

**OSCE Human Dimension Implementation Meeting**

**Warsaw, 21 September- 2 October 2015**

**Working Session 17 : Tolerance and non-discrimination II**

**Contribution of the Council of Europe**

**I. PROTECTION OF NATIONAL MINORITIES**

***Introductory Remarks***

The Council of Europe has dealt with the protection of national minorities since its early years of existence. In 1961, the Consultative Assembly (today: Parliamentary Assembly) encouraged the Committee of Ministers to include a specific article on the protection of persons belonging to national minorities into the Second Protocol to the European Convention for the Protection of Human Rights and Fundamental Freedoms.

The protection of national minorities became a priority concern for the Council of Europe during the early 1990s with the collapse of the communist regimes and the rise of extreme nationalism in certain parts of Europe. The outbreak of inter-ethnic violence and hostility in former Yugoslavia and the former Soviet Union made it all too clear that the protection of national minorities is not only a crucial element of human rights but also essential for stability, security and peace in Europe. The Heads of State and Government of the Council of Europe responded to these developments at their first Summit Meeting, held in Vienna in October 1993, by launching both standard-setting and cooperation activities aimed at protecting persons belonging to national minorities, and combating racism, xenophobia, anti-semitism and intolerance.

The increased attention given to minority issues within the Council of Europe resulted in a range of concrete achievements during the 1990s, including the adoption of the first legally binding minority rights instrument, namely, the Framework Convention for the Protection of National Minorities, as well as the European Charter for Regional or Minority Languages, with effective monitoring mechanisms coupled with targeted co-operation activities to support member states.

***Council of Europe Action***

Council of Europe action in the field of minority protection and respect for diversity is based on the principle that the protection of persons belonging to minorities is part of the universal protection of human rights.

Action includes standard setting and monitoring, intergovernmental co-operation, activities for the development and consolidation of democratic stability, and confidence building measures in civil society. It extends to many related policy fields and involves, in addition to intergovernmental co-operation, the Parliamentary Assembly and the Congress of Local and Regional Authorities of Europe as well as specialised bodies.

The activities organised in the field of minority protection are continuously evolving.

Recent awareness-raising events in the field of minority protection and antidiscrimination include: the Conference "Sami : The People, their Culture and Languages and the Council of Europe" – 27-29 November 2014 – Sajos Inari – Finland, a side-event during the 28<sup>th</sup> session of the Human Rights Council on "Implementing Linguistic minority rights" – 20 March – Geneva – Switzerland and the Conference with participation by the HCNM, Ms A. Thors, on "Minority protection at a Crossroads" – 30 March 2015 – Åland Islands – Finland.

### ***Legal Instruments***

The European Convention on Human Rights, which is the centre piece of the Council of Europe's normative "*aquis*", is of relevance for the protection of minorities because its universally applicable individual rights can also be claimed, individually or collectively, by persons belonging to national minorities. Relevant provisions include the freedom of thought, conscience and religion, the freedom of expression, the ad freedom of assembly and association. Next to the non-discrimination provision of the Convention (Article 14), which prohibits discrimination in the enjoyment of the rights guaranteed by the Convention, Protocol No. 12 to the Convention, which entered into force in April 2005, contains a general prohibition against all forms of discrimination and thereby strengthens the protection afforded under the Convention to individuals belonging to national minorities. The Council of Europe continues to work for the widest possible acceptance of this Protocol amongst all Council of Europe member states (currently 20 states have signed and 17 states have ratified Protocol No. 12).

The Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages are the two Council of Europe conventions with direct relevance to the protection of national minorities, one as an individual rights instrument, the other as a tool for the protection and promotion of regional or minority languages as part of Europe's cultural heritage.

### ***Framework Convention for the Protection of National Minorities (FCNM)***

The Council of Europe Framework Convention for the Protection of National Minorities has been in force since February 1998; today it has 39 State Parties.<sup>1</sup> It is the only legally binding instrument in the world that protects the specific rights of persons belonging to national minorities as an integral part of human rights.

