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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

**ANALYSIS OF THE REPLIES TO THE QUESTIONNAIRE
ON THE RIGHTS OF MINORITIES**

by

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PRELIMINARY REMARK

Before entering into the analysis properly-so-called of the replies to the questionnaire on the rights of minorities, we would like to mention a fundamental difficulty of this work which lies in the fact that the experts of the various states which agreed to reply have done so in often very different ways. Thus, the great prudence some of them displayed with regard to certain questions sometimes makes it impossible to draw from their replies all the conclusions we would have wished.

For this reason, it is sometimes difficult to compare the attitudes of certain countries with regard to a particular problem, most frequently because of the lack of sufficiently precise information. Some of our remarks must therefore be treated with some caution, the elements available to us not always enabling us to be certain.

I. INTRODUCTION

Experts from eighteen countries agreed to reply to the questionnaire on the rights of minorities. If the case of the Grand Duchy of Luxembourg is put to one side, each of these states recognises at least, either in its Constitution, or in its legislation, the presence on its territory of minorities and the need to grant them a degree of protection.

But it is important to understand what is understood by the term "minority" in the different countries and to see what the term - or the other terms employed to qualify these categories of persons - covers (II). Then the content, the extent of the rights or special protection granted to these groups or their members must be examined (III), but also the duties they must perform in return (IV). Finally, we will see what mechanisms, if any, guarantee the effectiveness of this protection (V).

II. DEFINITION OF THE CONCEPT OF "MINORITY"

The question of the definition of the concept of "minority" is obviously not new. It is enough to consult the considerable writing on the subject to be convinced of this.

The question has not, however, been resolved. Some factors have certainly been identified as, for example, the classification - classic without being universal - of minorities into three groups: ethnic

minorities, religious minorities and linguistic minorities. But no generally accepted definition of minorities has been formulated. While some have tried to do so, others have preferred not to, considering either that definition is impossible or that it is in any case useless.

These hesitations are naturally to be found in the replies to the questionnaire given by the experts. While the various states accept the concept, the terms employed to describe it, in the Constitution or legislation, differ. Similarly, while some of them try to define minorities, most make no attempt to do so.

1) Terms used to refer to minorities:

The great majority of the states whose situation is described in the replies to the questionnaire employ only the term "minority", combined in different cases with one or several qualifiers: minorities are "linguistic", "ethnic", "religious", "cultural" or, more rarely, "national" (this is the case of Albania, the Constitution of the German Land of Saxe, Hungary, Kyrgyzstan and Poland).

Other expressions are also used: Austria speaks more easily, since the passage of a 1976 law, of "ethnic groups"; Romania, which does not recognise minorities as distinct entities made up of the members composing them, speaks of "persons (or citizens) belonging to national minorities".

Some states employ several terms: Canada thus speaks of minorities, indigenous peoples (Constitution), groups of individuals (Canadian law on the rights of the individual), Catholic and Protestant groups (Constitutional Law of 1867) . Croatia speaks of "national and ethnic communities or minorities", as does Slovenia. Finland employs the terms "minorities" and, in its Penal Code, "racial group, group of a national or ethnic origin, or religious group". Hungary, in its definition of minorities, qualifies them as "groups of peoples". Finally, The Constitutions of certain German Länder use the terms "minorities and ethnic groups" (Schleswig-Holstein), even "people" (Brandenburg, which also speaks of ethnic, cultural, religious or linguistic minorities).

Finally, some states do not employ any term at all, either because they do not directly regulate the fate of minorities on their territory, as is the case of the Grand Duchy of Luxembourg, or because they refer by name to the groups which enjoy particular protection, as is the case of Denmark which speaks of the rights of the inhabitants of the Faroe Islands and of Greenland, as well as certain Icelandic citizens.

2) Definition of minority / minorities

A. IN THE CONSTITUTION:

Several states use the term "minority", or equivalent terms, in their Constitutions, without ever defining them. This is, for example, the case of Croatia, Albania, Finland, Hungary, Italy, Poland, Slovenia, Sweden, Belgium and again some German Länder.

There is therefore no definition of minorities with any constitutional value to be found in any of the

states in which experts have replied to the questionnaire.

We note, however, the case of the Republic of Croatia, whose "Constitutional Law on Human Rights and Freedoms and the Rights of National and Ethnic Communities or Minorities" of 1992, in Articles 5 to 57 details the rights granted to minorities or to their members in the cultural field (the right to their own identity, culture, religion, the right to the public and private use of their own language, right to their own education, right to have their own public and cultural activities and to form societies in order to protect national and cultural identity), in the educational field and participation in the exercise of political power. This leads the Croat rapporteur to say that the Constitutional Law indirectly defines the term "minority" in the sense in which it is understood by Croatia: minorities or their members are, according to this view, the groups and persons whose characteristics are the subject of the rights given to them by the Constitutional Law. The group and its members are thus defined by the content of their rights.

B. IN THE LAW:

Some states use the term "minority" or something similar in their legislation either in laws specifically concerning minorities (in Austria, Finland, Greece, Hungary, Portugal, Italy) or in other laws.

1. Some states define minorities in legislation.

It is at this stage, at the legislative stage, that the only attempts at a direct definition of minorities are to be found.

The Republic of Austria, in Article 1 of the 1976 Law on ethnic groups, considers to be such

"the groups of Austrian citizens permanently domiciled on the territory of the Republic, with a mother-tongue other than German and having their own cultural heritage".

Hungary, defines the scope of Law no. LXXVII of 1993 on the rights of national and ethnic minorities as follows:

Article 1. -

"1) The present law shall be applied to all persons of Hungarian citizenship living on the territory of the Republic of Hungary who consider themselves as belonging to a national or ethnic minority, as well as to the communities formed by these persons.

