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**ROUND TABLE ON**
**"NON-CITIZENS AND MINORITY RIGHTS"**

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# REPORT

## By


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# LEGAL ASPECTS REGARDING THE POSSIBLE CONSEQUENCES OF GRANTING THE STATUS OF PERSONS BELONGING TO NATIONAL MINORITIES TO NON-CITIZENS

## I. General remarks

### A. Origins of the legal debate

1. The present paper proposes an analysis over the legal consequences of granting the status of person belonging to national minorities to individuals who are not citizens of the State in which this status is granted. In this case, the national legislation concerning the protection of minorities, as well as the relevant international instruments in this field would apply to persons that are regarded as aliens from the point of view of general international law.

2. The origin of this legal debate can be identified in some special cases such as those in the Baltic States or in certain successor States of former Yugoslavia, where the legal status of an important number of persons is not (yet) clarified or settled. Thus, the existence of certain restrictive conditions for granting citizenship by some successor States generated a significant number of individuals not having/deprived by the citizenship of the State on whose territory they reside, but enjoying a specific ethnic, linguistic, religious and cultural identity.

3. It would be worth noting, in this context, the concerns expressed by the Advisory Committee of the Framework Convention for the Protection of National Minorities[1] concerning the fact that Estonia restricted the understanding of the term "national minorities" to "citizens" residing on the territory of Estonia.[2] These concerns were, nevertheless, determined by the fact that the citizenship requirement "does not appear suited on the existing situation in Estonia, where a substantial proportion of persons belonging to national minorities are persons who arrived in Estonia prior to the re-establishment of independence in 1991 and who do not at present have the citizenship of Estonia."[3] At the same time, the Advisory Committee noted that "further efforts are needed in order to make naturalisation more accessible, bearing in mind that the number of stateless persons remains high and the fact that the lack of citizenship often has a detrimental impact over the enjoyment of full and effective equality."[4] Similar situations could be observed, in the beginning of the 1990's, also in the other two Baltic States.

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1 Opinion on Estonia, adopted on 14 September 2001, specific comment in respect of Article 3 of the Framework Convention.

2 Declaration contained by the instrument of ratification of the Framework Convention, deposited by Estonia on 6 January 1997.

3 Opinion on Estonia, adopted on 14 September 2001, para 17.

4 *Ibid*, Executive Summary, para 5.

4. The situation of non-citizens was also noted as a result of the dissolution of the former Yugoslavia. The Advisory Committee on the Framework Convention for the Protection of National Minorities noted, for example, that the problems encountered with the *return of refugees' process* in Croatia affect the correct implementation of the Framework Convention.[5] The specific situation of displaced persons in some successor States of former Yugoslavia in relation with the citizenship issue is also complicated by the particularities of the previously existing system of "nations" (and the peculiar understanding attached to this term).

5. These particular situations determined somehow the need of granting a certain level of protection to certain persons that, in the common sense, would have been considered as persons belonging to minorities, but do not have the citizenship of their home - State due to specific historical or legal circumstances.

6. Besides the impulse given by these specific situations, it was also noticed that neither the UN, nor the European instruments on minority protection mention the citizenship criterion in order for this protection to be granted.

## B. Important aspects to be taken into account when discussing the issue of extending the minority status to non-citizens

### a. Absence of an "international"/European definition of the term "national minority"

7. The debate (and decision) of granting minority status to non-citizens might influence the debate on the definition of "national minority". The Venice Commission already started to recommend the exclusion out of the definitions of national minority at domestic level the citizenship criterion (see, for instance, the opinion issued in October 2005 regarding the draft Law on national minorities of Romania).

8. It is extremely important to underline, at this point, that, however, excluding out of the definition of national minority the citizenship criterion, that means granting official minority status to non-citizens, and granting – in fact, extending – some minority rights to non-citizens are not the same thing.

9. International documents do not provide for a definition of the term "national minority". Nor does the most important legal document within the Council of Europe legal system, the Framework Convention for the Protection of National Minorities. It is well known that both at international, and at European level convening upon a generally accepted definition of national minority (with the notable exception of the Central European Initiative) was not (yet) possible.