With ratifying the Framework Convention, States parties assume the obligation to safeguard the specific rights of persons belonging to national minorities such as the

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<sup>1</sup> Parties to the Framework Convention: Albania, Armenia, Austria, Azerbaijan, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, the Czech Republic, Denmark, Estonia, Finland, Georgia, Germany, Hungary, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Malta, Republic of Moldova, Montenegro, the Netherlands, Norway, Poland, Portugal, Romania, the Russian Federation, San Marino, Serbia and Montenegro, the Slovak Republic, Slovenia, Spain, Sweden, Switzerland, "the former Yugoslav Republic of Macedonia", Ukraine and the United Kingdom. Belgium, Greece, Iceland, and Luxembourg are signatories to the Framework Convention.

right to preserve and develop their cultural and linguistic identity, media and education rights, as well as provisions related to the use of minority languages in public life. In addition, the Framework Convention contains important general principles related to non-discrimination and the promotion of full and effective equality for persons belonging to national minorities in all spheres of life. Member States are further encouraged to formulate overall policies that foster diversity and promote inter-ethnic tolerance and understanding, and to ensure that persons belonging to national minorities are enabled to effectively participate in all economic, social and cultural life and in public affairs.

The Framework Convention sets out principles to be respected as well as goals to be achieved by the Contracting Parties, in order to ensure the protection of persons belonging to national minorities, whilst fully respecting the principles of territorial integrity and political independence of States. The principles contained in the Framework Convention must be implemented through national legislation and appropriate governmental policies

The Framework Convention is monitored by the Council of Europe's Committee of Ministers which adopts resolutions on the implementation of the Framework Convention in member states, containing recommendations on how to improve minority protection in the States under review. The Committee of Ministers is aided in this task by the Advisory Committee on the Framework Convention, a Committee of 18 independent experts, which provides detailed analyses on minority legislation and practice in the different member states.

Most of the countries concerned welcome the Opinions of the Advisory Committee and provide constructive comments to them, in many cases indicating that the Opinion has already prompted increased action to address specific shortcomings in the implementation of the Framework Convention. The Opinions stimulate fresh rounds of inter-departmental discussions within governments and in some cases have prompted an immediate dialogue with national minorities on the issues raised. Often this is assisted with the organisation of a 'follow-up seminar' in the country concerned. These seminars allow for a national discussion of the findings contained in a given Advisory Committee Opinion and provide a platform to discuss concretely how best to implement its recommendations. Follow-up seminars have become a standard feature of the Advisory Committee's work and are highly welcome by civil society representatives as an occasion to discuss constructively with various levels of authority, in the presence of experts who know the situation in the country. The Advisory Committee continues to encourage all States to organise such seminars at the end of each monitoring cycle. The 3<sup>rd</sup> cycle follow-up dialogue events in the member states were finalised at the end of 2013. 4<sup>th</sup> cycle follow-up seminars will be planned in 2016.

The monitoring mechanism of the Framework Convention has, in many cases, been a central catalyst for improved dialogue between governmental agencies and national minorities and for concrete improvements in legislation and practice in diverse subjects. It has also prompted the adoption of new laws devoted to the protection of national minorities and encouraged States to improve their non-discrimination legislation and practice.

The Framework Convention and the Opinions of the Advisory Committee have emerged as a central reference in the work of other international bodies, including the OSCE High Commissioner on National Minorities and the European Commission, which relies heavily on the Framework Convention when it examines the implementation of the Copenhagen criteria on national minorities in candidate countries.

