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Committee on Legal Affairs and Human Rights

An additional protocol to the European Convention on Human Rights on national minorities¹

Report

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A. Draft resolution

1. The Parliamentary Assembly stresses the importance of protection of persons belonging to national minorities as an integral part of the international protection of human rights to ensure equality, justice, stability, democratic security and peace in Europe
2. The Assembly regrets that the main Council of Europe instruments for the protection of the rights of national minorities, such as the Framework Convention for the Protection of National Minorities ("the Framework Convention", ETS 157) and the European Charter for Minority or Regional Languages (ETS 148) have not been ratified by all members states of the Council of Europe. Moreover, in its previous resolutions (such as Resolutions 1713 (2010) and 1944 (2010)), it has found numerous shortcomings in the implementation of these Conventions.
3. The Assembly also deplores the limited number of ratifications of Protocol No 12 to the European Convention on Human Rights (ETS 177), which broadens the scope of the prohibition of discrimination set forth in the Convention and which may be an important tool in combating discrimination based on "association with a national minority".
4. On several occasions, the Assembly has supported the adoption of an additional protocol to the European Convention on Human Rights (ETS 5) in order to reinforce the protection of the rights of national minorities in Europe. In particular, its Recommendation 1201 (1993) contained a draft protocol. However, the Committee of Ministers decided not to follow up this recommendation in 1996, which the Assembly regretted.
5. Considering the precarious situation of numerous national minority groups in Europe, the Assembly considers that it is time to reconsider its previous proposal concerning the adoption of an additional protocol to the European Convention on Human Rights, which could reinforce the standing of national minorities, both individuals and/or groups, before the European Court of Human Rights and provide them substantive and justiciable rights.
6. The Assembly considers that such a protocol could refer to the internationally recognised criteria laid down in the 1990 OSCE Copenhagen document and the relevant texts of the Council of Europe, in particular the Framework Convention, the European Charter for Minority or Regional Languages and the Assembly's Recommendations 1134 (1990), 1201 (1993), 1255 (1995), 1492

¹ Draft resolution and draft recommendation adopted by the Committee in Paris on 16 November 2011.

(2001), 1623 (2003) and Resolution 1713 (2010). It could guarantee the following minimum standard for national minorities and their members:

- 6.1. the right of every person to express freely his/her belonging to a national minority;
 - 6.2. political rights (such as freedom of association, the creation of political parties, participation in elections, representation in public bodies, at both national and regional level);
 - 6.3. cultural rights, including the right to cultural autonomy to preserve national identity;
 - 6.4. the right to make decisions on different forms of autonomy, in accordance with European practice and national or regional traditions;
 - 6.5. the right to freely use a minority language in private and public life, especially in relations with the administrative authorities or the judicial system in areas where national minorities reside traditionally or represent a significant percentage of the regional or local population.
7. Moreover, the Assembly calls upon member states which have not yet done so, to sign and/or ratify the Framework Convention for the Protection of National Minorities, the European Charter for Minority or Regional Languages and Protocol No 12 to the European Convention on Human Rights without reservations and restrictive declarations.
8. The Assembly calls upon national parliaments and their members to actively promote both within their parliaments and vis-à-vis their governments the idea of adopting an additional protocol to the European Convention on Human Rights in this context.

B. Draft recommendation

1. Referring to its Resolution ... (2012) on *An additional protocol to the European Convention on Human Rights on national minorities*, the Parliamentary Assembly recommends that the Committee of Ministers:

- 1.1. consider drafting an additional protocol to the European Convention on Human Rights providing for minimum rights for national minorities; such a protocol could contain the minimum rights mentioned in paragraph ... of Resolution (2012);

- 1.2. pursue cooperation with other international organisations, in particular the Organisation for Security and Cooperation in Europe (OSCE) and the United Nations, with a view to maintaining coherent standards for the protection of national minorities.

C. Explanatory memorandum by Mr Frunda, Rapporteur**Contents**

1.	Procedure to date	5
2.	Purpose of this report	5
3.	The international and European legal framework.....	6
4.	Towards increased protection for minorities within the Council of Europe framework.....	6
4.1.	The European Convention on Human Rights and national minorities.....	6
4.2.	The Framework Convention for the Protection of National Minorities	7
4.3.	The European Charter for Regional or Minority Languages.....	8
4.4.	The ground-breaking work of the Parliamentary Assembly.....	8
5.	Establishing an additional protocol to the ECHR.....	10
5.1.	Main elements to be taken into consideration	10
5.2.	The definition of rights-holders.....	11
5.3.	The scope of rights	11
5.3.1.	<i>The right of every person to express freely his/her belonging to a national minority</i>	12
5.3.2.	<i>Political rights (such as freedom of association, the creation of political parties, participation in elections, representation in public bodies, at both national and regional level).....</i>	12
5.3.3.	<i>Cultural rights, including the right to cultural autonomy as the main instrument to preserve the national identity.....</i>	13
5.3.4.	<i>The right to make decisions on different forms of autonomy, in accordance with European practices and national or regional traditions.....</i>	14
5.3.5.	<i>The right to freely use the minority language in private and public life, especially in relations with the administrative authorities or the judicial system in areas where national minorities represent a significant percentage of the regional or local population.....</i>	14
5.4.	Justiciability.....	15
5.5.	Giving full effect to the rights.....	16
6.	Disadvantages of an additional Protocol and the concept of “National Minority Sensitive Guidelines”	16
7.	Conclusion	16

1. Procedure to date

1. The motion for a recommendation entitled « Drafting an additional protocol to the European Convention on Human Rights: basic standards for national minorities » (Doc. 11897) was forwarded to the Committee on Legal Affairs and Human Rights on 20 November 2009 (reference 3619) for report. At its meeting in Paris on 16 December 2009, the committee appointed me as rapporteur.

2. At its meeting of 6-7 June 2011 in Oslo, the committee held an exchange of views with the participation of the following experts:

- Professor Geoff Gilbert, Professor of Law, Editor-in-Chief, International Journal of Refugee Law, School of Law and Human Rights Centre, University of Essex, United Kingdom;
- Professor Krzysztof Drzewicki, Professor of Law, Ministry of Foreign Affairs, Warsaw, former Senior Legal Advisor in the Office of the OSCE High Commissioner on National Minorities.

2. The purpose of the report

3. The above-mentioned motion for a recommendation stresses the need to adopt an additional protocol to the European Convention on Human Rights², to set out and to guarantee basic standards for national minorities within the framework of the Council of Europe. That need arises in view of the inadequacy of the present legal framework for the protection of minorities.