10. The Framework Convention departed from the initial proposal of the Parliamentary Assembly of the Council of Europe, contained in the Recommendation 1201 (1993) concerning an Additional Protocol to the European Convention on Human Rights on the Rights of National Minorities. Article 1 of the proposed Protocol provided for a definition of "national minority", according to the following criteria:

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[5] Opinion on Croatia, adopted on 6 April 2001, Executive Summary, para 4.

a. reside on the territory of the 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;
e. are motivated by a concern to preserve together that which constitutes their common identity, including culture, traditions, religion or language.

11. Absence of a definition in the Framework Convention generated the possibility and the need that States provide specific definitions in the internal legislation. [Some States prefer a simpler solution: enumerating the national minorities "recognised" on their territory (such as Article 64 of the Constitution of Slovenia)].

12. Nevertheless, the elimination of the definition initially proposed by Recommendation 1201 did not impeded States from sharing the essence of these criteria when defining "national minorities" on domestic level. Thus, certain State practice can be observed in the sense of conditioning the application of legislation concerning protection of national minorities to citizens.[6] Still, legislation of only a very limited number of States is extending minority rights to non-citizens.[7]

13. In other words, excluding the citizenship criterion / granting minority status to non-citizens is equivalent not only to extending the personal scope of minority protection to new categories of individuals, but also to *restarting the debate on the issue of a European definition of national minorities.* That is because excluding a certain criterion means finding another one(s) to replace it and to rely on. These new criteria are to be determined and accepted, this meaning to convene upon a generally accepted (new) European definition of national minority.

14. It is important to note, in this respect, that the most recent approach at the level of the Parliamentary Assembly of the Council of Europe seems to embrace or to come back to a rather *conservative* spirit. Thus, the Recommendation 1735/ 26 January 2006 on the "concept of nation" clearly refers to the persons belonging to national minorities as to citizens of their home-State: para 8 – "… on the territories of almost all the Council of Europe member states there live various groups of people who are at the same time *citizens* of the same state or civic nation…", para 9 – "These national minorities…which represent a constitutive part and a co-founding entity of the nation-state of which their members are subjects as *citizens*…", para 11 – "The Assembly acknowledges that the most important role in preserving the identity of national minorities falls with the state of which the national minority members are *citizens.*…", para 12 – "…to allow any individual to define himself as a member of a cultural 'nation' irrespective of his country of citizenship or the civic nation he belongs as a *citizen*…" (Italics added).

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[6] Constitutional Law in the Rights of National Minorities in Croatia, Article 4; Law on National Minorities of Ukraine (1992) – see also Advisory Committee Opinion on Ukraine, adopted on 1 March 2002, para 17; Declaration provided by Estonia, see note 2; Law no LXVII of 1993 on the Rights of National and Ethnic Minorities of Hungary, Article 1; Constitutional Act no. 23/1991 of Slovakia, Articles 24, 25, and 37.

[7] The cases of Latvia, Lithuania, Serbia and Montenegro.

b. The problem of the "new minorities"

15. The absence of the citizenship criterion within the definition of the national minority provides, indeed, for "more weight" of other criteria that might be followed in order to establish the content of the notion, such as the longstanding relations, the distinctive ethnic, cultural, religious or linguistic characteristics.

16. It might also imply putting the accent on *residence* and opening a debate on *how long* the residence period should be in order for a certain person to be considered as belonging to a national minority (a new one or an already existing one), or *how long* the relations with the home-State should be for a certain ethnic group to be recognised as minority. If UN and European instruments do not mention the citizenship criterion – in fact, they do not set forth *any* criterion, as they do not give any definition of national minority – there is, at least in theory, no legal reason to fix certain "long" periods of time in order for a certain group of persons to be regarded as a national minority (e.g. 100 years or more) or for a certain person to be considered to belong to an existing national minority.

17. The discrepancy between two particular persons residing for the same period of time on the same territory – one recognised as belonging to a "historic" national minority and the other not, because his/her ethnic group is not "historic" in that territory – can hardly be justified. If citizenship is excluded, why to maintain other restrictions that might be seen as discriminatory – like the "historic" link or the "personal" period of time?

