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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

REPORT ON THE REPLIES TO THE QUESTIONNAIRE ON THE RIGHTS OF MINORITIES

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PRELIMINARY REMARKS

This consolidated report is essentially based upon replies to the questionnaire on the rights of minorities formulated by the European Commission for Democracy through Law. It draws on a first analysis prepared by Mr Emmanuel Colla and Mrs Sylvie Marique, of the University of Liège, with reference to replies relating to eighteen countries.

In all, the Commission received replies from 26 European countries (Albania, Austria, Belgium, Croatia, Cyprus, Denmark, Finland, Germany, Greece, Hungary, Italy, Liechtenstein, Luxembourg, Malta, the Netherlands, Norway, Poland, Portugal, Romania, Russia, Slovakia, Slovenia, Spain, Sweden, Switzerland and Turkey) and two non-European States represented in the Venice Commission (Canada, Kyrgyzstan). The replies were given by members of the Commission.

The present report does not constitute an exhaustive study of comparative law in the matter of the protection of minorities. This is due partly to the fact that the Venice Commission received no reply to the questionnaire from some States. Its purpose is to demonstrate the diversity of legal models of protection which have been established, either independently or pursuant to obligations under an international treaty, a diversity which reflects the complexity of the situations in practice and, consequently, the variety of solutions adopted by different States to deal with the problem. This report might thereby serve as a concise repertoire of legislative practice in several European States.

I. INTRODUCTION

The importance of the question of the protection of minorities is today beyond dispute. The currency of the issue is reflected on the international level, where the different types of initiatives (declarations, resolutions, conventions, etc.) designed to improve the protection of minorities have proliferated, as well as on the national level. In most of the States here considered, and especially in the countries of Central and Eastern Europe which have recently adopted democratic institutions, legislation relating to the rights of minorities has undergone important modifications in the course of the past few years.

It must nevertheless be borne in mind that every minority situation presents its own particular characteristics. There is consequently no standard means of resolving the multitude of concrete problems which each case throws up in a national context. Models which might be directly "exportable" from one national context to another are difficult to find. Yet each such context can serve as a source of inspiration for the resolution of the serious problems with which the international community is confronted in this domain.

If one sets aside the examples of the Principality of Liechtenstein and of the Republic of San Marino where, apparently, the question does nos arise, each of the States here considered acknowledges as a minimum, either in its Constitution or by way of ordinary legislation, the presence of minorities on its territory and the necessity of extending to such minorities a certain measure of protection. Yet it is important to understand what is meant by the term "minority" in the different countries and to see what is covered by the term or by the other terms employed to define these categories of persons **(II)**. It is also necessary to examine the content and the extent of the rights or the measures of special protection granted to these groups or to their members, both at the international level **(III)** and nationally **(IV)**, as well as the corresponding duties imposed upon them **(V)**. The question of subminorities will then briefly be considered **(VI)**. Finally, we must look to what mechanisms, if any, guarantee the effectiveness of this protection **(VII)**.

II. DEFINITION OF THE CONCEPT OF "MINORITY"

There is no generally accepted definition of the concept of a "minority". Some elements thereof have certainly been identified as, for example, the standard if not universal classification of minorities into three groups: ethnic minorities, linguistic minorities and religious minorities; any one of these three criteria may be present or, more often, they may be in part cumulative. This (in part) threefold characterisation is adopted in Article 27 of the International Covenant on Civil and Political Rights and mentioned on section 5.1 of the General Comment adopted by the United Nations Human Rights Committee on 6 April 1994.(see also the Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities of the United Nations of 18 December 1992). However, no generally accepted definition of minorities has been formulated in any international legal instruments or doctrine to date. While some authors have attempted to bear upon the question, others have preferred not to, considering either that such a definition is impossible or that it in any case serves no purpose. Thus, the CSCE High Commissioner for National Minorities acts, in a pragmatic manner, and without formulating any definition wherever he deems that a question affecting minorities exists.