2) For the purposes of the present law, a national or ethnic minority (henceforth minority) is a whole group of peoples living on the territory of the Republic of Hungary, for at least a decade, which constitutes a numerical minority in the population of the State, the members of which have Hungarian citizenship / nationality and who differ from the rest of the population by their mother-tongue, culture and traditions and who manifest at the same

time a consciousness of inherent cohesion, which seeks the protection of these values and the expression and protection of the interests of their historically developed communities.

3) The present law does not apply to refugees, immigrants and persons with the nationality of a foreign State but resident in Hungary on a long-term basis, nor to stateless persons".

These are the only two real definitions of minorities properly speaking that are to be found in the legislation of the states whose experts reported on the situation. We should, however mention the cases of two other countries, Finland and Denmark, which, while not really defining the notion of "minority", do specify the characteristics that certain categories of persons must present if they wish to obtain special protection.

This is the case, in Finland, of the Sæmis (Lapps) and the Gypsies. According to Section 2 of the Act on the Use of the Sæmi Language in contacts with the Authorities, a Sæmi is any person who considers himself to be Sæmi, provided that either himself or any of his grandparents learned the Sæmi language as his first language. The Gypsy, this time according to Section 1 of the Act on the Improvement of the Housing Conditions of Gypsies, is a person who considers himself to be a Gypsy, except when it is evident that he is not a Gypsy, as well as the spouse of such a person and his children living in the same household. Finally, the "citizens" of the autonomous province of Åland are Finnish citizens possessing the "home region right" of the province, which can at present only be acquired by "naturalisation" in the province.

In Denmark, a "Faroe" is defined as "a Danish citizen domiciled in the Faroe Islands" (Article 10, section 1 of the Faroe Islands Home Rule Act). The Greenland Home Rule Act, which recognises Greenland as a distinct society within the Kingdom of Denmark, simply mentions permanent residents of Greenland as enjoying special protection.

If these four definitions are considered, they can be placed in two categories: Austria and Hungary focus on groups of persons, that is, minorities as such, as entities. Finland and Denmark, on the other hand, describe individuals who will have special rights, and not groups. The former display, at least at this simple stage of the definition, a collective approach to the question of minorities and the latter a more individualist approach.

In any case, it is interesting to see what criteria are used by these states in the definition of their minorities. Most of them are objective criteria: nationality or citizenship of the state, residence on the territory of that state, lasting presence, or even ancient or historical presence, the fact of constituting or being part of a numerical minority of the population, speaking a language distinct from that of the majority, having their own cultural heritage, traditions or religion (if we take the "indirect" definition of the Croat Constitutional Law).

On the other hand, other criteria are sometimes used which are more subjective, whether it be "considering oneself Sæmi or Gypsy" (Finland) or "considering themselves as belonging to a minority", or against manifesting a "consciousness of inherent cohesion" (Hungary).

2. The other states do not define minorities.

Even though the other states use the term "minority" in their legislation, or other terms which cover more or less the same reality, they give no more definition of them than their Constitutions when they also mention them. Yet all, still setting aside the Grand Duchy of Luxembourg, accord rights to minorities or, at least, to persons who belong to them.

Now if these rights which are conceded to minorities are to be applied, those enjoying them must be identified. There must, therefore, be conditions that have to be fulfilled in order to enjoy them. It is in these conditions that, for want of anything better, the elements of definition are to be found.

Thus, as a general rule, at the very least, the sine qua non is the possession of the nationality, and / or residence on the territory, of the particular state; in Italy, the protection of those concerned is further restricted to certain well-defined geographic zones (Valle d'Aosta, the Trentino-Alto-Adige and the provinces of Trieste and Gorizia). Thus, in the absence of a definition, only objective criteria have been taken into consideration.

It will be noticed that, as is moreover the case in the countries where they are defined, the only minorities protected are those whose members possess the nationality of the state in question; it is extremely rare for specific protective laws to be enjoyed also by non-nationals (this is the case only in Sweden, in Finland for the Sámis and the Gypsies, and in a proposed modification of the Basic Law in Germany, introduced by the Land of Brandenburg). Moreover, as was mentioned above, Hungary expressly excludes refugees, immigrants and stateless persons from the system of protection of minorities (Article A of Law no. LXXVII).

C. IN CASE-LAW

The replies provided by the experts of the various states do not enable us to have an overall view of the way in which the case-law, if any, of their constitutional and other courts regards the notion of minority.

3. The free choice of belonging to a minority.

The last question to examine at this stage of the definition of the concept of minority is the way in which belonging to a minority is determined.

This can be free, that is a matter of the personal choice of each individual who decides either to declare himself a member of a minority or, on the contrary, not to be part of one. It follows that such a choice will genuinely be free only insofar as there is no harmful consequence. Conversely, this choice may well not exist: the authorities will then intervene to determine themselves whether or not of their citizens belong to a minority.

The replies given by the rapporteurs of the various states to this question all tend in the same

direction: in each of them, belonging or not belonging to a minority results from a strictly personal choice: in no case will the state intervene.

Nevertheless, these remarks must be filled out a little. It is true that no state, according to the replies received, unilaterally imposes on some of its citizens the quality of member of a minority. Similarly, none of them forbid them to renounce belonging to a minority. On the other hand, not everyone who would like to state that he belongs to a minority and consequently claim the enjoyment of specific rights may do so. This is particularly the case in the countries which take the trouble to define what they mean by "minority". One must correspond to the criteria laid down in the definition. Thus, for example, in Austria and Hungary, one must speak a language other than that of the majority of the population; in Finland, one can only describe oneself as Sámi if one has, or has a parent or grand-parent who has, Lapp as mother-tongue, and it is not possible to claim to be Gypsy "if it is evident that one is not". In Kyrgyzstan, the choice of a "nationality" is restricted: it is not possible to opt for the nationality of one's father or mother, and once the choice is made, it is definitive and irreversible.