18. Again, the recent approach of PACE is rather conservative: the Recommendation 1735/ 26 January 2006 on the "concept of nation" clearly refers to national minorities as to "traditional" ones; so, the "new minorities" are excluded. Thus, in para 11 the Assembly "invites member states to adopt legislation and regulatory acts *recognising the traditional national minorities* and apply them in good faith" (Italics added).

c. The problem of the political and legal bond between the kin-State (which coincides with the State of citizenship) and the kin-minority

19. Extending the personal scope of application of minority protection to non-citizens (of the home-State) allows also for the *foreign citizens* to be included in this category, thus creating a certain political and legal bond, on ethnic basis, between the kin-State (which coincides with the State of citizenship) and the kin-minority. There is not only an overlapping of legal regimes (see below) that occurs, but also the premises for allowing, at a later, subsequent possible stage *for all* persons belonging to that kin-minority (including those persons already having the home-State citizenship) to be granted the kin-State citizenship, on ethnic basis.

20. This possibility was criticised during the European debate on the well-known Law on Hungarians living in neighbouring countries, as being contrary to the good-neighbourliness principle because it was considered likely to create a political bond between kin-State and kin-minority.[8] Not only because the early versions of the Law provided dual citizenship for the Hungarians abroad (this idea was abandoned and eliminated from the draft submitted for approval to the Parliament), but because granting ethnic certificates with certain symbolism

[8] Chapter D, Section (c) "The Principle of friendly neighbourly relations", Report on the preferential treatment of national minorities by their kin - State, adopted by the Venice Commission (19-20 of October 2001).

included (similar to Hungarian passports) risked, according to the Venice Commission on the preferential treatment of national minorities by their kin-State of October 2001, to create a political bond, which was an understandable cause of concern for the home-State.[9]

21. Taking into account the above mentioned, including foreign citizens in the category of national minority would not only create a political bond, but also a legal one. The political implications, the "understandable concern" (even more obvious than in the above mentioned case) would render such a measure unacceptable for the European States.

d. The relationship between the national minority and the (civic) nation of the home-State

22. If the definition of national minority excludes the citizenship as a criterion, thus extending the scope of national minority to non-citizens, this could imply that such non-citizens (which, together with persons having the citizenship of the home – State, thus belong to the same national minority) become part or, at least, *associated* to a certain civic nation to which a national minority belongs in the home – State. The contradiction (non-citizens becoming, by association, a part of a civic nation, other than the civic nation of their State of citizenship) is *obvious*.

### C. Possible legal situations of non-citizens within the scope of this study

23. *Three* situations might be envisaged concerning the legal status of a non-citizen residing on the territory of a State.

24. *First*, this person might enjoy the status of "**alien**" (that is "foreign citizen"), thus taking benefit of the general international law applicable to aliens (see, for instance, the UNGA Resolution 40/144 of 13 December 1985 - Declaration on the Human Rights of Individuals Who are not Nationals of the Country in which They Live). At the same time, aliens enjoy the diplomatic and consular protection of the State of citizenship.

25. *Second*, a particular situation could be foreseen when a person receives the status of **refugee**, case in which relevant international law instruments apply.

26. A *Third* situation is the one in which a non-citizen residing on the territory of a State is a **stateless** person. In this case, relevant international law also applies.

## II. Legal consequences of the combined application of the minority status and the status of alien/refugee/stateless person

27. In order to establish the legal consequences of the parallelism between the status of person belonging to a national minority, on one hand, and the status of alien, refugee or Stateless person, on the other hand, a comparative analysis of the international law for the protection of aliens, refugees and Stateless persons *in parallel with* international law regarding persons belonging to minorities is useful.

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9 Ibid.

## A. Overview of the applicable law on the four categories

### a. The legal regime of aliens in international law

28. In the case of **aliens**, there is no general international instrument regarding their protection, the receiving State having, in principle, the sovereign right to admit aliens on its territory or to establish the regime of aliens residing on its territory.[10] However, the State has the obligation to observe the principle of **minimum standard of treatment**, providing for a set of minimum guaranties recognised by the State to the aliens residing on its territory, independently of the treatment granted to its own citizens or to norms agreed through international treaties. The content of this principle may be identified on a case by case basis, but there is a broad recognition of the fact that it concerns the respect of the *general principles of the human rights protection.*

29. In this context, a general acceptance in the sense of inclusion of the principle of *non-discrimination* on the ground of belonging to a national minority in the general principles of human rights can be noted.[11] Moreover, Article 1 of the Framework Convention includes the protection of national minorities in the international protection of human rights. Therefore, it can be considered that States have a general customary obligation not to discriminate on the ground of minority or not to prohibit certain rights, such as religious freedom or the right to use the native language. Nevertheless, little consent could be met on inclusion of the obligation to take positive measures, as the ones provided by Article 4(2) of the Framework Convention, towards *all residents* in the minimum standard of treatment.