While the adoption of country-specific opinions forms the backbone of the Advisory Committee's work, the Advisory Committee has over the years also engaged in thematic commentaries on issues of particular importance and concern in a number of member states. Three such thematic commentaries have so far been adopted, based on the Advisory Committee's experience and findings throughout its monitoring work: the First Thematic Commentary on Education Rights under the Framework Convention was adopted in 2006, followed in 2008 by the Second Thematic Commentary on Article 15 of the Framework Convention and the effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs. In May 2012, the Advisory Committee adopted a Third Thematic Commentary on the language rights of persons belonging to national minorities. The Fourth Thematic Commentary on the scope of application of the Framework Convention is planned to be adopted by the end of 2015.

Regular monitoring in five year cycles constitutes the essence of the Advisory Committee's work and, in 2015, most States Parties are in their fourth cycle of monitoring. So far the ACFC has conducted 4<sup>th</sup> cycle country visits to Denmark, Spain, Slovak Republic, Estonia, Cyprus, Germany, Czech Republic, Italy and Croatia. In addition, the Advisory Committee conducted for the first time an ad hoc visit in March 2014. This visit occurred at the request of the Ukrainian authorities and subsequent to the instruction by the Committee of Ministers to review the situation of national minorities in Ukraine and report on the findings as soon as possible. The visit took place from 21 – 26 March and the Advisory Committee adopted its ad hoc report on 1 April. The report was made public by the Committee of Ministers on 2 April 2014.

**[For further information see: http://www.coe.int/minorities.](http://www.coe.int/minorities)**

### ***European Charter for Regional or Minority Languages (ECRML)***

The European Charter for Regional or Minority Languages is the only legally binding instrument in the world for the protection and promotion of traditional regional and national minority languages. With the support of the Parliamentary Assembly, the Standing Conference of Local and Regional Authorities of Europe (today: Congress of Local and Regional Authorities of the Council of Europe) took the lead in drafting the European Charter for Regional or Minority Languages during the 1980s. The Charter was opened for signature in November 1992 and entered into force on 1 March 1998. It has been ratified so far by Armenia, Austria, Bosnia and Herzegovina, Croatia, Cyprus, the Czech Republic, Denmark, Finland, Germany, Hungary, Liechtenstein, Luxemburg, Montenegro, the Netherlands, Norway, Poland, Romania, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, Ukraine and the United Kingdom. A further eight States have signed the Charter<sup>2</sup>. Six States have committed themselves to ratification when joining the Council of Europe but have not yet done so (Albania, Azerbaijan, Georgia, Moldova, Russian Federation, "the former Yugoslav Republic of Macedonia").

The purpose of the Charter is to protect and promote the various regional and minority languages spoken in the different countries of Europe. The Charter provides for a definition of the languages covered by this treaty (Article 1): these are the languages which have been traditionally used within a given territory of a State by nationals of that State who form a group numerically smaller than the rest of the State's population and

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<sup>2</sup> Azerbaijan, France, Iceland, Italy, Malta, Republic of Moldova, Russian Federation and "the former Yugoslav Republic of Macedonia".

are different from the official language(s) of that State. The definition explicitly excludes the languages of migrants and the dialects of the official language(s) of the State. The protection of regional or minority languages must respect the territorial integrity of each State without interfering with the development of the official language(s) of that State.

Part II of the Charter lays down the aims and principles for all the traditional regional and minority languages spoken on a given territory which are to be the States' long term policy targets. These aims and principles include, *inter alia*, the recognition of the language as an expression of cultural wealth, the respect for the geographical area in which each language is spoken, the facilitation and/or encouragement of the use of such languages, in speech and writing, in public and private life, and the teaching and study of these languages at all the appropriate stages. In addition, States are required to eliminate discrimination in respect of the use of regional or minority languages. Although the Charter is principally concerned with languages which are historically identified with a particular territory of the State, it was considered necessary to grant "non-territorial languages" protection as far as possible, and they are therefore subject to the protection under Part II of the Charter.