4. Indeed, binding minimum standards should be established for national minorities and their members in order to guarantee equal treatment for both majority and minorities and to eliminate any difference between the Council of Europe's member states in this regard.

5. The Council of Europe broke new ground by adopting, on the one hand, the Framework Convention for the Protection of National Minorities ("the Framework Convention")³ and, on the other, the European Charter for Regional or Minority Languages ("the Charter")⁴. Most countries now recognise the positive contribution that national minorities make to the societies in which they live. However, these legal instruments appear to be inadequate, in particular because they are relatively flexible and because they do not apply to all of the Council of Europe's member states.

6. It should be noted that some states refuse to sign and/or ratify these instruments. This refusal has recently been examined in depth by the committee, see in particular the reports of my colleagues Mr Boriss Cilevičs (Latvia, Socialist Group) on *Minority protection in Europe: best practices and deficiencies in implementation of common standards*⁵ and Mr József Berényi (Slovak Republic, Group of the European People's Party) on *The European Charter for Regional or Minority Languages*.⁶

7. As a result of the non-ratification of the Framework Convention and the Charter by some member states, national minorities in those states are discriminated both collectively and individually, being deprived of some basic rights such as freedom of association, political representation, instruction in the mother tongue or free use in public of the minority language. However, this is also the case in some countries which have ratified these legal instruments but do not implement them in an appropriate way.

8. I shall begin this explanatory memorandum with a short presentation of the Council of Europe's principal legal instruments on the protection of national minorities, and a rapid survey of the Assembly's and the Committee's earlier work in this connection. I shall try to give a brief account of the principal concerns about the implementation of these instruments in practice. Then I will strive to explain why it is necessary to adopt an additional protocol to the ECHR on minimum standards for the protection of national minorities and what would be the advantages of such a protocol. I am greatly indebted to the experts who took part in the exchange of views on 6 June 2011 for agreeing to assist me in this task.

² ETS n° 5.

³ ETS n° 157.

⁴ ETS n° 148.

⁵ Doc. 12109 of 20 January 2010.

⁶ Doc. 12422 of 21 October 2010.

3. The international and European legal framework

9. It should be noted that there is no well-established definition of “national minority” in international law. However, Article 27 of the International Covenant on Civil and Political Rights of 16 December 1966 stipulates that “in those states in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.”⁷

10. In the UN context, attention is also drawn to the Declaration on the Rights of Indigenous Peoples,⁸ adopted by the United Nations General Assembly in September 2007, which affirms, in particular, that indigenous peoples have the right to self-determination and that, by virtue of that right, they freely determine their political status and freely pursue their economic, social and cultural development.

11. At the European level, in 1990, States participating in the Organisation for Security and Cooperation in Europe (OSCE) signed the Copenhagen Document, which introduced numerous new commitments in the areas of human rights, and the rule of law, among others⁹. This Document also includes the rights of national minorities, a subject which had been paid little attention beforehand. The Copenhagen Document contains a definition of “national minority” and a catalogue of minority rights. Following the signature of this document, in 1992, the OSCE High Commissioner on National Minorities (HCNM) was established. Although his mandate is focused on early warning and conflict prevention, the HCNM has elaborated comprehensive sets of recommendations, which are not legally binding¹⁰.

4. Towards increased protection for minorities within the Council of Europe framework

4.1 The European Convention on Human Rights and national minorities

12. The European Convention on Human Rights and Fundamental Freedoms (“the Convention” or “ECHR”) does not confer any specific rights on national minorities, although it enables members of those minorities to enjoy, individually, some pertinent rights guaranteed in it. They include, in particular, the right to freedom of expression (Article 10), freedom of thought, conscience and religion (Article 9), freedom of assembly and association (Article 11), the right of a person charged with a criminal offence to be informed, in a language which he understands, of the nature of the accusation against him (Article 6 §3a), the prohibition of discrimination on grounds of “association with a national minority” (Article 14), the right to education (Article 2 of Protocol n° 1) or the right to free elections (Article 3 of Protocol n° 1). Under Article 34 of the Convention, persons belonging to national minorities may rely on these rights directly in proceedings before the European Court of Human Rights (“the European Court” or “ECTHR”). However, in cases concerning national minorities, the case law of the European Court has proved to be somewhat timid. In its judgment in *Gorzelik v Poland*, for example, while recognising the importance of the protection of those minorities for stability, democratic security and peace in Europe, the European Court concluded that “(...) *it cannot be said that the Contracting States are obliged by international law to adopt a particular concept of “national minority” in their legislation or to introduce a procedure for the official recognition of minority groups*”.¹¹

13. The adoption of Protocol No 12 to the Convention and its entry into force on 1 April 2005 was a step forward in protecting national minorities against discrimination. Article 1 of this Protocol introduces a general prohibition on discrimination in the enjoyment of “any right set forth by law “ (paragraph 1), which applies to all acts of public authorities (paragraph 2). Therefore any discrimination against a person belonging to a national minority, including discrimination based on the fact that they belong to such a minority, is covered by the general ban on discrimination. Regrettably, the geographical scope of the protection stemming from this instrument is limited, because so far only 18 out of 47 member states of the Council of Europe have ratified it.

⁷ <http://www2.ohchr.org/english/law/ccpr.htm>.

⁸ See United Nations Declaration on the Rights of Indigenous Peoples: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N06/512/08/PDF/N0651208.pdf?OpenElement>.

⁹ <http://www.osce.org/odihr/elections/14304>.

¹⁰ Till now six such sets were drawn up and adopted on: education rights (1996), linguistic rights (1998), participation in public life (1999), the use of minority languages in broadcast media (2003), policing in multi-ethnic societies (2005) and national minorities in inter-state relations (2008); <http://www.osce.org/hcnm/33633>.

¹¹ *Gorzelik and others v. Poland*, Application n° 44158/98, Judgment (Grand Chamber) of 17 February 2004, paragraph 68.

4.2 The Framework Convention for the Protection of National Minorities

14. The Framework Convention for the Protection of National Minorities,¹² drawn up within the Council of Europe by the ad hoc Committee for the Protection of National Minorities (CAHMIN) under the authority of the Committee of Ministers, was adopted by the Committee of Ministers of the Council of Europe on 10 November 1994 and opened for signature by the member states of the Council of Europe on 1 February 1995. The Framework Convention entered into force on 1 February 1998 and has now been ratified by 39¹³ of the 47 member states of the Council of Europe. It was drafted and promulgated as a direct result of the rejection of the Parliamentary Assembly Recommendation 1201 (1993)¹⁴ (see below paragraph 27).

