lack of access to rights that may create divisions, tensions or fear. The Framework Convention also seeks to strengthen societal interaction and inclusion across differences, based on the acknowledgment (by both the majority and minorities) that minority rights can only be effectively protected in integrated and inclusive societies where diversity is embedded, valued and lived.²³

44. Ratifying the Framework Convention should not be dismissed as creating nothing but a burden for States Parties. On the contrary, as outlined by the representatives of the Advisory Committee at the meeting held in Paris on 27 October 2016 by the Sub-Committee on the Rights of Minorities, ratification brings with it a series of practical benefits. First, it requires States to engage in consultations with persons belonging to national minorities or wishing to be recognised as such and to ensure that their views are heard, in particular on issues concerning them. This strengthens dialogue between minorities and the State, and helps to foster trust and understanding on both sides. Second, it encourages States to adopt either general or targeted legislation to promote access to rights and to combat discrimination, as well as policies and strategies for the protection of the rights of persons belonging to national minorities. Third, this may in turn help to strengthen the participation of these persons in economic and social life. Fourth, persons belonging to national minorities who feel that they have been victims of a violation of their rights tend to have better access to domestic remedies in States that have ratified the Framework Convention.

45. The monitoring mechanism set up under the Framework Convention is itself based on a process of responsible action and of constructive dialogue, aiming – with due consideration to the historical, social, economic and political realities and with due respect to the territorial integrity and national sovereignty of States – at helping both States and persons belonging to national minorities to identify the most appropriate solutions that allow for the strengthening of the regime of protection of their rights, while, at the same time, ensuring the better integration into the society. The role of the monitoring mechanism itself is to contribute to the creation of a climate of tolerance and to dialogue within society, thus enabling cultural diversity to be a source and a factor, not of division, but of enrichment for each society.

46. Finally, I wish to stress that an underlying aim of the Framework Convention is to ensure that all persons belonging to national minorities can participate in all facets of life in society on an equal footing with others. All Council of Europe member States, whether or not they are Parties to the Framework Convention, should be working towards the aim of achieving full equality of and non-discrimination against persons within their jurisdiction, and States have been enacting increasingly robust anti-discrimination legislation over the years. This process should culminate in their ratification of Protocol No. 12 to the European Convention on Human Rights, setting out a general prohibition on discrimination which is enforceable at international level.

23. See document [AS/Ega/Min \(2017\) PV 04](#); see also Advisory Committee on the Framework Convention, Tenth activity report covering the period from 1 June 2014 to 31 May 2016, Foreword by the President of the Advisory Committee.

To date, this instrument has been ratified by 20 member States. Of the remaining 27 member States, 18 have signed but not ratified the protocol and nine member States have neither signed nor ratified it. I strongly encourage these 27 States to accelerate their work towards ratifying Protocol No. 12.

6. Conclusions

47. Building societies in which national minorities can express their identities and culture freely, peacefully and safely requires concerted efforts and continuous attention, as well as constant adaptation to ongoing societal change. Yet these efforts will invariably be rewarded as societies become more open, tolerant and resilient, and hence better placed to face the challenges of an ever-changing world.

48. There appears to be an unfortunate trend in Europe today towards re-politicising the protection of the rights of persons belonging to national minorities, instrumentalising such issues and/or analysing them predominantly through the prism of security.²⁴ This is regrettable, because it may serve to create an “us”-against-“them” dynamic and to re-open dangerous arguments that rely on “kin”-minority protection in order to justify intervention (irrespective of its nature) on the territory of the State of residence of persons belonging to national minorities in ways contrary to international law. It should be recalled that the European Commission for Democracy through Law (Venice Commission) dealt extensively, in its 2001 Report on the preferential treatment of national minorities by their “kin”-State,²⁵ with the limits of intervention of a State in support of its “kin”-minority living in another State as set forth in international law.

49. What is needed – and provided under the Framework Convention – is a multilateral, human-rights-based approach. Every State, and not only “kin”-States, should express concern when a State denies the exercise of the rights of persons belonging to national minorities or when the exercise of these rights is limited. States should focus their policies on advancing the protection of the rights of persons belonging to national minorities and refrain from introducing legislation that would restrict already enjoyed rights and that would limit the exercise of already enjoyed rights, such measures affecting the standard of protection provided under the Framework Convention.

50. I firmly believe that it is in the interests not only of all persons belonging to national minorities in Europe, but also of all 47 Council of Europe member States, for the Framework Convention for the Protection of National Minorities to be ratified by all of them. For as long as this is not the case, the absence of ratification of the Framework Convention by some States will continue to weaken the overall protection it can provide.