Part III contains more specific provisions for the languages identified thereunder by the States at the time of ratification. The undertakings entered into by the States under Part III require the latter to adopt concrete positive measures for the protection and promotion of regional or minority languages in several fields: education, justice, dealings with the administrative authorities and public services, media, cultural activities and facilities, economic and social life and transfrontier co-operation. However, the extent of the protection can vary according to the situation of each language (e.g. the number of speakers) provided that the State applies at least 35 paragraphs or sub-paragraphs of the Charter to each language that it has selected under Part III. This contributes to a minimum standard of protection.

The Charter foresees a system of monitoring its implementation by an independent Committee of Experts. Each Party is required to present a first report within the year following the entry into force of the Charter with respect to it, in which the Party states its policy and measures taken in order to fulfil its obligations under the Charter. Other periodical reports are to be presented thereafter at three yearly intervals. These reports are made public by the State Party. The Committee of Experts, established in accordance with the Charter's provisions, has already considered the sixth periodical reports presented by the longest-standing States Parties.

In the context of the fact-finding process, the Committee of Experts can be approached by bodies or associations legally established in the respective State Party wishing to supply additional information or to give their views on specific situations relating to the implementation of the Charter. After this process of information gathering, the Committee of Experts adopts a report which is then sent to the Committee of Ministers of the Council of Europe together with proposals for the recommendations to be addressed by the Committee of Ministers to the State concerned.

Additionally, the Secretary General of the Council of Europe is required to report every two years to the Parliamentary Assembly concerning the implementation of the Charter.

Several improvements in the situation of minority languages can be attributed to the Charter and recommendations made during the monitoring procedure. Examples include the recognition of minority languages which had previously not enjoyed any status or the right to use Frisian family names in the Netherlands. Denmark adopted several special arrangements for its German minority when merging municipalities. In

Northern Ireland, a licence for the broadcasting of private radio in Irish was allocated. Norway presented an action plan to ensure the use of Sámi in hospitals, and Sweden established a right to use Finnish in relations with authorities and courts.

The Charter being a rather complex instrument for States to ratify and implement, information seminars are regularly organised by the Secretariat in those States which are approaching ratification or are facing difficulties in the implementation of the Charter and the recommendations made by the Committee of Ministers and the Committee of Experts. To name a few: Roundtable on The European Charter for Regional or Minority Languages in Albania (24/04/14); Implementation Round Table in Bratislava, Slovakia (29-30/04/14); Capacity-building event in Banja Luka, Bosnia and Herzegovina (21-21/01/15); Conference on minority languages, Belgrade, Serbia (21-22/01/14).

Non-governmental organisations and local, regional and national authorities are usually also involved in such seminars. In particular, non-governmental organisations have the important role of assisting the authorities in identifying the needs of the languages as to which kind and level of protection is adequate. They also have the role of providing the Committee of Experts with information, after ratification and during the monitoring process, on how the Charter is applied in practice. Local and regional authorities are often the authorities, which are in practice confronted with implementing the obligations arising from the Charter, for example in pre-school education, in local and regional assemblies and administration.

The OSCE High Commissioner on National Minorities continues to make reference to the Charter as the legal frame of reference for the protection and promotion of languages used by national minorities. In this context, the secretariats of the Charter and the HCNM regularly exchange information, for example in relation to HCNM country-visits.

## **II. EUROPEAN COMMISSION AGAINST RACISM AND INTOLERANCE (ECRI)**

The fight against racism, racial discrimination (i.e. discrimination on grounds of such as “race”, colour, citizenship, national/ethnic origin, religion and language), xenophobia, antisemitism and intolerance is at the core of the Council of Europe’s mission. Since 1993 this task has been entrusted to the European Commission against Racism and Intolerance (ECRI), which is an independent human-rights monitoring mechanism set up by the Heads of State and Government of the organisation.

### ***Main trends***

The Internet has become an important vehicle for promoting racism and intolerance, particularly via social media. ECRI continues to recommend ratification of the Council of Europe’s Additional Protocol to the Convention on Cybercrime concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems.