As for the consequences of this choice, in particular for the acquisition or loss of nationality or the exercise of political rights, the experts, in all states, reply in general that there are none. We note, however, the somewhat sibylline reply of the rapporteur of the Grand Duchy of Luxembourg according to which, "belonging to an ethnic minority can have an effect on the exercise of political rights when they are for the moment reserved to Luxemburgers". In Finland, when it is a matter of granting Finnish nationality, and this decision is free, account may be taken of the ethnic origin as well as the knowledge of the Swedish or Finnish language that the candidate can show. But once nationality is acquired, it cannot be lost because one belongs to a minority.

Finally, it is clear that when the administrative or institutional structure of the state enables minorities or their members to participate as such, at any stage, in the exercise of political power, belonging or not belonging to a minority will obviously be a determining factor. We will return to this point later.

iii the protection of minorities within the state

I. The recognition of minorities by the state.

Before analysing the laws protecting minorities, it is necessary to know whether, in order to benefit from these laws, minorities must be recognised by the state, that is recognised not simply as a reality, but recognised and identified precisely as groups who must be protected. If this recognition is not required, all minorities may be protected: it is enough to fulfil the criteria used to define them. If, on the contrary, recognition is required, the fact of fulfilling these conditions is no longer sufficient: a positive act of recognition is required in addition.

In some countries, the Constitution or the law requires the recognition of minorities by the state as an indispensable condition for them to be able to benefit from all or some of the safeguards provided. This is, for example, the case in Italy, Belgium - where the protection granted to linguistic

minorities by the legislation on the use of languages, for example, is limited exclusively to the categories of persons mentioned in the law - , in Croatia or in Hungary, where, furthermore, a procedure is provided for which enables groups of citizens who so desire to have the fact that they constitute a minority certified and obtain this recognition (Law no. LXXVII, Article 61).

In other countries, the Constitution or the law expressly allows the state to recognise minorities, without, however, requiring it to do so, as in Albania. In still others, on the contrary, this possibility is not provided for, but nor is it expressly excluded. This is the case in Greece, Poland, Denmark, Finland, Portugal, Kyrgyzstan, Slovenia and Germany. Finally, in Romania, the recognition of minorities by the state is expressly forbidden, since only individuals, and not groups, may be granted specific rights.

This is obviously not an innocent question. If a state must, by virtue of its domestic law, recognise minorities, it will not be able to avoid ensuring that they enjoy these rights. This is a supplementary safeguard which minorities enjoy.

On the other hand, the application of this same mechanism may have the result of creating discrimination between minorities, according to whether or not they are recognised by the state. This discrimination may take the form of extra help to some minorities recognised as particularly "worthy" of protection: thus, in Slovenia, supplementary rights are given to certain native peoples; Canada, while not recognising minorities, nevertheless grants special rights to the indigenous population; Croatia gives a special status to two districts where the Serb minority represents more than 50% of the population and enjoys privileges not granted to other minorities; finally, Hungary grants privileges to some minorities, of which the others are deprived. But by pushing things to the extreme, one can also arrive at much more harmful results, in that it would be possible that some minorities, because they were not recognised by the state, would not even be taken into account and thus find themselves without any protection at all. This danger is obviously lying in wait for all countries where either the Constitution or the law requires the recognition of minorities by the state as a prerequisite for the granting of any special protection. One striking example of this is Belgium where several linguistic minorities are refused any protection because they are not recognised as such by the legislation on the use of languages.

2. The rights of minorities

A. "INSTITUTIONAL" PROTECTION OF MINORITIES

The first, and probably the best, way of ensuring effective protection of minorities and of enabling them to best satisfy their claims is to take account of their existence in the state structure itself. Yet only two states among those for which we have information have opted for a federal model because

of the heterogeneity of their populations and the existence of minorities in their territory. They are Belgium, which has officially been federal since the constitutional revision of 5 May 1993, and Canada. While other states have chosen the same type of state, they do not justify having done so for the same reasons but rather for historical reasons.

A regional state structure also makes it possible to simplify the question of the protection of minorities; while Italian regionalism is the result of factors other than the presence of minorities, the two major linguistic minorities of Italy are nonetheless to be found in two regions, the Valle d'Aosta and Trentino-Alto-Adige, which both enjoy a particular autonomy for this reason.

In any case, it is also possible to ensure an "institutional" protection of minorities in unitary states. For example, by adapting the administrative division of the territory to the presence of minorities, they can be guaranteed better participation in the political life of the country, even a degree of autonomy. We will return to this below.

We would like to point out straightaway, however, that these solutions, federalism, regionalism or others, have one major limitation: they all pre-suppose that minorities are concentrated or grouped together. They will therefore be of no assistance if minorities are dispersed throughout the national territory. In this case, other means of protection have to be found.

B. PROTECTION BY THE GRANTING OF RIGHTS

1. Fundamental rights and the principle of equality.

Fundamental rights, whether they are recognised in the state's own Constitution or in the European Convention on Human Rights are above all designed to protect every human being, whoever he may be, precisely as a human being. Nevertheless, they also make it possible to provide, generally, quite a good level of protection for the members of minorities, notably through principles of equality and non-discrimination.