15. To date, four states – Belgium, Greece, Iceland and Luxembourg – have signed but not yet ratified the Framework Convention, and four other states – Andorra, France, Monaco and Turkey – have neither signed nor ratified it. The Assembly has repeatedly urged member states which have not signed and/or ratified the Framework Convention to do so.¹⁵

16. In view of the failure of earlier and often more ambitious attempts, such as the Assembly recommendations (see below), the Framework Convention for the Protection of National Minorities is based on a particularly flexible legal framework. It is a detailed, text but it is concerned only with principles, and has no real binding monitoring mechanism.

17. It should be observed first that the Framework Convention itself does not define the groups of persons who are entitled to the protection it provides. Consequently, the scope of the Framework Convention remains one of the most controversial issues connected with its implementation, although the Advisory Committee of the Framework Convention (“the Advisory Committee”) has attempted to elucidate it through its thematic commentaries¹⁶.

18. As a matter of fact, the states parties have a wide margin of discretion in determining the scope of the Framework Convention, because it contains programme provisions defining certain objectives which the states parties undertake to achieve.¹⁷ While these provisions are not directly enforceable, the states parties must nevertheless respect the general principles of international law and the fundamental principles set out in Article 3 of the Framework Convention, which states that every person belonging to a national minority has the right to choose to be treated or not to be treated as such (paragraph 1). Moreover, the Advisory Committee of the Framework Convention has repeatedly stressed that the interpretation given by the states parties cannot be a source of arbitrary or unjustified distinctions.¹⁸ The implementation of the Framework Convention by the states parties is marked by a variety of methods ranging from minimalist approaches (for example, limiting its scope to the so-called «historical» minorities or to certain selected minorities, while arbitrarily refusing to recognise others) to more open and generous approaches.

19. In fact, the Assembly initially criticised the wording of the Framework Convention, which it considered to be weak.¹⁹ However, the Framework Convention is the first multilateral treaty on the protection of national minorities in Europe. It recognises collective rights of minorities, to be exercised

¹² For fuller information, see text:

<http://conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?NT=157&CM=8&DF=06/05/2011&CL=ENG>

¹³ See status of ratification of the Framework Convention:

<http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=157&CM=8&DF=06/05/2011&CL=ENG>

¹⁴ Recommendation 1201 (1993) on an additional protocol on the rights of national minorities to the European Convention on Human Rights, of 1 February 1993.

¹⁵ See, in particular, Recommendation 1623(2003) *Rights of national minorities* of 29 September 2003 and Resolution 1713 (2010) and Recommendation 1904(2010) on *Minority protection in Europe: best practices and deficiencies in implementation of common standards*, of 12 March 2010.

¹⁶ Commentary on the Effective Participation of Persons Belonging to National Minorities in Cultural, Social and Economic Life and in Public Affairs of 8 May 2008, ACFC/31DOC(2008)001 and Commentary on Education under the Framework Convention for the Protection of National Minorities, of 2 March 2006, ACFC/25DOC(2006)002.

¹⁷ G. Pentassuglia, *Minorities in international law*, Council of Europe Publishing 2002, p.142.

¹⁸ Summarised by the Assembly in its Recommendation 1623(2003) of 29 September 2003 on the *Rights of national minorities*, paragraph 6.

¹⁹ See paragraph 7 of Recommendation 1255(1995) *on the protection of the rights of national minorities* of 31 January 1995: “7. *The convention is weakly worded. It formulates a number of vaguely defined objectives and principles, the observation of which will be an obligation of the contracting states but not a right which individuals may invoke. Its implementation machinery is feeble and there is a danger that, in fact, the monitoring procedures may be left entirely to the governments.*”

not by individuals but by the minority group as a whole. The Advisory Committee is responsible for monitoring the process of implementing the Framework Convention; this classic treaty instrument is set in an intergovernmental framework, which does not extend beyond the conventions and declarations of the United Nations and the Council of Europe.

20. The pre-eminence of states or the state language is often put forward. The legal standards described in the Framework Convention are not addressed directly to the minority groups. Only the states parties can rely on the provisions of the Convention. Moreover, the scope of some articles is limited by vague expressions such as “as far as possible” (for example, Article 9(3)) and “where appropriate/necessary” (for example, Articles 12 and 18).²⁰

21. Because of its flexibility this legal instrument can be adapted to the situation of the states parties, but it is not incisive enough to afford effective protection to minorities. In fact, the Framework Convention is strictly inter-state in nature, and a political consensus in the Committee of Ministers is required to effect any change in its provisions. In the event of any political disagreement, the decision-making process in the Committee of Ministers will be blocked.²¹

22. As a result, the Framework Convention is closely bound up with the need for political endorsement by the states parties, and this may limit its extent and interpretation and its implementation. The idea of an additional protocol to the ECHR on the protection of minorities therefore seems to be an innovative and effective tool to enable members of minority groups to rely directly and individually on the provisions of this text.

4.3. *The European Charter for Regional or Minority Languages*

23. The European Charter for Regional or Minority Languages was adopted in 1992 to protect and encourage historical regional languages and minority languages in Europe.²² It entered into force on 1 March 1998.

24. It is a « variable geometry » treaty, since it proposes a great many different measures that the signatory states can take to protect and encourage regional or minority languages, such as, for example, use of bilingual road signs or opening schools specialising in teaching a protected language. States are required to select and take at least thirty-five of these measures.²³

25. To date, the Charter has been ratified by 25 states: Armenia, Austria, Bosnia and Herzegovina, Cyprus, Croatia, Czech Republic, Denmark, Finland, Germany, Hungary, Liechtenstein, Luxembourg, Montenegro, Netherlands, Norway, Poland, Romania, Serbia, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Ukraine and United Kingdom. Eight other states have simply signed it: Azerbaijan, France, Iceland, Italy, Malta, Moldova, Russian Federation, and «the former Yugoslav Republic of Macedonia». The Assembly has repeatedly deplored the fact that almost half the Council of Europe member states have not yet acceded to this legal instrument.²⁴

4.4. *The ground-breaking work of the Parliamentary Assembly*

26. Since the beginning of the 1950s, the Assembly has reflected on the best way to protect the rights of national minorities and in 1961 it adopted Recommendation 285, which proposed to include a provision on minorities in the European Convention on Human Rights. While that attempt was rejected because of the abstract and imprecise nature of the concept of protection of national minorities, the criterion of “association with a national minority” was added to the list of grounds on which a difference in treatment is prohibited in the Convention (Article 14).²⁵

27. The Council of Europe subsequently concentrated on more sector-oriented protection designed to preserve the culture of minority groups in Europe. In this connection, the Assembly attempted, in

²⁰ See footnote 12, pp.142-143.