An increase in insults and physical attacks on Jewish persons and institutions has been noted, as well as attempts to rehabilitate or trivialise World War II collaborationist regimes and their actions and revived sympathies for the extreme right in some countries. Concern is also expressed over the growing trend of Islamophobia. Islam is seen as inherently opposed to European values of democracy

and secularism. Populist movements protesting against the alleged Islamisation of Europe mixed various aspects of Islamophobia with general xenophobic sentiments.

Discrimination of people of African descent is still widespread, not only in countries with little tradition of societal heterogeneity but also in those where Black communities have lived for many decades. Disproportionate numbers live in socially deprived areas, have less favourable health care outcomes and are more frequently stopped and searched by the police.

ECRI observes a varied picture with regard to homo- and transphobia across Europe. In some countries further progress has been made towards combating discrimination of LGBT persons, while in others they still experience high levels of stigma and intolerance, including hate speech from members of the political leadership, as well as threats and violence.

Roma and Travellers are still marginalised in education, employment, housing and health care. Segregation in schools continues, despite judgments by the European Court of Human Rights against such practices. ECRI considers it a major progress that all EU member States and many other Council of Europe countries have adopted strategies or action plans for the integration of Roma. However, their implementation remains inadequate.

The number of refugees, asylum seekers and migrants entering Europe continues to increase. Those who survive the perilous Mediterranean crossing face a grim reception, characterised by detention, insufficient social assistance and hostile public opinion. The challenges posed by migration are often exploited in populist politics and election campaigning. Anti-immigration rhetoric was successfully used by populist parties in the run up to the European Parliament elections in May 2014 and some even emerged as the strongest force in certain countries.

The need to equip specialised bodies<sup>3</sup> to fight against racism and intolerance with sufficient financial resources is crucial for their effectiveness and independence. Since the onset of the current economic crisis, precisely at a time of mounting social problems and a general rise in racism and intolerance, their budgets have been reduced. ECRI also notes a trend to merge specialised bodies with broader human rights institutions at the risk of losing the special expertise necessary to fight discrimination.

### ***ECRI's programme of activities***

ECRI's programme of activities is based on three pillars. The first is country monitoring work, whereby ECRI conducts an in-depth analysis of the situation concerning manifestations of racism and intolerance in each of the Council of Europe member States. ECRI's findings, along with recommendations on how each country should deal with the problems identified, are published in a report drawn up after a contact visit to the State concerned and confidential dialogue with the national authorities.

The country-by-country approach deals with all member States of the Council of Europe on an equal footing. The work is carried out in five-year cycles, covering nine to ten countries per year. In 2013, ECRI began work on its fifth round of country

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<sup>3</sup> Independent authorities expressly entrusted with the fight against racism, xenophobia, antisemitism, intolerance and discrimination on grounds such as ethnic origin, colour, citizenship, religion and language (racial discrimination), at national level.

monitoring. ECRI's fifth cycle reports focus on four common topics in all member States, namely legislative issues, hate speech, violence and integration policies, and a number of topics specific to each country. ECRI also addresses LGBT issues if they are relevant to the overall analysis of the situation in a member State.

So far in 2015, ECRI has conducted fifth-round country visits to Armenia, Azerbaijan, Cyprus, France, Georgia, Italy, Lithuania, Monaco and "the former Yugoslav Republic of Macedonia". Further visits will take place this year in Turkey and the United Kingdom.

ECRI has now a well-established interim follow-up mechanism. Approximately two years after the publication of the country report, member States are requested to provide information on specific recommendations for which the report requested priority attention. ECRI's conclusions concerning the level of implementation of these recommendations are made public.

The second pillar of ECRI's programme of activities is work on general themes. ECRI elaborates General Policy Recommendations which are addressed to all member States and provide guidelines for the use of national policy-makers. These cover important themes, including key elements of national legislation to combat racism and racial discrimination, the creation of national specialised bodies to combat racism and racial discrimination, combating intolerance and discrimination against Muslims, combating the dissemination of racist and antisemitic material via the Internet, combating racism while fighting terrorism, combating antisemitism, combating racism and racial discrimination in and through school education, combating racism and racial discrimination in policing, combating anti-Gypsyism and discrimination against Roma and combating racism and racial discrimination in employment.