30. At the same time, aliens living on the territory of a State are enjoying the diplomatic and consular protection of the State of citizenship. Thus, when its own citizen has suffered a prejudice due to certain action/measures of the authorities of the State of residence incompatible with the international law, after the exhaustion of local remedies, the State of citizenship may exercise the diplomatic protection. The individual claim is transformed into a State claim thereby.

31. Moreover, according to the 1963 Vienna Convention on Consular Relations, the sending State may intervene for defending the rights of its own citizens, rights that should have been observed by the receiving State (Article 5).

### b. The legal regime of refugees in international law

32. In the case of **refugees**, the reference document is the 1951 Convention related to the Status of Refugees,[12] establishing as a general principle, the **principle of non-refoulement**, meaning that no Contracting State shall expel or return ("*refouler*") a refugee, against his or

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[10] Nevertheless, States usually agree on bilateral or multilateral level the treatment applicable to nationals of the other Contracting Parties, by granting certain specific rights or specific regimes, as the most favoured nation treatment or national treatment.

[11] See opinion of Professor Matscher, quoted by Peter Van Dijk, in Comments on the Constitutional Law on the Rights of National Minorities in Croatia, Op. no. 216/2002 of the Venice Commission.

[12] The Convention was amended by the 1967 Protocol, with the main scope of enlarging the notion of refugee, without making any reference to the date of January 1, 1951. However, the Protocol is an independent international instrument from the Framework Convention of 1951.

her will, in any manner whatsoever, to a State where he or she fears persecution. The convention is not applicable to those refugees who are the concern of United Nations agencies other than UNHCR, [such as refugees from Palestine who receive protection or assistance from the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA)], nor to those refugees who have a status equivalent to nationals in their country of refuge.

33. As a general rule,[13] the State Parties to this Convention shall grant to refugees the same treatment as to the aliens accepted on their territory (Article 7 of the Convention). Moreover, the State Parties to the Convention are obliged not to discriminate the refugees by reference to their race, religion or State of origin (Article 3 of the Convention).

34. [Certain specific provisions of the Convention could be mentioned. Thus, Article 4 of the Convention regarding the right to religion, provides for a treatment not less favourable to the one granted to its own citizens. At the same time, Article 22 of the Convention regarding the right to education, provides for the same treatment for the refugees as for the citizens of the State, concerning elementary education. Regarding the following cycles of education, the treatment is similar to the one granted to aliens].

c. The legal regime of stateless persons in international law

35. In the case of the **stateless persons**, the reference document is the 1954 Convention relating to the Status of Stateless person, establishing a similar framework for stateless persons as for the refugees: principle of non-discriminatory treatment on the basis of race, religion or State of origin (Article 3), treatment similar to the one granted to aliens, with the exception where the Convention provides for a more favourable treatment (for example, Article 4 of the Convention provides for a treatment similar to the one granted to its own citizens as regards the freedom to express their religion).

36. [Specific provisions stipulate that during the elementary cycle of education, the Stateless persons are granted the same treatment with the citizens of the State of residence (Article 22). As for the following cycles of education, the treatment should be, as possible, similar to the one granted to aliens].

d. The legal regime of persons belonging to national minorities in international law

37. In Europe, the international protection granted to the persons belonging to **national minorities** is set forth mainly by the **1994 Framework Convention for the protection of national minorities,**[14] but also by other international documents. As mentioned above, there is no unanimously accepted definition of national minority.[15] Nor does the Convention provide for a definition of the term "national minority". Therefore concrete conditions that certain persons must accomplish for being recognised as persons belonging to national

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[13] The States shall grant the same treatment as to the aliens accepted on their territory, with the exception of the cases where the Convention provides for a more favourable treatment.

[14] The preamble of this Convention is referring to other international instruments containing provisions regarding the protection of minorities (such as the UN conventions and declarations).