All the states for which we have a reply have included in their Constitutions or elsewhere the principle of equality and / or non-discrimination. Sometimes these texts treat the problem of minorities either explicitly, when they expressly forbid any discrimination on the grounds of belonging to a minority (Albania, Austria, Croatia), or more indirectly, when they simply prohibit any discrimination on the grounds of nationality, race, language or religion (Canada, Germany, Hungary, Italy, Kyrgyzstan, Poland, Portugal). But sometimes too the constitutional provisions containing the principle of equality make no mention of this question, as is the case of the Grand Duchy of Luxembourg, Denmark, Finland, Greece and Sweden. In Belgium, Article 6 of the Constitution simply proclaims the equality before the law of all Belgians, but Article 6b forbids any discrimination affecting particularly ideological and philosophical minorities.

The protection of minorities through these principles of equality and non-discrimination rests on an individual approach to the question. The Grand Duchy of Luxembourg, for example, restricts itself purely and simply to this approach, protecting minorities only through laws on equality and non-

discrimination.

However, the mere application of these laws will not always make it possible to protect minority groups sufficiently, nor certainly to take account of their particular characteristics or specific interests. It is even possible that the application of the principle of equality would paradoxically result in discrimination against certain minorities. There is a corrective to this which makes it possible to take specific measures in favour of certain categories of individuals: the system known as positive discrimination.

According to the replies to the questionnaire, many states are to a greater or lesser extent familiar with this mechanism. This is, for example, the case of Albania, Austria, Canada, Croatia, in the Constitutions of certain German Länder, Greece, Hungary, Italy and Slovenia.

The use of positive discrimination indicates that we are passing from a strictly individual conception of the protection of minorities to a more collective conception. Individual protection alone, through classic fundamental rights, is no longer enough: the minority group is no longer simply the sum of its members but represents a distinct entity which itself enjoys rights. In fact, almost all the states where positive discrimination is used have a collective approach to the problem.

We will again note that while the strictly individual approach can completely exclude the collective approach - this is the case in Romania, where only the people belonging to minorities are taken into consideration, to the exclusion of groups - , the contrary is not true. The most effective protection of minorities consists without any doubt in taking account of the individuals as much as the groups they constitute, and granting specific rights to both. Many states seem to have understood this and approach the question of minorities in terms of individuals and groups at once (Albania, Austria, Canada, Croatia, Poland).

2. The specific rights accorded to minorities

Most states do not limit themselves to protecting minorities only by the application of the principle of equality, even if it is corrected by positive discrimination mechanisms. Most often, they seek to go further in the measures they take in favour of their minorities. Specific rights are then granted to them, which obviously differ according to the needs of each type of minority.

a) Linguistic rights

The countries where there are either ethnic minorities, which as a general rule have their own language, distinct from that of the majority, or only linguistic minorities, if they wish to protect these minorities, must establish regulations concerning the use of languages in order to guarantee a certain role to the minority language. Only one country, apart from Portugal and Greece which have no linguistic minorities, does not take the trouble to do so: Poland, where the question of the right

of minorities to use their mother-tongues is regulated neither in the Constitution, nor the law, but in international bilateral treaties.

As for the other states for which we have replies to the questionnaire, all apparently accept the freedom of the individual to use the language he chooses in the private sphere. Often, this right is even expressly guaranteed in the Constitution (Austria, Belgium, Croatia, Germany, Greece, Slovenia).

Things are of course much less simple regarding the use of languages in the public sphere, that is in the relations between private individuals and the authorities, and between the latter. This question certainly deserves a questionnaire to itself; furthermore, very often the replies given by the experts of the various countries were too schematic for us to be able to make any judgment about the various systems in existence. Nevertheless, we can attempt to classify the states using the available information on the basis of the replies to the questionnaire according to the degree of importance they give to the minority language(s).

The states which apparently accord the least weight to minority languages seem to be Romania and Germany. In Romania, Article 13 of the Constitution makes Romanian the only official language of the Republic. However, Article 127 specifies that, in judicial proceedings, the members of national minorities and, more generally, all those who do not understand Romanian, have the right to an interpreter (free in criminal cases) and to a translation of the procedural documents. In Germany, German is the only official language of the country; according to federal law, only German may be used in the public sphere. However, the Serbian minority has the right to use its language in judicial matters. The Constitution of the Land of Brandenburg goes further, since it authorises the same Serbian minority to use its language in the whole of the public sphere; furthermore, it is provided that in the regions occupied by this minority all road signs must be bilingual.

It should be noted here that in Austria Article 8 of the Constitution also makes German the only official language of the Republic and confers on the legislature the duty to establish laws concerning the public use of the languages of minorities. But the content of these laws is not specified in the reply. The case of the Grand Duchy of Luxembourg is rather particular since Luxembourgish has been the official language of the country since 1984. Each citizen can thus address the authorities in this language. But, according to the Constitution, the use of languages is regulated by the law; thus, French is used by the Courts and generally by government departments in their communications with each other. In their communications with private individuals, in different cases, they use French or German.

In some states such as Belgium, Canada, Italy and Finland, the question of the use of languages is quite precisely regulated. In Belgium, the three national languages, French, Dutch and German, have the status of official languages. But their use by, and in relations with, government departments, as well as in the fields of justice and social relations, are the subject of very detailed and complex legislation which, based essentially on the principle of territoriality, does not always, however, provide ideal protection for the various linguistic minorities and has fuelled much case-law. In Canada, in the same way, the use of languages in the official sphere has produced and is still

producing abundant regulation. English and French are the two official languages and linguistic legislation is tending to establish a generalised official bilingualism. In Italy, while Italian is the only official language of the Republic, German enjoys exactly the same status of official language in the region of Trentino-Alto-Adige, particularly in the province of Bolzano where there is a German-speaking minority. It can therefore be used in the public sphere on the same basis as Italian. In the Valle d'Aosta, the principle is the same, this time in relation to French, except for the fact that Italian remains the only language employed in the judicial field. In the provinces of Trieste and Gorizia, where there is a Slovene minority, interpreters are placed at the disposal of its members. Finally, in Finland, the Constitution gives both principal languages, Finnish and Swedish, exactly the same official status, which is detailed in law. As for the Sápmis, they have the right in law to use their language before any administrative or judicial authority whose competence extends to the territory they occupy as well as before the national courts and certain national departments. In addition, they always have the right to an official translation of administrative documents.