ECRI is currently working on two new General Policy Recommendations on combating hate speech and on safeguarding irregular migrants from discrimination. Both should be adopted and published by the end of the year.

Relations with civil society and specialised bodies constitute the third pillar of ECRI's work. In this context, awareness-raising and a communication strategy are crucial. ECRI's round tables in Finland (7 May 2015), Belgium (1 July 2015) and Romania (29 September 2015) – organised in co-operation with its national partners, to discuss the follow-up to be given to reports on these countries – are part of its 2015 civil society programme. ECRI also organised its traditional seminar with national independent authorities on "The role of national Specialised Bodies in addressing underreporting of discrimination and hate crime" on 28-29 May 2015.

As in previous years, ECRI would like to emphasise its excellent cooperation with the OSCE-ODIHR. Both attach particular importance to the fight against hate crime and benefit from each other's expertise and initiatives. ODIHR's annual reports on Hate Crime in the OSCE Region are a key source of information for ECRI. ODIHR and ECRI continue to systematically involve each other in their conferences and meetings.

### **III. European Commission for Democracy through Law (Venice Commission)**

The Venice Commission, created in 1990 as an instrument of constitutional engineering, provides member States of the Council of Europe with assistance in the adoption of constitutions and related legislation that conform to the standards of Europe's constitutional heritage. It has since done so in relation to a variety of constitutional matters, as well as to legislation on constitutional courts, national



minorities and elections and other legislation with implications for national democratic institutions.

**From its inception**, the Venice Commission has devoted particular attention to a number of key issues in the field of minority protection. At the request of various governments, the Venice Commission has in particular provided **detailed expertise** of draft legislations on national minorities. It has also prepared **several opinions** at the request of the Parliamentary Assembly of the Council of Europe and come up with a few **thematic studies** on its own initiative. Furthermore, the Commission has organised **scientific events** with a view to helping shed light on the evolving international practice in this field.

A **study on “Non-Citizens and Minority Rights” (CDL-AD(2007)001)** was adopted by the Commission at its 69<sup>th</sup> plenary session on 15-16 December 2006, aiming at determining to what extent the citizenship requirement and/or other criteria are relevant to circumscribe the personal scope of rights, measures and facilities taken by the state authorities on behalf of minority groups and their members. The study contains a set of practice-oriented conclusions and principles for the Commission’s approach of issues pertaining to the personal scope of minority rights. The Venice Commission has in particular concluded that *“attention should be shifted from the definition issue to the need for an unimpeded exercise of minority rights in practice. In this context, it needs to be stressed that the universal character of human rights, of which minority rights form part and parcel, does not exclude the legitimate existence of certain conditions placed on the access to specific minority rights. Citizenship should therefore not be regarded as an element of the definition of the term “minority”, but it is more appropriate for the States to regard it as a condition of access to certain minority rights”*.

The Venice Commission also organised a **UniDem seminar on “the participation of minorities in public life” in Zagreb on 18-19 May 2007**. The aim was to take stock of the substantial development of international standards which foster minority participation, to assess their implementation through states’ national policies and discuss the impact of different constitutional models, in particular unitary and federal or regionalist states, on the opportunities minorities have to make their voice heard in decision-making..

At its 75<sup>th</sup> plenary session (13-14 June 2008), the Venice Commission adopted the **Report on Dual Voting for Persons Belonging to National Minorities** (CDL-AD(2008)013), on the basis of a request of the OSCE High Commissioner on National Minorities. Its conclusions are as follows: “Dual voting is an exceptional measure, which has to be within the framework of the Constitution, and may be admitted if it respects the principle of proportionality under its various aspects. This implies that it can only be justified if:

- it is impossible to reach the aim pursued through other less restrictive measures which do not infringe upon equal voting rights;
- it has a transitional character;
- it concerns only a small minority.