These hesitations are naturally reflected in the replies to the questionnaire. While the concept of a minority is accepted in the various States concerned, the terms employed to describe it, whether in the Constitution or in legislation, differ.

A. TERMS USED TO REFER TO MINORITIES

The laws of most of the States summarised in the replies to the questionnaire employ only the term "minority", combined in different cases with one or several terms of qualification: minorities are "linguistic", "ethnic", "religious", "cultural" or, more rarely, "national" (this is the case in Albania, in the Constitution of the German Land of Saxe, in Hungary, in Kyrgyzstan and in Poland). In Romania, rights are ensured to "persons (or citizens) belonging to national minorities", while Romanian law does not recognise minorities as distinct entities.

Other expressions are also used: in Austria the term "ethnic groups", since the passing of a 1976 law, is now employed; this term is also used in Hungary; in Canada, reference is made to minorities, indigenous peoples (Constitution), groups of individuals (Canadian Act on the Rights of the Individual), and to Catholic and Protestant groups (Constitutional Law of 1867). In Croatia and in Slovenia, the terms "communities" or "national and ethnic minorities" are used.

In Slovakia the terms "national minority and ethnic group" (article 33 of the Constitution) and "national and ethnic minority" (articles 24-25 of the Charter of fundamental rights and freedoms) are used. In Finland, the terms "minorities" and "racial group, group of a national or ethnic origin, or religious group" are employed (Penal Code, Employment Contracts Act, etc.). Finally, the Constitutions of certain German Länder use the terms "minorities and ethnic groups" (Schleswig-Holstein), and even "people".

In Russia, it is a question not only of national minorities but also "ethnic groups", "small ethnic communities" and the "small Northern populations".

It should be noted that the various terms used to designate a minority are largely synonymous.

In some States, no specific term is adopted at all ; such is the case in Denmark where the legislation speaks of the rights of the inhabitants of the Faroe Islands and of Greenland, as well as of certain Icelandic citizens, or in Finland, where legislation refers to "the Swedish speaking population", to "Sami" or to "Roma".

In Cyprus, the notion of a minority is rejected in favour of that of a community; there exist two communities, Greek (majority) and Turk (minority), the members of which have equal rights.

B. ATTEMPTS TO DEFINE OR CIRCUMSCRIBE THE NOTION OF A MINORITY

Several States use the term "minority", or equivalent terms, in their Constitutions without ever defining them. This is, for example, the case in Albania, Belgium, Croatia, Finland, Hungary, Italy, Poland, Slovenia, Sweden, Switzerland and again in certain German Länder. There is therefore no definition of minorities in any of the States here considered which enjoys a constitutional underpinning.

The situation is similar in regard to certain international treaties having the status of constitutional law in domestic law (see, for example, Article 7 of the Treaty of Vienna, 1955, which refers to Austrian nationals belonging to the Slovene and Croatian minorities in Carinthia, Burgenland and Styria).

In several States, the term "minority" or a similar term is to be found in ordinary legislation, or in laws specifically concerning minorities (in Austria, Finland, Hungary, Italy, Portugal, Romania) or in other texts (Greece).

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

In Austria, Article 1 of the 1976 Law on Ethnic Groups provides that such groups are constituted by:

"those 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".

In Hungary, the scope of application of Law No. LXXVII of 1993 on the rights of national and ethnic minorities is delimited as follows:

Article 1. -

"1) The present law shall apply 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 population group 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 or 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 strictly speaking the only two definitions of minorities that are to be found in the legislation of the States here considered. Mention should nonetheless be made of the cases of three other countries, Finland, Denmark and Norway which, while not really defining the notion of "minority", do specify the characteristics that certain categories of persons must present if they are to obtain special protection.

This is the case, in Finland, of Samis and Roma (Gypsies). According to Section 2 of the Act on the Use of the Sami Language in Relations with Public Authorities, a Sami is any person who considers himself or herself to be Sami provided that such person or any parent or grandparent of such person learned the Sami language as his or her first language. The same situation is to e found in Norway. A Gypsy, according to Section 1 of the Finnish Act on the Improvement of the Housing Conditions of Gypsies, is a person who considers himself or herself to be a Gypsy, except when it is evident that he or she 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 Aland 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 provides that the special protection thereby conferred shall extend to all permanent residents of Greenland.