[15] The Convention refers to "essential elements of their identity, namely religion, language, traditions and cultural heritage" in Article 5 (1).

minorities are established by the States. Thus, the right to "choose to be treated or not to be treated as a person belonging to a national minority", provided by Article 3 (1) of the Framework Convention is conditioned by the definition that each State provides for "national minority".

38. In conformity with the provisions of the Framework Convention, the persons belonging to national minorities have the benefit of certain rights that confer them the possibility of preserving and promoting their ethnic, linguistic, religious and cultural identity. The main idea is to ensure that the persons belonging to the national minorities are effectively treated equally as the majority. This means that it is necessary to take special measures in favour of the persons belonging to national minorities (Article 4 (2) of the Convention).[16]

39. The Convention provides for the possibility of a State which has ethnical, cultural, linguistic or religious link or a common cultural heritage with the persons having the status of national minority in another State, to conclude bilateral agreements with that State and the right of these persons to establish and maintain free and peaceful contacts across frontiers (Article 18 of the Convention).

40. The idea of the primacy of agreements and of a consensual (not unilateral) approach in the field of minority protection is reiterated by the **Report on the preferential treatment of national minorities by their kin - State,** adopted by the **Venice Commission (**19-20 of October 2001). The report provides, *inter alia*, for the following principles: *the primary responsibility for minority protection belongs to the home - State; there is a need of a conventional basis between the two States; the preferential treatment may be granted by the kin - State in the education and cultural field, and with the condition of the existence of the legitimate aim of fostering cultural links and with the respect of the principle of proportionality*. These rules were confirmed by the Statement of the High Commissioner of OSCE for the National Minorities, from October 26, 2001.

### B. Combined application of the aliens/refugee/Stateless persons regimes and minority status

41. There are certain legal *consequences* that may occur when granting to an alien/to a refugee/to a Stateless person the status of person belonging to national minority. The examination of some of these effects might be useful.

a. Aliens

42. *First*, even though in all situations rights of persons belonging to minorities are individual rights,[17] the exercise of the rights and the enjoyment of the freedoms flowing from the principles enshrined in the Framework Convention shall be done *individually as well as in community with others*, as provided by Article 3 (2) of the Framework Convention. Thus *the*

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[16] For example there are special rules regarding the protection of religious identity of the national minorities.

[17] The basic legal concept of the Framework Convention is "rights and freedoms of persons belonging to national minorities", meaning individual rights and freedoms (Article 1 of the Convention). The Framework Convention departed from the concepts proposed by the Recommendation 1201 (1993) of the Parliamentary Assembly of the Council of Europe, that provided, in para 5 of the Preamble, for "rights of national minorities" as a component of international law on human rights.

*exercise of the rights* does not regard only individuals, as in the case of aliens, refugees or Stateless persons, *but also communities of individuals.*

43. *Secondly*, in the case that certain aliens (that have, together with other aliens or with citizens of the home – State a common ethnic or cultural identity) are granted the status of persons belonging to a national minority, this situation might be interpreted as a *discrimination* against other aliens that may be found on the territory of that State (and do not have such identity links). That is because the State would be bound to take positive action in respect of the former category of aliens, according to Article 4 (2) of the Framework Convention, in order for them to *effectively* benefit from the same status as "the persons belonging to the majority."[18]

44. At the same time, the legal situation of cumulating the regime of person belonging to a national minority and the status of alien could be interpreted in the sense of *affecting* the sovereign right of the State to set forth the domestic standard of treatment of aliens, as, according to the provisions of the Framework Convention, the State would be obliged to grant to aliens with the status of persons belonging to national minorities certain rights that are generally excluded for aliens, such as the right to participate to activities related to public affairs.[19]

45. *Thirdly*, another consequence is related to the possibility of granting *diplomatic protection by the State of citizenship*. This would imply the possibility of the State of citizenship to intervene in the favour of the person residing on the territory of another State as alien and, at the same time, as a person belonging to a national minority. Practically, in this situation, it is most probable that the State of citizenship coincides with the kin - State, determining the *parallel application* of two different legal regimes: the preferential treatment granted by the kin - State, according to internationally recognised standards, and diplomatic protection. It would be difficult to imagine how the principles outlined in the Venice Commission Report on the Preferential Treatment of National Minorities by their kin-State of 2001, would apply in this situation, especially the ones referring to the primacy of agreement or the consensual approach between the two States involved.[20]