In other states, linguistic legislation seems to be less developed. The Constitutions affirm the right of linguistic minorities to express themselves freely, to preserve and develop their cultural and linguistic identity (Albania, Sweden), or even tend to place minority languages on an equal footing with the official language (Kyrgyzstan, Sweden). Finally, in some states, all languages appear to enjoy exactly the same treatment: either there is no genuinely "official" state language, as seems to be the case in Croatia and Hungary, or they are all recognised as such (Denmark, Slovenia).

b) Rights in the educational field

In the educational field, there are two principal aspects that must be emphasised as far as the problem of minorities is concerned: the linguistic aspect, that is the question of education in the language(s) of minorities and of these languages, and the religious aspect. The first aspect essentially concerns ethnic and linguistic minorities and is therefore intimately connected to the question of the use of languages discussed above. The second concerns principally religious minorities but possibly also ethnic minorities. Here, too, the problem is vast and the information provided by the rapporteurs of the various states does not always make it possible to have a precise idea of the various situations.

1) With regard to the question of linguistic minorities.

We note that a great number of states provide, in their Constitutions or in legislation, that education will be organised in the language of the minority, at least at primary and secondary level.

The rule may apply generally, that is throughout the territory: this is the case in Albania (where secondary education is also conducted, however, in the national and in the minority language(s)), in certain German Länder, Greece, Croatia (where, in addition, curricula may be adapted to the history and culture of the minorities and where separate schools may be created in towns with a great

concentration of minorities; finally, university education may also be given in the minority language), in Hungary (where an adaptation of curricula to the specific history and culture of minorities is also provided for) and Kyrgyzstan (where education is conducted in both languages, the official language and that of the minority, and sometimes only in the minority language, when that is possible).

The application of the rule may also be restricted to certain regions where the minorities concerned are grouped together, as in Italy (teaching is carried out in German only in the schools of the region of Trentino-Alto-Adige, and in French in the Valle d'Aosta, where moreover it is in French for everyone, half in French, half in Italian; teaching in Slovene is generally provided where that minority is present), Canada (where numbers justify it), Austria (in Kärnten, where the Slovene minority is to be found, and in Burgenland, where the Croat and Hungarian minorities live). The Belgian system is similar: the principle of territoriality, which requires that teaching be carried out only in the official language of the linguistic region concerned, is tempered in some areas, enumerated in the law, where, if there is a certain number of requests, teaching may be carried out in the language of the minority. But teaching of the other languages is always provided.

Denmark contents itself with providing the teaching of the minority language in state schools, but expressly allows parents to find other solutions if they want their children to be educated in their mother-tongue. In Sweden there is a mixed system: teaching is provided in the language of the Sæmis in their region, but elsewhere only the teaching of languages other than Swedish is provided for. Similarly, in Poland, teaching at all levels may be in a minority language, if the number of pupils interested permits the creation of special classes. Otherwise, teaching of the minority language will be provided.

Finally, we must note that several states expressly make provision for the possibility of creating private schools where the use of languages is completely free: Denmark, of course, but also Poland, Slovenia and Sweden.

2) With regard to the question of religious minorities.

The replies to the questionnaire give us little information to analyse. Canada provides for the guarantee of the confessional rights of Catholics and Protestants; schools of this nature must be financed out of public funds, funds which are also provided to other schools. In Denmark, children who do not wish to attend classes in the Catholic religion in official schools may be exempted from doing so. In Germany, the federal legislature has given more attention to this question than that of the use of languages: a very clear distinction is made between state schools, where parents and children over fourteen may refuse religious instruction, and private schools. The latter may be recognised (and therefore financed) only if they are religious or confessional and guarantee an education similar to that of the other establishments. In Belgium, Article 17 of the Constitution guarantees freedom of education and the free choice of parents; official education is neutral and provides a choice of the teaching of the major recognised religions or of non-confessional ethics. Finally, in Romania, finally, the state guarantees freedom of religious education and the organisation of religious instruction in state schools.

c) Freedom of belief and worship.

The rights of people belonging to religious minorities may be taken into consideration by states in various ways which result in varying degrees of protection.

Firstly, the problem can be approached from the point of view of non-discrimination which means that the individuals must be able to enjoy and exercise freedom of thought, conscience and religion, without discrimination. This represents a minimum degree of protection for people belonging to religious minorities.

Another approach is for the state to take special measures to promote the material equality of religious groups; some people may find themselves in a minority religious position and therefore require special attention from the state.

In this section we will address ourselves to the task of seeing whether the states which have religious minorities have taken special measures or have, at least, taken account of freedom of religion in their Constitutions.

1) Freedom of thought, conscience and religion.

All the states for which we have information recognise this fundamental freedom, whatever the terminology employed. The countries thus speak of freedom of religion, conscience, belief, worship, etc.

This freedom has implications at both individual and collective level which means that everyone has the right to choose a religion and that the individuals of the same religion may come together to worship. Some states clearly make provision for the right of these persons to practice, in both public and private, individually and collectively, the religion of their choice.