Even though legislation in the other States uses the term "minority" or other terms which cover more or less the same circumstance, they do not offer a definition of such terms. Nonetheless, and still setting aside the example of the Principality of Liechtenstein, where there are apparently no minorities, all such States accord rights to minorities or, at least, to persons who belong to them. Clearly, if these rights which are conceded to minorities are to be applied, those entitled to them must be identified. They must, therefore, fulfil certain conditions in order to

enjoy them and it is in these conditions that the elements of definition are to be found. Such is the case in Slovakia (Article 34 of the Constitution) and in Croatia. In the latter case, the "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, the right to their own education, the right to have their own public and cultural activities and to form societies in order to protect national and cultural identity), as well as in the educational field and in connection with their participation in the exercise of political power. According to the Croatian rapporteur, the Constitutional Law indirectly permits a definition of the term "minority"; within the meaning of Croatian law, minorities or their members are those 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.

Thus, as a general rule, at the very least, the sine qua non for being granted special protection as a member of a minority is the possession of the nationality and/or residence on the territory of the State in question; in some countries such as Italy, the protection of those concerned is further restricted to certain well-defined geographical zones (Valle d'Aosta, the Trentino-Alto-Adige and the provinces of Trieste and Gorizia). Here, 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 granted special protection are those whose members possess the nationality of or have their residence in the State in question. It is extremely rare that specific measures of protection extend also to non-nationals. One example is the Finnish law on the use of the Sami language. By contrast, Hungarian legislation expressly excludes refugees, immigrants and stateless persons from their system of protection of minorities (cf. Article 1 of Law No. LXXVII cited above).

C. THE FREE CHOICE TO BE TREATED AS A MINORITY

A further question to examine is the manner in which belonging to a minority is determined.

In theory this could be free, that is, a matter of personal choice for each individual who decides either to declare himself a member of a minority (provided that some objective criteria are also met) or, on the contrary, to decline to make such a declaration. This free choice was given expression for the first time at the international level in the CSCE Final Act of Copenhagen. This enshrines a subjective approach. It follows that such a choice will be practically free provided that no unwarranted harmful consequences nor unwarranted privileges result from its exercise.

Conversely, the choice itself may well not exist, in which case the authorities will intervene to determine themselves whether or not 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 is the result, in principle, of a personal choice. The choice is made by means of a periodic or special census of the population. Sometimes freedom of choice - including freedom not to declare oneself and the lack of harmful consequences of such a choice - are expressly provided by the law (this is the case for Austria in the 1976 Ethnic Groups Act). Indeed, States do not unilaterally impose on some of their 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 or she belongs to a minority and consequently claim the enjoyment of specific rights may do so. The definition of a minority - inherently - implies the existence of objective criteria, usually together with subjective criteria. Thus, for example, in Austria and Hungary, one must be of a mother-tongue other than that of the majority of the population; in Finland, one can only describe oneself as Sami if one has, or has a parent or grand-parent who has Sami as one's mother-tongue, and it is not possible to claim to be Roma "if it is evident that one is not".

In Russia, whether an individual belongs to a national minority is determined by the authorities according to his ethnic and linguistic belonging.

In Kyrgyzstan, the choice of a "nationality" is restricted: it is not possible to opt for a nationality other than that of one's father or mother, and once the choice is made, it is definitive and irreversible.

The free choice of belonging to a minority does not, in general, have consequences for the acquisition or loss of nationality or the exercise of political rights. Of course, the fact of belonging to the majority race and speaking its language may actually constitute a factor facilitating the acquisition of nationality. In Finland, for example, when it is a question of granting Finnish nationality, and this decision is free, one's Finnish ethnic origin as well as one's knowledge of the Swedish or Finnish language can be taken into consideration in one's favour in the acquisition of nationality. But once nationality is acquired, it cannot be lost because one belongs to a minority.