46. There might appear some questions whether this situation would create discrimination as regards the other persons belonging to national minorities (or to the same national minority, but that are citizens of the State in which they reside) that can not enjoy the diplomatic protection of the State with which they have cultural, linguistic, ethnic or religious ties or a common cultural heritage. Some questions might remain difficult to answer, especially whether the kin - State, which coincides with the State of citizenship, might overtake a claim

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[18] By the contrary, there is no contradiction or discrimination when granting fundamental freedoms (like the freedom of expression, freedom of association, access to education or to justice or other rights included within the general principles of human rights protection), as provided by the legal regime of aliens.

[19] Article 15 of the Framework Convention provides for the obligation of the Contracting Parties to create the necessary conditions for the participation of the persons belonging to the national minorities to the cultural, social or economic life also in the field of 'public affairs', especially when they have a direct effect on their situation.

[20] The exercise of diplomatic and consular protection is considered, according to the international law in force, as a *unilateral and discretionary right* of the State of citizenship.

of its citizen concerning the respect of international norms related to the rights of persons belonging to national minorities.

47. In connection with the above mentioned, another conceptual contradiction is the *qualification of the action* of the State exercising diplomatic protection for a person belonging to a national minority: according to international law, this is a *right* of that State; according to the standards regulating the kin – State involvement, "although (such) State…may have an *interest* in persons having the same ethnicity living abroad, *this does not entitle or imply, in any way, a right under international law* to exercise jurisdiction over these persons." [21] (Italics added)

48. Last but not least, it is important to underline that "an alien lawfully in the territory of a State may be *expelled* there from", under certain conditions.[22] Even if "individual or collective expulsion of such aliens on ground of race, colour, religion, culture, descent or national or ethnic origin is prohibited,"[23] creating this possibility (on other grounds) might be seen, in certain circumstances, as contrary to Article 16 of the Framework Convention, which prohibits measures aimed at modifying the proportion of population in areas inhabited by persons belonging to national minorities.

b. Refugees and Stateless persons

49. The main questions that may arise from the parallel application of the norms related to rights of persons belonging to minorities and the ones concerning refugees or stateless persons could be related to a possible situation of *discrimination* among different categories of refugees or stateless persons. This discrimination would result from applying *different legal norms* to different refugees or stateless persons, according to the criterion of belonging (or not) to a national minority, *in the context in which, in most cases, refugees and stateless persons have various/different ethnic, linguistic or religious features in comparison with the majority of citizens.* This situation could be also interpreted as affecting the non-discrimination rule on the basis of the *State of origin*, provided by Article 3 of the Convention relating to the Status of Refugees and Article 3 of the Convention relating to the Status of Stateless Persons.

## C. Coincidence of certain rights

50. The examination of certain specific rights established by international law to the benefit of the persons belonging to national minorities would be useful, with the view to see to what extent these rights coincide with other rights generally recognized for specific categories as aliens, refugees or stateless persons. For the purpose of this analysis, we will refer to the rights provided by the Framework Convention.

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[21] Statement of the High Commissioner of OSCE for the National Minorities, October 26, 2001.

[22] Article 7 of the UNGA Declaration on the Human Rights of Individuals Who are not Nationals of the Country in which They Live, 13 December 1985

[23] Ibid.

51. The *freedom of peaceful assembly, freedom of thought and freedom of expression* are provided by Article 7 of the Framework Convention for persons belonging to national minorities. *Freedom of expression* is also detailed in Article 9.[24]

52. At the same time, with respect to *freedom of peaceful assembly*, Article 5 para 2 (c) of the UNGA Declaration on the Human Rights of Individuals Who are not Nationals of the Country in which They Live (13 December 1985), Article 15 of the Convention relating to the Status of Refugees and Article 15 of the Convention relating to the Status of Stateless Persons also apply. *Freedom of thought* is also provided, for aliens, in Article 5 para1 (e) of the UNGA Declaration on the Human Rights of Individuals Who are not Nationals of the Country in which They Live. *Freedom of expression* is also provided, for aliens, in Article 5 para 2 (b) of the UNGA Declaration on the Human Rights of Individuals Who are not Nationals of the Country in which They Live.