This freedom also implies that of not choosing a religion. Few states explicitly recognise unbelief; we can, however, cite the examples of Canada, Germany, Greece, Italy, Kyrgyzstan.

Another important point is that no one can be obliged to practice a given religion: no country imposes this obligation, all citizens being free to choose a religion, to leave it and join another religious community.

The freedom of religion and conscience provided for is not unlimited: there must be some restrictions. Thus we find restrictions appropriate to any democratic society; the exercise of this freedom cannot be contrary to accepted standards of behaviour or public order.

2) The question of the recognition of religious confessions.

In order to enjoy supplementary guarantees, some religious communities must be recognised by the

public authorities. Thus in Portugal, in order to have a legal personality, religious confessions must first obtain recognition. The problem of military service also arises here. Some religions forbid their members to do military service and a state such as Kyrgyzstan provides that a person who is a member of a registered religious organisation shall have the right to do some other form of service.

The legislation of states such as Hungary require that certain special conditions be fulfilled in order to create a church. Among these conditions, we might note that it must not be contrary to the law or the Constitution and that it must be registered with a departmental or municipal court. See also Article 8 of Law no. IV of 1990.

Others grant special protection to some religions with no prior recognition being required; this is notably the case in Canada, where there is no state religion but where the confessional rights of Catholics and Protestants are protected in their schools by Article 93 of the Constitutional Law of 1867.

3) The right to create educational establishments

The most striking case in this respect is Croatia which seems exemplary in every respect. The Constitution provides that "religious communities are free, in conformity with law, to open their own schools,...". The religious communities thus have numerous kindergartens, high schools and universities at their disposal. It is accepted that the right that everyone has to profess his own religion also involves that of creating schools.

4) Financing of religious activities by the state.

The replies to the questionnaire are too laconic on this subject. This is a pity because it is one of the areas in which the members of the religious minorities of a country may find themselves at a disadvantage.

d) Cultural rights

In the countries where minorities live it is generally accepted that the members of these groups have the right to preserve and develop their own culture. They are able to preserve their specificity in relation to the population of the country in which they form a minority by various means. Thus the various countries permit the use of means of communication such as television and radio. In addition, they also have recourse to the theatre, the press, etc. and, finally, they have the right to form associations to develop their cultural identity, most frequently with the financial aid of the state.

1) The principle of equality.

Some Constitutions do not contain special provisions concerning the cultural identity of their minorities but they do at least have recourse to the principle of equality. Thus, for example, in Kyrgyzstan, in accordance with the Constitution, all citizens are equal before the law and the courts and have the right to benefit from the advantages of culture. This is simply an application of the principle of individual equality, with no special measure for minorities. 2) 2)Special measures

None of the states provide measures in their Constitutions for the promotion of the culture of ethnic minorities; we must, therefore, refer to the legislation of these countries in order to have a more precise idea of the guarantees in this area.

- **RADIO AND TELEVISION**

Looking through the replies to the questionnaire, it can be noted that there are four possible models of participation of minorities, either individually or jointly.

a) Special programmes on national television channels.

Various states give ethnic minorities the right to use national television channels or radio stations for a specified amount of time in order to produce programmes for the members of their minority in their language. Examples of this are Luxembourg, Austria, Hungary, Italy, Portugal Sweden, etc.

b) Creation of their own television channels.

On another level, some countries simply give minority groups the right to create their own television channel or radio station. Finland is an interesting example in this respect: there are Lapp television channels.

c) The reception of programmes from mother countries

So as not to cut off all contact with their country of origin and their culture, Hungary, for example, has granted minority groups the right to receive television or radio programmes from their mother countries.

d) Participation in the management of television channels

The various minority groups can be involved in the administration of national channels. Thus, in Finland, linguistic and social groups are represented in the administration of the national channel.

- **THE PRESS, THEATRE, BOOKS, PERIODICALS**

In many cases, states give aid to the minority press and for the theatre, as in Finland, where there are

theatrical activities for the Gypsies.

- **CREATION OF SOCIETIES FOR THE PROMOTION OF THEIR CULTURE AND IDENTITY**

In Croatia, for example, ethnic and national minorities may create cultural societies in order to preserve their national and cultural identity. They have autonomous status and are, in addition, financed by the Government of Croatia. Similarly, in Slovenia, the right of the Hungarian and Italian minorities to form organisations to develop their scientific and cultural research activities as well as in the field of the mass media and publishing is recognised in the Constitution; the state bears the financial cost of the exercise of these rights.

3. The participation of minorities in political life.

Minorities may also be protected by the structure of the state. Some structures guarantee greater protection of minorities. For example, in a federal state, it is much easier to grant a degree of autonomy to the minorities in the state. They are attributed their own territory in which they can conduct policy through autonomous institutions. As we have already underlined, the precondition of the federal option is that the minorities are concentrated in a particular area and are not dispersed throughout the country.

The choice of a federal structure can have two origins: it may be due to the heterogeneous, multi-cultural character of the population or to the existence in the country of more or less concentrated linguistic minorities. But for most of the states for which we have information the reason is purely historical.

Minorities participate in different ways in the political life of the state in which they are present. After having examined the right they have to form cultural and political groupings, we will study the way in which these states take account of the presence of minorities on their territory in the dividing of the country into political and administrative sub-divisions as well as electoral districts.