Given the exceptional nature of dual voting, the fulfillment of the above-mentioned conditions (in particular, those that refer to its functionality as a means of integrating minorities in the political system and its limited scope) should be periodically reviewed, in order to maintain its transitional character.”

At its 83<sup>rd</sup> plenary session (4 June 2010), the Venice Commission adopted a **joint opinion with OSCE/ODIHR on the Draft Law on Amendments and Supplements to the Law on the Election of Councilors and Members of Parliament of Montenegro** as amended in July 2006. In their opinion, the Venice Commission and the OSCE/ODIHR recall that countries have developed a wide diversity of mechanisms in accordance with their historical and legal traditions, and the political system. Montenegro has developed an original system, which both institutions generally consider in conformity with the European constitutional heritage.

**At its 84<sup>th</sup> plenary session (15-16 October 2010), the Venice Commission adopted an opinion on the Act on the State Language of the Slovak Republic.** This act imposes the use of the official language in a number of situations, including in contacts with the authorities and in the media and cultural activities. An exception is provided for areas where minorities reach a threshold of 20%. The Venice Commission concluded that the protection and promotion of the official language of the state is a legitimate concern common to many European countries, but that it must be balanced against protection and promotion of the linguistic rights of persons belonging to national minorities, in conformity with the principle of proportionality. Where the State deems necessary or appropriate to ensure the use of the state language in addition to minority languages, it should provide adequate facilities and financial means. On this basis, some provisions of the law should be reconsidered in order to comply with the principle of proportionality, in particular concerning the obligation to use the state language in official communication in areas where the minority population does not reach the threshold of 20%.

**At its 85<sup>th</sup> plenary session (25-26 March 2011), the Venice Commission adopted an opinion on the draft law on languages in Ukraine.** In its opinion, the Commission found legitimate the aim to establish an up-to-date and modern legislation on language use. In the light of Ukraine's historical, linguistic and political background, the Commission stressed the need for an appropriate balance between the promotion and development of the Ukrainian language as Ukraine's constitutionally recognised state language, and the protection of the various regional and/or minority languages in use in Ukraine. In particular, the specific protection provided by the draft law to the Russian language was mentioned as one of the issues deserving, due to its very sensitive nature, careful consideration and a very cautious approach. The Ukrainian authorities were invited to propose a more precise, consistent and balanced legal framework for the use and protection of Ukraine's languages, paying adequate attention to the rights and needs of all Ukraine's minorities and providing increased guarantees to confirm the role of Ukrainian as the state language.

**At its 89<sup>th</sup> plenary session (15-16 December 2011), adopted a new opinion on language policy** in Ukraine was adopted, in which the Venice Commission examined a draft law on the principles of the state language policy of Ukraine. The Commission found that the second Draft Law, largely drawing on the provisions of the 2010 "Draft Law on Languages in Ukraine", represented, in general, an improved and more balanced text and the amendments introduced were going into the right direction. While the aim of strengthening the position of the Russian language was maintained, the modality foreseen was to increase its protection as part of a more general move towards improved protection of all Ukraine's minority languages. While welcoming this approach in principle, the Commission expressed its concern that this would pose serious issues of feasibility and would only be beneficial to Russian and several other minority languages which would fulfill the specific conditions required by the Draft law. Moreover, this would not solve related divisions within society as the

question remained whether the Draft provided sufficient for the consolidation of the Ukrainian as the sole State language, and its the integrative role.

In its **opinion on the new Constitution of Hungary, adopted during its 86<sup>th</sup> plenary session (17-18 June 2011)**, the Venice Commission also addressed issues relating to minority protection, touching upon both the protection of persons belonging to national minorities living in Hungary and the support provided by the Hungarian Government to Hungarians abroad.