D. OBSERVATIONS

It is important to note that alongside the criteria of an objective nature employed by national laws to define minorities exist subjective criteria. In most cases, objective criteria are retained: nationality or citizenship of the State, residence on the territory of that State, a lasting presence, or even an ancient or historical presence, in the territory, the fact of constituting or being part of a numerical minority of the population, speaking a language distinct from that of the majority, or having their own cultural heritage, traditions or religion. In more recent legislation, criteria of a somewhat more subjective nature are preferred, whether it be "considering oneself Sami or Roma" (Finland) or "considering oneself as belonging to a minority", or again manifesting a "consciousness of inherent cohesion" (Hungary).

III. THE PROTECTION OF MINORITIES AT THE INTERNATIONAL LEVEL AND ITS INFLUENCE ON DOMESTIC LAW

The protection of minorities has been the subject of several international bilateral treaties and other international instruments.

The effects of international treaties (multilateral or bilateral) in the domestic legal order essentially depend upon the status conferred to international law in the State concerned. As regards provisions protecting minorities included in international instruments which are considered as being self-executing, these are directly applicable in the domestic legal order. Moreover, where the provisions protecting minorities are contained in international treaties which are not considered as being self-executing, a contracting state is expected, in accordance with Article 27 of the Vienna Convention on the Law of Treaties, to amend its legislation to make it compatible with the international treaty and with the international obligations deriving therefrom for the state concerned. The provisions protecting minorities in international law have thus a considerable influence on domestic law.

Among several international treaties and other international instruments, note must particularly be made of the conventions relating to human rights which, although looking to confer a first measure of protection on the individual as a human being, also confer protection on persons belonging to minorities. Work on instruments relating to minorities is under way in the CSCE and in the Council of Europe, while the UN adopted on 18 December 1992 a Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Lingistic Minorities. Yet, in express terms, the question of minorities is addressed only in the provisions set out below.

Article 27 of the 1966 International Covenant on Civil and Political Rights provides that persons belonging to ethnic, religious or linguistic minorities cannot be deprived of the right, in common with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

In addition, under Article 14 of the European Convention on Human Rights, and the similar provisions in Article 2 (1), of the 1966 International Covenant on Civil and Political Rights and Article 2 (2), of the 1966 International Covenant on Economic, Social and Cultural Rights, the enjoyment of the rights and freedoms set forth in these treaties must be secured without discrimination on any ground, including association with a national minority . But in contrast to the separate equality clause in the first International Covenant mentioned above (Art. 26), these provisions are not independent and can only be invoked in relation to the enjoyment of one of the rights and freedoms guaranteed by the Convention. The European Charter for regional or minority languages aims at protecting these languages mainly for cultural reasons. It should also be noted that the Austrian State Treaty (which is of a multilateral character), in its Articles 6-7, provides for the protection of the Slovenian minority.

As regards the CSCE, note must be particularly made of points 18 and 19 of the Concluding Document of the Vienna Meeting on the Follow-up to the Conference (15 January 1989), points 30-32 of the Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE (29 June 1990), the report of the meeting of experts of the CSCE on National Minorities of 19 July 1991 and the Charter of Paris for a New Europe (21 November 1990). In particular, the Copenhagen Document provides for the right of persons belonging to a national minority "to exercise fully and effectively their human rights and fundamental freedoms without any discrimination and in full equality before the law" (point 31), for a free choice in the matter of belonging to a national minority and for certain cultural linguistic and

religious rights (point 32), and for the protection by States of the ethnic, cultural, linguistic and religious identity of national minorities on their territory (point 33).

In the States here considered, international treaties on human rights in general have not given rise to any significant jurisprudence on minority questions. Nor is there an abundance of international jurisprudence; see, however, European Court of Human Rights, Case "relating to certain aspects of the laws on the use of languages in education in Belgium"(Merits), judgment of 23 July 1968, Series A, Vol. 4, Case of Mathieu-Mohin and Clerfayt, judgment of 2 March 1987, Series A, Vol 113.