A. FREEDOM OF ASSOCIATION

1. Do minorities enjoy this freedom?

In general, freedom of association is recognised either by the Constitution or by the law (Austria, Hungary, etc.), but the problem is to know whether when making provision for it there is a reference to minorities. There are various situations: either an express reference is made to freedom of association for minorities, or it can be deduced from the general principle which applies to the citizens of the state; this freedom is broadly interpreted by applying it to people belonging to a minority (Romania, Luxembourg, etc.). In any case, no state adopts a negative stance by refusing this freedom to people belonging to a minority. Furthermore, it must be noted that some states go further and provide that this freedom is not limited only to nationals: in Finland, "everyone, even a foreigner, is entitled to join an association". The criterion of nationality may not, therefore, be a

determining factor.

2. Conditions for the exercising of this freedom.

It is obvious that this freedom cannot be exercised at random, there must be some restrictions. The exercising of this freedom may not be contrary to public order; the right to form associations must respect legitimate, legal aims (Denmark); for others, restrictions may be placed upon this freedom in particular circumstances which affect national security, public safety and the protection of the population against the spread of infectious diseases (Slovenia).

3. Is this freedom limited to the national territory or may it extend across national borders?

There are three possible solutions: either the experts of the states who replied to the questionnaire do not mention this in their replies, but we have reason to suppose that the freedom is territorially limited, or the states limit the freedom to the national territory (Croatia, Poland), or, finally, other states provide for the possibility of going beyond the frontiers, the people belonging to a minority being able to create associations outside the territorial limits of the country in which they live (Germany, Croatia, Slovenia). The aim of this system is to encourage contacts with the country of origin (see Slovenia). The case of Finland can also be cited (but other conditions are required, in particular Finnish nationality for the president of the association, of whom at least half the members must be resident in Finland).

4. Are supplementary duties imposed upon the members of a minority?

Freedom of association cannot be absolute; certain duties may be imposed upon individuals belonging to minorities. Thus, in Slovenia in particular, the Hungarian and Italian ethnic communities must join autonomous ethnic associations if they wish to enjoy special safeguards such as representation in the national Parliament and in the representative bodies of local authorities.

B. THE RIGHT TO FORM POLITICAL PARTIES

The replies in this area are sometimes very sketchy and do not always make it possible to have a general idea of the question.

We must, however, distinguish between the states which provide special measures for political parties representing the interests of minorities and those which do not take account of this problem. In addition, we must check that the states do not impose special conditions for the creation of such political parties. But apparently the states do not generally lay down precise rules concerning political parties representing the rights of minorities. The parties of minorities must, in any case, fulfil the same conditions as other political parties. In Finland, to form a political party, the support of five thousand people able to vote at general elections is required. This condition is applicable to all political parties, whether or not they protect the rights of minorities. In Germany, two Länder have provisions in their Constitutions to facilitate the election of minorities, without guaranteeing

them a minimum representation in the corresponding legislative body. Romania has specific rules for the organisations of citizens belonging to minorities giving them special guarantees for parliamentary elections.

C. MODIFICATIONS OF THE ELECTORAL LAW

When there are national or local elections in a country, it must take care to give particular attention to minorities. Representation in political institutions is a way of protecting the interests of minority groupings.

We will examine the legislation on elections of the states in order to see how they have resolved this problem.

1. The division of the country into electoral districts.

There is little to be said on this subject: the states with minorities do not divide the country with reference to the existence of minorities of whatever kind. However, it may be noted that in Finland, for example, the Province of Åland forms a special electoral district electing a representative in parliamentary elections. In Hungary, a law specifies that when the boundaries of electoral districts are established, account must be taken of local ethnic particularities.

2. The formation of political parties.

Two solutions are possible here: either the interests of the minorities are defended by the political parties that they have formed to this end which are composed only of representatives of the minorities, or the interests of minorities are defended by the traditional political parties which include in their lists some representatives of the minorities (this is notably the case of the German-speaking minority in Belgium for federal elections).

This problem can be linked to the existence of their own electoral districts; if the division of the country into districts does not favour the recognition of a degree of autonomy to the minority components, it is obvious that the minorities will have to come to terms with the other political parties in order to ensure that they have a degree of representation in national institutions.

3. Special measures for the attribution of seats to representatives of the interests of minorities.

Some states have made provisions which make it possible to take account of the existence of minorities on their territory.

Thus, in Croatia, if the members of an ethnic or national minority comprise more than 8% of the population, they can be represented proportionally in the national Parliament and in the Government, as well as in judicial bodies. For those which do not reach this threshold, a number of seats in the national Parliament is reserved for them. Similarly, in Denmark, legislation makes provision for two seats to be given to representatives of the Faroe Islands and two to representatives

of Greenland. Romania also makes special provision for the organisations of citizens belonging to national minorities, seats in both the lower and the upper house are reserved for them on certain conditions.

We do not think an exhaustive enumeration of the mechanisms is necessary. We observe that, when states make such provisions, they seem to be complete and favour the representation of minorities.

Quite obviously, it is easier to give guarantees to minorities which are concentrated in a particular area, as is the case notably in Denmark, than to minorities which are scattered throughout the country. In this case, other criteria have to be applied in order to ensure them some representativeness: the states may require that the minority constitutes a certain percentage of the total population in order to have seats in the political institutions.

One other remark must be made regarding the effective participation of minorities in political life. We have noticed that minorities are far better integrated and participate more actively at a more local level.

D. THEIR REPRESENTATION IN INSTITUTIONS

In addition to what we have already said on the subject of electoral law, some states have created bodies for the management of problems relating to minorities so as to facilitate their participation in the management of power. Thus, in Romania, there is the Council for National Minorities; in Finland, a committee has been set up for Sámi affairs, another for Gypsy affairs and finally a delegation of the Province of Åland, whose aim is to favour relations between the national Government and these various groups; in Hungary there is a national body for minority self-management.