²¹ See, for example, the blocking of the Advisory Committee’s opinion on the situation in Lithuania in 2008. http://www.coe.int/t/dghl/monitoring/minorities/6_Resources/PDF_Table_Monitoring_en.pdf

²² For fuller information, see the European Charter for Regional or Minority Languages (ETS 148): <http://conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?NT=148&CM=8&DF=08/05/2011&CL=ENG>

²³ For fuller information, see Mr József Berényi’s report on *The European Charter for Regional or Minority Languages*, see footnote n° 5 above.

²⁴ See, in particular, Resolution 1770(2010) and Recommendation of 12 November 2010 and Resolution 1713 (2010) and Recommendation 1904(2010) of 12 March 2010.

²⁵ See footnote 17, p. 136 and 128.

Recommendation 285(1961),²⁶ to include in the 4th protocol to the ECHR a provision on the protection of minorities. However, that proposal was not supported by the Committee of Ministers.

28. While the idea of introducing legal standards to protect the rights of minorities is not new, it was relaunched and developed by the Assembly only in the early 1990s. In that sense, the transition to democracy in the countries of Central and Eastern Europe brought out into the open the problems associated with minorities in Europe which had long been artificially stifled under the totalitarian regimes.

29. In October 1990, the Assembly adopted Recommendation 1134 (1990)²⁷ on the basis of a report on the rights of minorities presented by Mr Brincat.²⁸ For the first time, this recommendation advised the Committee of Ministers to draw up a Protocol to the ECHR or a special convention to protect national minorities. While general measures to prohibit discrimination were needed, the Assembly also recommended the introduction of special measures for minorities, such as the right to maintain contacts with citizens of other states, and the right to maintain their own institutions and to participate fully in decisions on education in their mother tongue, which ultimately entails positive measures on the part of the states. It is true that the Committee of Ministers did not act on this proposal²⁹, but the reference to the concept of collective minority rights was an innovation that has since gained ground.

30. In February 1992, the Assembly adopted Recommendation 1177 (1992),³⁰ in which it expressed its support for the adoption of an additional protocol to the ECHR³¹ and a declaration setting out the basic principles relating to the rights of national minorities³². The Assembly took note of the terms of reference given to the Steering Committee for Human Rights by the Committee of Ministers in order to elaborate the proposal for a European convention for the protection of minorities. However, it was doubtful about the proposed supervisory machinery and insisted on elaborating an additional protocol to the European Convention on Human Rights. Therefore, in January 1993, another recommendation, Recommendation 1201(1993)³³ containing the proposed protocol, was passed³⁴.

31. This proposed protocol recognises the individual rights of persons belonging to a national minority and gives a definition of the expression "national minority". The text is remarkable in that it recognises rights with respect to education and language and grants a certain autonomy to minority groups in the regions where they are in a majority. It is true that Recommendation 1201(1993) is not binding, but it formed part of the commitments undertaken by member states acceding to the Council of Europe and was included as a reference document in bilateral treaties.³⁵

32. The idea of an additional protocol to the ECHR was submitted to the heads of state and government at their Summit meeting in Vienna on 9 October 1993. They instructed the Committee of Ministers only "to draft with minimum delay a framework convention specifying the principles which contracting States commit themselves to respect, in order to assure the protection of national minorities (...)" and "to begin work on drafting a protocol complementing the European Convention on Human Rights in the cultural field by provisions guaranteeing individual rights, in particular for persons belonging to national minorities"³⁶. For that purpose, on 4 November 1993, the Committee of Ministers set up an ad hoc Committee for the Protection of National Minorities (CAHMIN).

²⁶ Recommendation 285(1961) on the rights of national minorities, of 28 April 1961.

²⁷ Recommendation 1134 (1990) on the rights of minorities, of 1 October 1990.

²⁸ *Rights of minorities*, Doc. 6294, Committee on Legal Affairs and Human Rights.

²⁹ Doc. 7316 of 1 June 1995, Communication from the Committee of Ministers. Joint reply to Recommendation 1134(1990) on the rights of minorities, Recommendation 1177(1992) on the rights of minorities, Recommendation 1201 (1993) on an additional protocol on the rights of national minorities to the European Convention on Human Rights and Recommendation 1255(1995) on the protection of the rights of national minorities, paragraph 1.

³⁰ Recommendation 1177 (1992) on the rights of minorities, of 4 February 1992.

³¹ *Ibid*, paragraph 12.

³² *Ibid*, paragraph 13.

³³ Recommendation 1201 (1993) on an additional protocol on the rights of national minorities to the European Convention on Human Rights, of 1 February 1993.

³⁴ <http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta93/EREC1201.htm>.

³⁵ See footnote 17, p.137.

³⁶ Doc. 7316 of 1 June 1995, Communication from the Committee of Ministers. Joint reply to Recommendation 1134(1990) on the rights of minorities, Recommendation 1177(1992) on the rights of minorities, Recommendation 1201 (1993) on an additional protocol on the rights of national minorities to the European Convention on Human Rights and Recommendation 1255(1995) on the protection of the rights of national minorities, paragraph 1.

33. In its Recommendation 1231 (1994), the Assembly deeply regretted that the Vienna Summit did not follow its Recommendation 1201 (1993) and recommended that the Committee of Ministers revise its decision³⁷. In the view of the Assembly, at least a framework convention and an additional protocol on cultural rights should have been adopted in order to reflect the principles formulated by the CSCE and in the Copenhagen document³⁸.

34. The Framework Convention was adopted by the Committee of Ministers on 10 November 1994 and CAHMIN continued its work on a Protocol complementing the ECHR in the cultural field by provisions guaranteeing individual rights, in particular for persons belonging to national minorities³⁹. However, in its Recommendation 1255 (1995)⁴⁰, the Assembly considered the Framework Convention was a weak instrument, because of the vague terms contained therein and because its monitoring mechanism was too flexible, giving too much discretion to the member states. Recalling the principles listed in Recommendation 1201 (1993), it recommended again that the Committee of Ministers draw up an additional protocol to the ECHR guaranteeing cultural rights to persons belonging to national minorities. Despite this recommendation, in January of 1996, the Committee of Ministers decided to suspend the work of CAHMIN⁴¹ on this subject and “to continue reflection on the feasibility of further standard setting in the cultural field and in the field of protection of national minorities”, taking into account the Vienna Summit Declaration⁴². According to the Committee of Ministers, drafting an additional protocol to the ECHR was not feasible, because some of its elements such as the definition of a national minority, the nature and scope of certain rights, did not muster the support of all member states⁴³.