Alongside such treaties, there exist multilateral instruments which particularly aim at the protection of the rights of minorities. Examples are the 1948 Convention for the Prevention and Punishment of the Crime of Genocide - which does not refer expressly to minorities but which is applicable to them - the 1965 International Convention for the Elimination of all Forms of Racial Discrimination, ILO Convention N°. 111 (1958) concerning Discrimination in Respect of Employment and Occupation and the 1960 Unesco Convention against Discrimination in Education. Bilateral agreements also address the question of minorities. As examples one may note the Gruber-De Gasperi Pact of 1946, which seeks to protect the German-speaking minority in Italy (in South Tyrol), the 1954 Treaty of London between Italy and Yugoslavia on the Slovene minority of Trieste, and the 1955 Declaration of Bonn and Copenhagen on the protection of Danish and German minorities in Germany and Denmark respectively.

Recently, Poland has concluded a series of bilateral treaties of friendship with Germany, with Hungary and with the Czech and Slovak Federal Republic. These treaties, inspired by certain documents of the CSCE in this area, contain a comprehensive set of provisions for the protection of persons belonging to minorities. In particular, they provide guarantees in respect of a set of fundamental rights as well as the maintenance and development of ethnic, cultural, linguistic and religious identity. Any attempt at forced assimilation is expressly prohibited.

Russia has also recently concluded several treaties, in particular with the former Republics of the USSR which now belong to the Community of Independent States, containing clauses on the protection of minority rights.

For the Muslim minority in Greece and the Greek minority in Turkey (today almost wholly disappeared), the provisions of the 1923 Treaty of Lausanne relating to the protection of minorities (Arts. 37-45) retain a certain significance. This Treaty is particularly concerned with guaranteeing civil and political rights, with the use of one's own language and with the right to create and maintain minority schools and charitable, religious and social institutions. These guarantees are the more important in that the Treaty of Lausanne (in its Art. 37) expressly provides that they cannot be abrogated by subsequent legislation. In general, provisions relating to the protection of minorities contained in international conventions cannot be amended unilaterally, which is a guarantee of their continuance in force.

IV. THE PROTECTION OF MINORITIES AT THE DOMESTIC LEVEL

A. THE RECOGNITION OF MINORITIES BY THE STATE

Before examining those laws which protect 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 an entity, but recognised and identified precisely as groups who must be protected. If such recognition is not compulsory, then any minority can be protected: it is enough, in a concrete case, that the criteria used to define them are fulfilled. If, by contrast, such recognition is required, the fact of fulfilling these conditions is no longer sufficient: a positive act of recognition on the part of the State is additionally required.

In some countries, the Constitution or the law lays down restrictively the categories of persons who benefit from all or some of the safeguards provided. This is, for example, the case in Italy, (but the provisions adopted by central government in favour of recognised minorities do not operate to prevent the intervention of regional legislators in favour of other minority linguistic groups), in Belgium - where the protection granted to linguistic minorities by the law, for example on the use of languages, is limited exclusively to the categories of persons mentioned in the law, in Croatia and also in Hungary, where a procedure is further provided for which enables groups of citizens who so desire to have the fact that they constitute a minority certified and to thereby obtain this recognition (Law No. LXXVII, Article 61).

In Albania, the Constitution expressly allows the State to recognise minorities, without however requiring it to do so. In most States, this possibility is not foreseen, but nor is it ruled out. This is the case in Greece, Poland, Denmark, Finland, Portugal, Kyrgyzstan, Slovenia, Switzerland and Germany. Finally, in Romania, the State does not recognise minorities as such, that is to say as a entity, because only individuals and not groups can be granted rights.