53. The *freedom of religion* is regulated by Article 8 of the Framework Convention.

54. It can be noted that this freedom is regulated also in Article 5 para 1 (e) of the UNGA Declaration on the Human Rights of Individuals Who are not Nationals of the Country in which They Live, by Article 4 of the Convention relating to the Status of Refugees, and by Article 4 of the Convention relating to the Status of Stateless Persons.

55. With respect to the *right to education*, provided by Articles 12, 13, and 14 of the Framework Convention, it is to note that Article 22 of the Convention relating to the Status of Refugees and Article 22 of the Convention relating to the Status of Stateless Persons assimilate the treatment granted to refugees and stateless persons to the one granted to nationals.

56. The *right to equal protection by law and before courts* is set forth in Article 4 of the Framework Convention. It is also provided by Article 5 para 1 (c) of the UNGA Declaration on the Human Rights of Individuals Who are not Nationals of the Country in which They Live, by Article 16 of the Convention relating to the Status of Refugees and Article 16 of the Convention relating to the Status of Stateless Persons.

57. Therefore, certain rights and freedoms are guaranteed by international law to *all* categories examined: persons belonging to national minorities, aliens, refugees, stateless persons. In these situations, the need for applying the rules related to rights of persons belonging to national minorities would not appear as obvious. At the same time, it should be noted that the wording defining the exact content of these rights is not always identical, as the purpose of protection is not the same.

## III. Conclusions

58. The conclusion of the above analysis concerning the consequences of excluding the citizenship criterion from the domestic definitions of "persons belonging to national minorities" (in the sense of including non-citizens) are, mainly, the *following*:

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[24] These rights are also set forth in the European Convention on Human Rights (Articles 9, 10, 11) and the International Covenant on Civil and Political Rights (Articles 18, 19, 21).

- There is *no* definition accepted at international level for "national minorities"; the international and European legal instruments in this field do not provide any criteria regarding this definition – *either citizenship, or/and other criterion*; in consequence, the fact that national legislations restrict the application of rules concerning rights of persons belonging to minorities to citizens can not be interpreted as not respecting the Framework Convention or any other relevant legal instrument.

- Recommending the exclusion of citizenship as criterion from the definition of "national minority" implies discussing and *finding other criteria* to rely upon; they have to be *generally accepted*;

- Excluding the citizenship criterion from the domestic definitions of "persons belonging to national minorities" (in the sense of including non-citizens) creates a situation of *overlapping regimes* and *parallel application* of different set of norms of international law: international protection of national minorities *and*, at the same time, the legal regime of aliens or of refugees or of stateless persons;

- Applying simultaneously these different international law regimes would result in *practical and conceptual difficulties and contradictions*,[25] the *non-discrimination* rule is mostly affected;

- Some important rights and freedoms are regulated by *all* these regimes;

- Taking into account the difficulties encountered, as well as the *political* implications involved (especially regarding the inclusion of aliens/foreign citizens in the category of national minority), it is *unlikely* that States will accept easily the extension of the notion of "national minority" to persons that are not citizens of the State in which they reside *as a general rule*;

- Taking into consideration the fact that the debate about excluding the citizenship criterion was stimulated by some particular situations in Europe (following the dissolution of the former USSR and of the former Yugoslavia), the best solution would be found on a *case-by-case basis, if the specific situation in a certain State would call for an extension of certain rights of persons belonging to national minorities to persons not having the citizenship of that home – State; so, it should be seen as an exception, and not as a general rule;*

- So, if the specific situation in a certain country so requires, ***the right solution,*** *from the international law point of view****, is not to exclude the criterion of citizenship from the definition of national minority***, as set forth in its domestic legislation in this field, ***but to extend the benefit of certain rights of persons belonging to national minorities to those non – citizens present in the home - State who need this protection;*** the selection of those rights extended to such non – citizens should be performed also on a *right – by – right* (*article – by – article) approach.*

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[25] Perhaps the most controversial issues would be generated by granting diplomatic protection to a person belonging to a national minority by a State that coincides with the kin - State. This legal situation could be interpreted both in the sense of creating discrimination among persons belonging to that minority, and of affecting certain principles governing kin - State involvement. Nevertheless, difficulties resulting from the parallel application of international legal regimes for refugees or stateless persons should not be neglected.