35. In 2001, in its subsequent Recommendation 1492 (2001),⁴⁴ the Assembly recalled its Recommendation 1201 (1993) and reaffirmed the need for an additional protocol to the ECHR on the rights of minorities. However, once again, the Committee of Ministers considered it premature to re-open the discussion on this issue, stressing that Protocol No 12, which was about to enter into force, would cover all forms of discrimination based on an association with a national minority⁴⁵.

5. Establishing an additional protocol to the ECHR

5.1. Main elements to be taken into consideration

36. As demonstrated above, the need for an additional protocol to the ECHR has been invoked several times by the Assembly and, in view of the weakness of the current instruments concerning protection of national minorities, it may be necessary to come back to this issue now.

37. As stressed by Professor Gilbert at the hearing in June 2011, there are various issues that need to be addressed if a Protocol to the Convention on the protection of national minorities and persons belonging to a national minority is to be adopted: the definition of rights-holders, the content of the rights to be included in the protocol, the justiciability of any such rights and the sorts of remedies that might be necessary to give full effect to the rights.

³⁷ Recommendation 1231 (1994) on the follow-up to the Council of Europe Vienna Summit, of 26 January 1994, paragraphs 4 and 8 ii.

³⁸ Ibid, paragraph 8iii.

³⁹ See footnote 25 (31).

⁴⁰ Recommendation 1255 (1995) on the protection of the rights of national minorities, of 31 January 1995.

⁴¹ For the work of CAHMIN, see

http://www.coe.int/t/dghl/monitoring/minorities/6_Resources/DocumentaryResources_en.asp.

⁴² Doc. 8306 of 26 January 1999, Recommendations of the Assembly, Replies from the Committee of Ministers, p. 3.

⁴³ Ibid, p. 4. Although the CDDH (the Steering Committee on Human Rights) recommended not to take up work on such a protocol, it did not exclude « the possibility that further developments, and in particular the experience drawn from the implementation of the Framework Convention for the Protection of National Minorities, might reveal a need to consider further standard-setting » ; ibid, p. 6.

⁴⁴ Recommendation 1492 (2001) “Rights of national minorities” of 23 January 2001, paragraphs 7 and 12 xi. See also the report by Mr Rudolf Binding (Germany, Socialist Group), Committee on Legal Affairs and Human Rights, Doc. 8920 of 4 January 2001.

⁴⁵ Doc. 9492 of 19 June 2002, Rights of national minorities. Recommendation 1492 (2001). Reply from the Committee of Ministers, p.2 and p. 5.

5.2. The definition of rights-holders

38. There is no definition of “national minority” in international law. The Framework Convention does not contain such a definition, which might be seen as one of its main weaknesses and is one of the reasons why it is so difficult to secure a balanced opinion on the situation in individual countries⁴⁶.

39. Legal precision requires that, if substantive rights are granted to a specific group of people such as a national minority, this group should be clearly defined in law. If an additional protocol on the rights of national minorities were to be established, it would need to define its rights-holders and therefore contain a definition of the term “national minority”.

40. The draft protocol contained in Recommendation 1201 (1993) proposed the following definition of the term “national minority”:

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

41. This definition contains four objective elements (a), b), c) and d)) and one subjective (e): the desire of the members of a minority to affirm their status as such and to claim attachment to whatever gives them their specific identity. Such a definition is essential, because it avoids confusion with the rights of aliens, migrants or refugees⁴⁷.

42. However, even though the Assembly was in favour of defining the concept of “national minority”, there is no general acceptance for filling this lacuna. As noted by Professor Gilbert at the hearing in June 2011, there is always a risk that states will try to reformulate this definition in order to exclude some groups from its scope. Moreover, states may try to exclude certain groups through restrictive definitional practices and interpretations (which has already been the case with the Framework Convention). Thus Professor Gilbert refrained from defining the notion of “national minority”, stressing that the European Court did not do so either.

43. On the other hand, in any judicial procedure, it is indispensable to clearly define the rights-holders. The absence of a definition of “national minority” would leave too much leeway for interpretation and could only entail never-ending arguments between the ECtHR and the States in the course of judicial proceedings. Therefore this issue would require further reflection at the level of the expert bodies that would elaborate the draft of the additional protocol. The definition contained in Recommendation 1201 (1993) could serve as a basis for further discussions.

5.3. The scope of rights

44. As stressed by Professor Drzewicki at the hearing in June 2011, two general options that can be envisaged if an additional protocol to the ECHR is to be adopted. One is that the protocol contains a list of minimum rights for persons belonging to minorities in some detail. Another option could be that a draft protocol provides for a general formulation of minority rights in specific fields and limitation clauses. The first option has the merit in ‘imposing’ on the European Court the specific content of the rights in question and particularly their substantive scope. However, it may imply more difficulties in the course of negotiations and may lead to a final version of the protocol in which the substantive content of minority rights would be seriously limited. The second option is more flexible, because it leaves broad scope for the European Court’s interpretation of national minorities protection standards. Moreover, as proposed in Recommendation 1255 (1995), the additional protocol could include rights which may be taken from both the Framework Convention and the draft of additional protocol proposed by the Assembly in its Recommendation 1201 (1993)⁴⁸.

45. Bearing in mind the advantages and disadvantages of these options, I consider that a draft additional protocol could contain the following minimum rights:

⁴⁶ Doc 8920, supra note 44, paragraph 25.

⁴⁷ Doc. 6742 of 19 January 1993, Report on an additional protocol on the rights of minorities to the European Convention on Human Rights (Rapporteur: Mr Worms, France, Socialist), p. 8.

⁴⁸ Recommendation 1255, paragraph 9.

- a) the right of every person to express freely his/her belonging to a national minority;
- b) political rights (such as freedom of association, the creation of political parties, participation in elections, representation in public bodies, at both national and regional level);
- c) cultural rights, including the right to cultural autonomy as the main instrument to preserve the national identity;
- d) the right to make decisions on different forms of autonomy, in accordance with European practices and national or regional traditions;
- e) the right to freely use the minority language in private and public life, especially in relations with the administrative authorities or the judicial system in areas where national minorities represent a significant percentage of the regional or local population.

5.3.1. The right of every person to express freely his/her belonging to a national minority:

46. The right of every person to express freely his/her membership of a national minority is a fundamental right, enshrined in Article 3 § 1 of the Framework Convention⁴⁹. As stated in the Copenhagen document, belonging to a national minority is “a matter of a person’s individual choice and no disadvantage may arise from the exercise of such a choice”⁵⁰. The draft protocol contained in Recommendation 1201 (1993) also enshrines this right in its Article 2⁵¹.

47. It results from this principle that the membership of a minority cannot be imposed by the state authorities and that it also implies freedom to alter that choice or not to identify with any minority⁵². Any person who makes this choice should be protected from any negative consequences of that affirmation⁵³.