Beside these organs, the various minorities may elect representatives of their grouping to national assemblies, as is the case in Croatia.

Belgium is interesting in this respect: special measures have been taken both in the Constitution and in legislation to ensure an effective representation of minorities in political life. Their participation (and particularly that of the French-speaking minority at national level) has been provided for at all levels of government, legislative, executive and judicial. In addition, this protection is not valid only for the federal government: the Flemish minority resident in the federated entity of the Region of Brussels-Capital also benefits from mechanisms quite similar to those used at federal level to protect the French-speaking minority.

In other words, the states have not established a general structure in order to bring about the participation of minorities in the life of political institutions. Here and there measures exist but they do not affect all levels of political life. They concern sometimes the legislative power, sometimes the executive power and sometimes the judicial power.

IV. THE DUTIES OF MINORITIES WITHIN STATES

Most states, therefore, grant specific rights to minorities. Consequently, it is possible that, in return, special duties be imposed on them. It goes without saying that the members of minorities have a duty to respect all the legislation of the state and, particularly, the rights of other minorities as well, of course, as those of the majority. This last point is particularly important when, on a portion of the territory, the members of the majority group at national level find themselves in the position of a minority. This is known as the problem of sub-minorities. Only four of the states about which we are informed have special regulations protecting sub-minorities: Belgium, Canada, Italy and Finland.

In Belgium, the Flemish linguistic group, which forms a majority at national level, is in a minority within one of the federal entities, the Region of Brussels-Capital, where it enjoys a protective mechanism similar to that enjoyed by the French-speaking minority at national level. In Canada, special protection in the field of education is accorded to the English-speakers of Quebec, where they are in a minority. In Finland, the members of the majority linguistic group at national level - those who speak Finnish - enjoy the same protection as the minority Swedish-speaking group when they find themselves in the position of sub-minority; in the province of Åland, this protection is limited to fundamental linguistic rights in order to protect the identity of the inhabitants of this province against a too great influence of Finnish-speaking immigrants. Finally, in Italy, the Italian-speaking sub-minority of the province of Bolzano is placed on the same footing as the German-speaking minority.

It would also be conceivable for states to impose a special duty of loyalty to them on the members of minorities: thus, Romania imposes on all its citizens - not only those who belong to minorities - "a duty of sacred fidelity to the country". However, no state seems to require this of its minorities, with the possible exception of Greece where, according to the reply to the questionnaire, "a special duty implicitly follows from both the Constitution and the legislation", the non-compliance with which could lead to the loss of Greek nationality.

V. PROTECTIVE MECHANISMS

Granting minorities a great number of specific rights and guaranteeing the broadest respect of their identity is one thing; it is also necessary that the effectiveness of these protective measures, which have been mentioned above, be ensured. This can be done by or through international law; it can also be done through the national courts enabling private individuals to seek a remedy when they consider that their rights have been flouted.

1. The influence of international law on the protection of minorities.

Many international treaties include clauses relating to the rights of minorities. The replies to the questionnaire refer to various types of instruments; distinctions must be made among these.

Firstly, the states refer to treaties of a general nature which do not aim exclusively to protect the rights of minorities. The UN Covenant on Civil and Political Rights, the European Convention on

Human Rights and the Universal Declaration of Human rights can be quoted as examples.

Beside these treaties, other, more specific, treaties exist for the protection of minorities. They are of two types, some are multilateral, such as the Convention on the Prevention and Punishment of Genocide, the International Convention on the Elimination of all Forms of Racial discrimination, others are bilateral. These are treaties concluded between two states in order to protect a minority: thus, in Italy, the Gasperi-Gruber Agreement aims to protect the German-speaking minority, and the Osimo Treaty, concluded between Italy and Yugoslavia, regulates the protection of the Yugoslav minority.

We do not consider it necessary to give an exhaustive enumeration of the treaties applicable in the states. In addition, as far as the rank of these treaties in the hierarchy of legal rules is concerned, we note, as a matter of information, that there are three different situations. Either international laws are superior to the Constitution: this is the case of Luxembourg, according to most academic lawyers; or the treaty itself has the same status as the law; or the treaty has greater force than the law. This is a very interesting question and deserves further study

2. The internal remedies available to minorities

A. THE REMEDIES AVAILABLE TO MINORITIES

In addition to administrative, judicial and constitutional remedies, there are two possible solutions which have been envisaged by the states. Firstly, some states have created national organs whose task is to deal with affairs affecting minorities. Thus, in Belgium, there is, for the linguistic minorities, the Permanent Commission for Linguistic Supervision and the post of Deputy Governor, and, for ideological and philosophical minorities, a Permanent National Commission of the Cultural Covenant. In Austria, in the regional government of Kärnten a special bureau has been created for the problems of interest to the minority, but it is in no sense a judicial authority. In Hungary, we might cite the institution of Parliamentary Commissioner for the rights of national and ethnic minorities and that of local spokesman for minorities. In Poland, a commission for national minorities has been established as a consultative body of the Council of Ministers and has various tasks relating to minorities and their integration. Furthermore, both Chambers of the Polish Parliament have instituted committees responsible for minority affairs. Finally, the minorities and their members are able to complain to the commissioner for civic rights.

One further solution is to appeal to the international organisations in existence such as, for example, the European Court of Human Rights.

B. CRIMINAL LEGISLATION AGAINST RACIAL HATRED, GENOCIDE, ETC.

The criminal law of many states provides measures restraining incitement to racial hatred and violence against minority groups such as ethnic and national minorities.

This special protection concerns either the groups themselves or the individuals composing the

group. Prison sentences, fines, etc. are imposed by the various penal codes of the states concerned.