The Venice Commission also adopted, at its **91<sup>st</sup> plenary meeting (15-16 June 2012) an opinion on Hungary's new Act on the Rights of Nationalities**, an organic law adopted as part of the implementation of the new Hungarian Constitution. In the Commission's view, the Act confirmed Hungary's commitment to ensure adequate protection to its minorities, based on the relevant international standards and in accordance with national context. The Act indeed guaranteed rights to its thirteen recognised nationalities and their members in the main areas of interest for the protection of their identity (education, culture, private and public use of the mother tongue, access to media and participation) and endeavoured to improve the specific institutional arrangements available for nationality self-government. The Commission however found that the new legal framework provided by the Act was particularly complex and excessively detailed, and sometimes lacking legal clarity on important issues.

The Venice Commission has pursued a constructive and fruitful co-operation with the office of the HCNM during the preparation of the above-mentioned opinions.

In the context of its **co-operation with the Arab countries**, particularly developed in recent years, a delegation of the Venice Commission participated, on 21 November 2012 in Rabat, in a **workshop organized by the Chamber of Councillors of Morocco in the context of the preparation of future organic law on the protection of the Amazigh language**. The European standards and examples of best practice in the field of the protection of languages were presented and discussed with the local participants.

In 2013 and 2014, the Venice Commission has pursued its co-operation with the Office of the High Commissioner for National Minorities on issues of common interest, with a view to ensuring appropriate co-ordination of their message in the context of their dialogue with the interested States.

At the request of the authorities of Montenegro, the Venice Commission is preparing, in view of its October 2015 plenary meeting, an opinion on draft amendments to the law on the protection of national minorities aiming at improving, including through making them more transparent and impartial, in particular, the mechanisms for allocation of state subsidies to the activities of national minorities.

#### **IV. Parliamentary Assembly**

The Assembly promotes the ratification and implementation of the Framework Convention for the Protection of National Minorities and the European Charter on Regional or Minority Languages.

The Assembly has held debates and adopted texts on specific minorities.

The question of national minorities is also addressed in the Assembly's monitoring of compliance with obligations and commitments, in particular the state of ratification of

the relevant Council of Europe instruments and aspects of non-discrimination, citizenship legislation, status of and education in minority languages.

The last reports considered by the Council of Europe Parliamentary Assembly led to the adoption of the following resolutions and recommendations concerning national minorities:

**Resolution 1985 (2014)** The situation and rights of national minorities in Europe

**Recommendation 2040 (2014)** The situation and rights of national minorities in Europe

**Resolution 1866 (2012)** An additional protocol to the European Convention on Human Rights on national minorities

**Recommendation 1994 (2012)** An additional protocol to the European Convention on Human Rights on national minorities

In March 2014 the Secretary General of the Council of Europe presented his biennial Report to the Parliamentary Assembly on “[Application of the European Charter for Regional or Minority Languages](#)”

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The Council of Europe presents the following specific recommendations:

1. Member States of the Council of Europe are once more encouraged to sign and ratify Protocol No. 12 to the European Convention on Human Rights, which provides for the general prohibition of discrimination.
2. OSCE participating States are encouraged to sign and ratify the Additional Protocol to the Council of Europe’s Convention on Cybercrime, on the criminalisation of acts of a racist and xenophobic nature committed through computer systems.
3. Member States of the Council of Europe are once again encouraged to enact legislation against racism and racial discrimination, if such legislation does not already exist or is incomplete; they are also encouraged to ensure that such legislation reflects the key elements in ECRI’s General Policy Recommendation No. 7, including the setting up of an independent body specialised in the fight against racism and racial discrimination; moreover, they are encouraged to ensure that this legislation is applied effectively.
4. OSCE participating States are encouraged to allocate sufficient resources to national independent bodies entrusted with the fight against racism and intolerance.
5. OSCE institutions are encouraged to continue their co-operation in the fight against racism, racial discrimination, xenophobia, antisemitism and intolerance with the Council of Europe, and in particular ECRI, by further strengthening mechanisms enabling the exchange of information and data to support common action.