5.3.2. Political rights (such as freedom of association, the creation of political parties, participation in elections, representation in public bodies, at both national and regional level):

48. Article 11 of the ECHR guarantees to every person freedom of assembly and association (with the limitations stemming from its § 2). In addition, Article 7 of the Framework Convention stipulates that states should ensure to persons belonging to national minorities the right to freedom association, which implies the right to create political parties and organisations. However, it would be useful if the right to create associations, including political parties, by national minority groups were to be clearly enshrined in a legally binding text such as a protocol to the ECHR.

49. Indeed, persons belonging to national minorities should enjoy rights allowing them to participate in public affairs. First of all, they should be entitled to establish and maintain their own associations (educational, cultural, religious, etc.), which can seek voluntary contributions or public assistance (see also the Copenhagen document 32.2 and 32.6⁵⁴). Considering the frequency of prohibitions of the setting up of political parties on the basis of membership of a national minority⁵⁵, a provision on the right to establish political parties would be very useful indeed. Moreover, Article 6 of the draft Protocol contained in Recommendation 1201 (1993)⁵⁶, reaffirmed these two rights

50. Although the right to free elections is generally enshrined in Article 3 of Protocol 1 to the ECHR, there are no other specific provisions on it in the Convention or its additional protocols. Moreover,

⁴⁹ “Article 3

1. Every person belonging to a national minority shall have the right freely to choose to be treated or not to be treated as such and no disadvantage shall result from this choice or from the exercise of the rights which are connected to that choice.”

⁵⁰ Paragraph 32.

⁵¹ “Article 2

1. Membership of a national minority shall be a matter of free personal choice.

2. No disadvantage shall result from the choice or the renunciation of such membership.”

⁵² Supra note 47.

⁵³ Ibid.

⁵⁴ Supra note 9.

⁵⁵ Supra note 47.

⁵⁶ “Article 6. All persons belonging to a national minority shall have the right to set up their own organisations, including political parties.”

according to Professor Gilbert, the case of *Sejdic and Finci v Bosnia and Herzegovina*⁵⁷ shows that the right to participation in public affairs is even better protected if it is granted to a group⁵⁸.

51. Effective participation in public affairs of persons belonging to national minorities is also contained in paragraph 35 of the Copenhagen Document and Article 15 of the Framework Convention. According to the latter, “the Parties shall create the conditions necessary for the effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs, in particular those affecting them”. This means, according to the explanatory report, that states could promote inter alia effective participation in the decision making processes and elected bodies both at national and local levels, as well as decentralised or local forms of government⁵⁹.

52. The issue of participation in public affairs has been explored in the second thematic commentary of the Advisory Committee - “Commentary on the Effective Participation of Persons Belonging to National Minorities in Cultural, Social and Economic Life and in Public Affairs”⁶⁰. In the view of the Advisory Committee “representation and participation of persons belonging to national minorities in elected bodies, public administration, judiciary and law-enforcement agencies is an essential but not sufficient condition for effective participation. Their inclusion in elected bodies at different levels largely depends on the constitutional traditions and guarantees provided for by electoral legislation. The choice and modalities of the electoral system often has a direct impact on the effectiveness of minority participation in decision-making. (...)”⁶¹. The Advisory Committee has found that, besides the possibilities provided for by the two main types of electoral systems (majoritarian and proportional), measures facilitating the representation of persons belonging to national minorities in elected bodies, such as exemptions from threshold requirements, reserved seats or veto rights, etc., should be supported⁶².

53. I therefore consider that appropriate representation of national minorities in public bodies, at both national and regional level could be ensured in an additional protocol to the ECHR, irrespective of the constitutional system of the state. For instance, the system of proportional representation would fairly ensure the participation of persons belonging to national minorities in public affairs, especially in constituencies where they constitute a large part of the local population. In practice, this system could be coupled with other measures such as those mentioned in the Advisory Committee’s Commentary.

5.3.3. Cultural rights, including the right to cultural autonomy as the main instrument to preserve the national identity

54. As stated by Professor Gilbert at the hearing in June 2011, expression as part of the culture of a minority group contains many different aspects beyond the obvious literature, art, music or performance: the use of one’s mother-tongue; different alphabets; names, particularly with respect to official documents; access to various media. Some of these aspects might be protected under Article 8 (right to respect for private life) and Article 10 (freedom of expression) of the ECHR.

55. The right to express, preserve and develop one’s cultural identity is mentioned in the Copenhagen document (paragraph 32) and is enshrined in a combination of provisions of the Framework Convention (Articles 5, 6 and 15). Its general nature means that the right to a specific identity is the basis for all the other substantive rights⁶³. One of the important aspects of cultural rights is access to the media: persons belonging to national minorities need to be able to create and make

⁵⁷ (...) The case concerned the Constitution of Bosnia-Herzegovina that had been established as part of the Dayton Agreement. It established the political structures of Bosnia-Herzegovina and granted certain rights to the “constituent peoples”, that is, the Bosnians, Croats and Serbs. Certain elements of the governance of the state were limited to persons from the “constituent peoples” and, as members of the Roma and Jewish communities respectively, Mr Sejdic and Mr Finci were thus barred from standing for the House of Peoples and the Presidency. They successfully challenged this under Article 3 of Protocol 1 with Article 14 of the ECHR and Article 1 of Protocol 12.

⁵⁸ Although the complaint before the Court was brought by two affected individuals, the contested interference concerned a specific group of persons belonging to national minorities. If such a complaint is to be justiciable, then it would better reflect the full range of underlying issues were the challenge to come from the affected group, something that a specific Protocol on basic standards for national minorities would facilitate.

⁵⁹ [http://www.coe.int/t/dghl/monitoring/minorities/1_AtGlance/PDF_H\(1995\)010_FCNM_ExplanReport_en.pdf](http://www.coe.int/t/dghl/monitoring/minorities/1_AtGlance/PDF_H(1995)010_FCNM_ExplanReport_en.pdf)

⁶⁰ ACFC/31 DOC(2008)001, adopted on 27 February 2008.

⁶¹ Ibid, paragraph 72.

⁶² Ibid, paragraphs 72 7 and paragraphs 81-84.

⁶³ Supra note 47.

use of their own media⁶⁴. The second thematic Commentary of the Advisory Committee also focuses on cultural rights. It stresses that the delegating competences to cultural autonomies can play an important role in enabling national minorities to participate effectively in cultural life⁶⁵. In this context, the process of decentralisation is of particular relevance⁶⁶.

56. Article 3 § 1 of the draft Protocol included in the Recommendation 1201 (1993) enshrines the right of persons belonging to national minorities to “express, preserve and develop in complete freedom his/her (...) cultural identity, without being subjected to any attempt at assimilation against his/her will”.