51. Of course, full ratification of the Framework Convention cannot be achieved without political willingness on the part of the eight member States that are not yet Parties, and dialogue on how best to progress towards this goal is essential. It is my conviction that the Assembly should help States to overcome the obstacles they may encounter in this field. My report has therefore from the outset been intended as a means to rekindle dialogue, based on all the information and analysis available today on the implications that such ratification could involve. While this opportunity has so far only been taken up to a limited extent by the States concerned, I hope that the elements set forth in my report may provide a constructive basis for further dialogue and steps forward.

52. Such dialogue of course also needs to be supported by expertise. Through its representatives who have engaged with the Assembly through several hearings in the Sub-Committee on the Rights of Minorities since 2015, the Advisory Committee has made clear that it is ready to provide one source of such expertise, whether through the exchanges we have held with national parliamentarians in the sub-committee, or in direct dialogue with governments, or through conferences, round tables or seminars, or by inviting interested States to take part in a mock monitoring exercise, showing what it would mean to prepare a State report and receive advice, as has already been done in some States with respect to the European Charter for Regional or Minority Languages.

53. The process of preparing this report has shown once again that when it comes to persons belonging to national minorities, no one-size-fits-all solution exists. But it has also shown that taking a pragmatic, rights-based-approach to the issues, focusing on the creation of integrated societies, enables solutions to be found, to the greater benefit not only of persons belonging to national minorities but also of our societies as a whole.

24. Advisory Committee on the Framework Convention, Eleventh activity report covering the period from 1 June 2016 to 31 May 2018, Part I: Trends and challenges for minority protection in Europe.

25. [CDL-INF\(2001\)019](#).

54. I believe that those States that are not Parties to the Framework Convention for the Protection of National Minorities should take a fresh look at the situation in their country, bearing in mind the benefits that ratification of this instrument could bring both to their societies and to the protection of the rights of persons belonging to national minorities throughout Europe. This is the essential focus of the recommendations put forward in the draft resolution.

Appendix – Dissenting opinion by Mr Mustafa Yeneroğlu (Turkey, FDG),²⁶ member of the committee

This dissenting opinion aims to respond to certain inaccurate information in the report, which is based on how Greece applies the implementation of the protection system for the Turkish Minority. Herewith we present our own perspective on these given issues.

The report states that Greece considered that advanced legislation was already in place which went beyond the requirements of the Lausanne Treaty, and a wide variety of tools to protect minority rights already existed. It is also suggested, with reference to the Greek point of view, that there were no gaps in the legislative protection afforded to minorities in Greece. Although the Government of Greece asserts that it relies on the Treaty of Lausanne as the primary basis for its policies towards the Turkish Minority in Western Thrace, the non-implementation of the Lausanne Treaty in full by Greece regarding minority rights is a well-established fact. Certain issues related to rights and freedoms can be summarised as follows:

In light of the facts as regards the situation in Western Thrace and the conditions of the Turkish Muslim population living in Rhodes and Kos, the aforementioned claims appear to be ill-founded. The ethnic identity of the Minority members has been constantly denied. As a result of this, the right to establish associations by the Minority is also violated since the minority NGOs bearing “Turkish” in their title continue to suffer from this policy. The Minority expects that such NGOs be recognised in line with the verdicts of the European Court of Human Rights. The Minority is also unable to administer its charitable foundations. Elected Muftis are not recognised. The Greek authorities have stepped up the legal pressure over the elected Muftis, amounting to the violation of the Minority’s religious rights and freedoms. New regulations have been adopted concerning the powers of the assigned Muftis emanating from the Islamic Law (implementation of Islamic Law will be optional. In case there is disagreement among parties, civil law will prevail) without consulting the elected Muftis. The Minority is worried that the implementation of the new regulations would undermine the status of the office of the Mufti as recognised by the relevant Agreements. Minority preschools and minority schools at any level are not allowed to be opened. Due to the implementation of now-repealed Article 19 of the Greek Citizenship Code, some 60 000 members of the Minority were stripped of their citizenship. As the repeal of the said Article in 1998 was not retroactive, their nationality has not been restored. In addition to this, the Turkish Muslim population living in Rhodes and Kos, who are deprived of a minority status, continue to face serious restrictions in enjoying fundamental rights and freedoms on the grounds that these Islands were under Italian rule when the Lausanne Peace Treaty was signed.

This overall picture in Greece regarding minority rights is not in line with the Council of Europe standards. Greece should be urged to respect Council of Europe standards regarding minorities.

26. Rule 50.4 of the Assembly’s Rules of Procedure: “The report of a committee shall also contain an explanatory memorandum by the rapporteur. The committee shall take note of it. Any dissenting opinions expressed in the committee shall be included therein at the request of their authors, preferably in the body of the explanatory memorandum, but otherwise in an appendix or footnote.”