57. Some elements of expression are more susceptible to protection through litigation. If something affects the group as a whole, it has been argued that it is better if the application to the European Court of Human Rights may be brought by the group itself. Therefore, as a consequence of individual petition to the European Court, for example the cultural autonomy of the group might be protected.

5.3.4. The right to make decisions on different forms of autonomy, in accordance with European practices and national or regional traditions

58. The Framework Convention does not provide for the right of persons belonging to national minorities to autonomy, whether territorial or cultural. However, in its second thematic commentary, the Advisory Committee examined the functioning and impact of territorial and cultural autonomy arrangements on participation of persons belonging to national minorities in State Parties where they exist. It found that, “(...) in the State Parties in which territorial autonomy arrangements exist, as a result of specific historical, political and other circumstances, they can foster a more effective participation of persons belonging to national minorities in various areas of life”⁶⁷.

59. Article 11 of the proposed Protocol to the ECHR found in Recommendation 1201 provides for the right of autonomy of national minorities:

“In the regions where they are in a majority the persons belonging to a national minority shall have the right to have at their disposal appropriate local or autonomous authorities or to have a special status, matching the specific historical and territorial situation and in accordance with the domestic legislation of the state.”

60. As stated in the explanatory memorandum by Mr Worms⁶⁸, this right may have political repercussions, as states are afraid of infringing the principle of the “territorial integrity of states”. However, the proposed Article was drafted with the intention of preserving the integrity of the state in all circumstances: contacts with nationals of another country must not infringe the abovementioned principle and they are subject to the possibility of derogation provided for by Article 15 of the European Convention on Human Rights (this is the only circumstance in which the proposed protocol provides for the possible use of that derogation clause.) Thus, the inclusion of the right to autonomy in an additional protocol could be useful, since the Advisory Committee has demonstrated that it can have a positive impact on the participation of national minorities in different walks of life; however, such a provision would need to be carefully drafted.

5.3.5. The right to freely use the minority language in private and public life, especially in relations with the administrative authorities or the judicial system in areas where national minorities represent a significant percentage of the regional or local population

61. Linguistic rights of persons belonging to national minorities are guaranteed as part of freedom of expression in the European Convention on Human Rights (Article 10); however their protection in the case law of the ECtHR has sometimes been weak⁶⁹. These rights are also enshrined in paragraphs

⁶⁴ See supra note 60, p. 6.

⁶⁵ See supra note 60, p. 6 and paragraphs 65-68.

⁶⁶ Ibid, paragraph 67.

⁶⁷ Ibid, paragraph 134.

⁶⁸ Supra note 47.

⁶⁹ See for instance cases *Kuharec alias Kuhareca v. Latvia*, judgement of 7 December 2004, application n° 71557/01 and *Bulgakov v Ukraine*, judgement of 11 September 2007, application n° 59894/00. Both concerned the use of the majority’s spelling of the applicants’ names on official documents. Both cases involved ethnic Russians living in Latvia and Ukraine, respectively. *Kuharec* dealt with the transliteration of a Russian name on a passport issued by Latvia that added a feminine suffix (*Kuhareca*) to the name in conformity with Latvian rules of grammar. The case under Article 8 of the ECHR was declared inadmissible as the interference was minimal and

32.1 and 34 of the Copenhagen Document. They are guaranteed in Articles 9-11 of the Framework Convention and in more detail in the European Charter for Regional or Minority Languages. However, the wording of Articles 9-11 of the Framework Convention, in particular the use of the formula “the Parties undertake to recognise that”, makes these rights weak.

62. Article 7 of the proposed Protocol to the ECHR found in Recommendation 1201 provides for linguistic rights. I agree with Mr Worms that the inclusion of these rights in an additional protocol to the ECHR would be necessary because of the specific nature of the protection offered by the machinery of the Convention⁷⁰.

5.4. *Justiciability*

63. If a protocol on minority rights were to be adopted, the European Court of Human Rights would be able to receive individual complaints concerning the rights contained therein on the basis of Article 34 of the Convention⁷¹ from persons belonging to national minorities and from national minority groups.

64. Under the current system, complaints concerning minority rights might be individual or collective. An application can be lodged by individuals, groups of individuals and non-governmental organisations. As mentioned by Professor Gilbert at the hearing in June 2011, procedurally, there is nothing to prevent the European Court of Human Rights from hearing complaints from individual persons belonging to a national minority or from a group if it can show itself to be a victim of a violation of a Convention right. However, in practice it has transpired that such complaints have not been successful for various reasons, including formal ones⁷². Thus is because the rights set out in the ECHR are designed for individual applicants and minority groups cannot always show their victimhood separate from that of their members.

65. If a protocol were to be adopted, national minority groups would have the possibility to bring such claims to the ECtHR, as long as they can show that they are victim of the violation of the Protocol to the ECHR. In each case however the right-holders would need to substantiate their status as of victims of alleged violations. However, as stressed by Professor Gilbert, in the light of Protocol 14, it is possible that it will become even harder for groups to succeed in bringing complaints under the ECHR. Protocol 14 amended Article 35 of the Convention to add a new admissibility requirement – the applicant has to have suffered *a significant disadvantage*⁷³.

66. According to Professor Drzewicki, an individual complaint to the ECtHR could undermine the position of the Advisory Committee and its jurisprudence. Therefore the Advisory Committee should

deemed to be within the margin of appreciation. In *Bulgakov*, the applicant's Russian name had been changed into its Ukrainian equivalent in his internal passport; this was much more than a mere transliteration, but was a different name - from Dmitriy Vladimirovich to Dmytro Volodymyrovych. The case was rejected by the European Court of Human Rights because there was a domestic mechanism to allow the name to be changed that the applicant had not utilised, but it is apparent that names as part of the culture of a minority group could receive protection through individual complaints.

⁷⁰ Supra note 47.

⁷¹ “Article 34 – Individual applications

The Court may receive applications from any person, nongovernmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right.”

⁷² For example, in the case of *Noack and others v. Germany*, (...) concerning a Sorbian village relocation, the European Court considered that the applicants had no standing to bring a complaint, which was not separate from that of their members.

⁷³ Article 12 of Protocol No 14. Therefore the provision of Article 35 § 3 reads as follows:

“3. The Court shall declare inadmissible any individual application submitted under Article 34 if it considers that :

a. the application is incompatible with the provisions of the Convention or the Protocols thereto, manifestly ill-founded, or an abuse of the right of individual application; or
 b. the applicant has not suffered *a significant disadvantage*, unless respect for human rights as defined in the Convention and the Protocols thereto requires an examination of the application on the merits and provided that no case may be rejected on this ground which has not been duly considered by a domestic tribunal.” (Emphasis added).

act as an intermediary between the European Court and governments and develop the jurisprudence on minority rights for the needs of recourse to the European Court.⁷⁴

67. As stressed by Professor Gilbert, a Protocol concerning itself with the rights of national minorities as well as persons belonging to national minorities would have an advantage over the United Nations system. While the International Covenant on Civil and Political rights provides expressly for the rights of persons belonging to national minorities in Article 27, only individuals can submit a communication to the Human Rights Committee under first Optional Protocol 1. Nor can any individual submit a communication with respect to the right to self-determination under Article 1, for that is a right of peoples.

5.5. *Giving full effect to the rights*

68. Remedies available before the European Court are financial (i.e. payment of just satisfaction) while national minorities want changes in legislation and policy. However, the implementation of judgments of the European Court of Human Rights finding violation(s) of the Convention may sometimes lead to important changes in the legislation and practice of the respondent state, since, on the grounds of Article 46 of the Convention, states must take so-called “general measures”, which aim at preventing new similar violations in the future. The general measures required by the Committee of Ministers in the framework of its supervision of the execution of judgments can improve the situation of the community as a whole.⁷⁵

6. **Disadvantages of an additional Protocol and the idea of “National Minority Sensitive Guidelines”**

69. As stressed by Professor Gilbert at the June hearing, several factors argue against the promotion of an additional Protocol to the ECHR: the delay in getting cases to the European Court because of the backlog of applications; the limited reparation offered by the European Court; the nature of a judicial response generally in this area of international law; the danger of duplication and confusion with the work of the Advisory Committee and the general lack of political will at the international level to protect groups.

70. Hence, Professor Gilbert proposed to encourage greater liaison between the European Court and the Advisory Committee, for example through elaborating ‘Guiding Principles on Rights for Persons Belonging To National Minorities’; This could be achieved by academics, judges and parliamentarians for example in the form of a general comment. Such guidelines would assist the Court in its interpretation of the ECHR⁷⁶. They could cover each provision of the ECHR and its Protocols so as to alert the European Court of the broader context than simple individual claims. Given the need to obtain the political impetus for the additional Protocol to be adopted and then ratified, Guiding Principles would be swifter, more far-reaching and promote consistency across the Council of Europe area.

7. **Conclusion**

71. This is not the first time that the committee and the Assembly have addressed the question of adopting an additional protocol to the European Convention on Human Rights in order to strengthen the protection of national minorities. The proposed Protocol to the ECHR in the Assembly’s Resolution 1201 (1993) was not followed up and its ideas, dating from 1993, cannot be taken now. In the meantime, the Committee of Ministers of the Council of Europe adopted the Framework Convention for the Protection of National Minorities and Protocol No 12 to the Convention. Although some progress has been made in the member states which have ratified the Framework Convention and/or the Charter, the issue remains an important one and there is an urgent need to find effective solutions.

⁷⁴ Professor Drzewicki was also in favour of collective complaints which could be added to the Framework Convention and could be based on the collective complaints mechanism from the European Social Charter. The advantage of such a mechanism would be that national minority groups would not have to fill the rigorous criteria of the ECHR concerning the status of the victim. See also K. Drzewicki, *Advisability and feasibility of establishing a complaints mechanism for minority rights*, in: ‘Security and Human Rights’ 2010 No 2, p. 45-59.

⁷⁵ See in particular *Sidiropoulos and others v. Greece*, judgement of 10 July 1998, application 26695/95 and Committee of Ministers Resolution DH(2000)99 of 24 July 2000.

⁷⁶ The use of Guiding Principles is a practice that has been successfully adopted by UNHCR in trying to provide domestic courts in states applying the Convention Relating to the Status of Refugees 1951 and its 1967 Protocol with insight and analysis on various provisions relating to refugee status determination.

Many minorities are still in a precarious situation because States prefer to promote and implement a single cultural model which very often disregards the more diversified reality.

72. As stressed by Professor Drzewicki at the hearing in June 2011, decades of debates have demonstrated broad support for a complaints mechanism on minority rights among the parliamentarians and civil society, including national minorities themselves. This attitude has not been entirely accepted by the governments in spite of the democratic framework and mechanisms within the constitutional systems of governance of members of the Council of Europe. It seems that democratic mechanisms do not operate in a satisfactory way. Hence, I conclude, that it is time to eradicate the discrepancy between, on one hand, the will of societies and its democratically elected representatives and, on the other hand, that of governments, and consequently, adopt an additional protocol to the ECHR guaranteeing minimum rights to national minorities.

73. There are many reasons for considering an additional protocol to the ECHR. Most of all, any right must be accompanied by a remedy. The rights set forth in the Framework Convention are not justiciable, as they cannot not to be used in the court, while Article 34 of the ECHR allows groups of individuals to be seen as victims before the European Court of Human Rights.

74. The advantage of such a protocol would also be that all or some of the provisions of the Framework Convention for the Protection of National Minorities could be enforced by the European Court of Human Rights, which could refer to the "jurisprudence" of the Advisory Committee. The minimum rights contained in the additional protocol should apply for:

- the right of every person to express freely his/her belonging to a national minority;
- political rights (such as freedom of association, the creation of political parties, participation in elections, representation in public bodies, at both national and regional level);
- cultural rights, including the right to cultural autonomy as the main instrument to preserve the national identity;
- the right to make decisions on different forms of autonomy, in accordance with European practices and national or regional traditions;
- the right to freely use the minority language in private and public life, especially in relations with the administrative authorities or the judicial system in areas where national minorities represent a significant percentage of the regional or local population.

75. I am convinced that the incorporation of these rights in a binding legal text, namely an additional protocol to the ECHR, may be the only way to curtail discrimination against national minorities in the member states of the Council of Europe. The Assembly, which secures respect for the principles of democracy, the rule of law and human rights, could therefore again invite the Committee of Ministers to draft a protocol of this kind.

76. Drafting, adopting and ratifying such a protocol may take many years. Therefore, as suggested by Professor Gilbert, a parallel procedure would be needed: before the Council of Europe members states adopt an additional protocol to the ECHR, a quicker response, such as guidelines in favour of national minorities to guide lawyers before the ECtHR, could be elaborated.

77. In any event, PACE's MPs should start to actively promote the adoption of an additional protocol to the ECHR at domestic level, both within their parliaments and vis-à-vis their governments. Without political will, none of the above proposals will be followed up. Therefore I call again upon my colleagues from the Assembly to give impetus to the idea of an additional protocol, in line with its previous resolutions and recommendations.