In Austria, there is no system for recognising minorities proper, but the minorities for which the ethnic group councils (III/D/U) are established are determined by decree (issued in implementation of the 1976 act, after consultation with the representatives of the minorities themselves); this results de facto in "recognition" of the minorities in question (at present, they are Croats, Slovenes, Hungarians, Czechs, Slovaks and Roma) and the term "recognised minority" has also entered everyday language. Nevertheless, granting of the special protection from which minorities benefit (use of their language in relations with the authorities, bilingual place names, teaching of the language) is regulated in a specific manner and formally without reference to the status of "recognised minority"; in addition, certain advantages may result from this status, such as the granting of subsidies.

The recognition of minorities may result in a different treatment of minorities, according to whether or not they are recognised by the State. This different treatment may take the form of a special status or of extra measures of help for certain minorities in respect of which the need for particular protection is recognised. Thus, in Slovenia, supplementary rights are accorded to certain native peoples. In Canada special rights are granted to the indigenous population. In Croatia, a special status has been accorded to two districts where the Serb minority represents more than 50% of the population. This minority enjoys privileges not granted to other minorities. Finally, in Hungary, privileges have been granted to some minorities only.

This holds good also for States having a federal structure, such as Switzerland and Belgium, where protection of language groups is essentially on a territorial basis.

B. "INSTITUTIONAL" PROTECTION OF MINORITIES

One 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 three of the States here considered have opted for a federal model by reason of the heterogeneity of their populations and of the existence of minorities on their territory. These are Russia, Canada, and now Belgium, officially federal since the constitutional revision of 5 may 1993. The federal structure is an expression of the will to integrate the diverse cultural, linguistic and confessional elements which exist in these countries. While other States have chosen the same type of State structure, they do not justify having done so for the same reasons but rather for historical reasons.

The regional structure of a State also makes it possible to render the protection of minorities more effective. While Italian regionalism, for example, 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 addition, pursuant to Article 6 of the Constitution, the Republic protects linguistic minorities. Resort is often made to this provision as an interpretative aid in the case law of the Constitutional Court.

Yet, at all events, 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, and even a degree of autonomy, as, for example, in Greenland (Danish) and the Aland Islands (Finnish).

It will be noted at once, however, that these solutions (federalism, regionalism or others) can more easily be put into practice if the minorities are concentrated or grouped together; however, the institutional protection of minorities dispersed throughout the whole of the national territory, or a large part of it, must not be excluded a priori (see, for example, the election by the Finnish Samis of a Sami delegation which may freely use a part of the State budget in favour of the Sami population).

C. PROTECTION BY THE GRANTING OF RIGHTS

1. Fundamental rights and the principle of equality

Fundamental rights, whether recognised in the State's own Constitution or in the European Convention on Human Rights, are above all designed to protect every person, whoever he or she may be, as a human being. They also make it possible to provide, to some extent, protection for the members of minorities, notably through principles of equality and non-discrimination.

All the States here considered recognise the principles of equality and/or non-discrimination. The question of minorities is treated, sometimes explicitly, when they expressly forbid any discrimination on the grounds of belonging to a minority (Albania, Austria, Croatia, Slovakia), or more indirectly, when they simply prohibit any discrimination based upon grounds of nationality, race, language or religion (Canada, Germany, Hungary, Italy, Kyrgyzstan, Malta, the Netherlands, Poland, Portugal, Spain, Russia and Turkey). But often the constitutional provisions containing the principle of equality make no mention of these criteria, as is the case

in Denmark, Finland, Liechtenstein, Luxembourg, Greece, Sweden and Switzerland, where on the contrary privileges of place or birth of persons or of families are forbidden. In Belgium, Article 6 of the Constitution simply proclaims the equality before the law of all Belgians, but Article 6bis forbids any discrimination affecting particularly ideological and philosophical minorities. It should also be remembered that most States here considered are bound by the European Convention on Human Rights, which provides expressly in Article 14 that the enjoyment of the rights and freedoms set forth in the Convention must be secured without discrimination on any ground, including language, religion, national origin or association with a national minority. The protection of minorities through these principles of equality and non-discrimination rests upon an approach to the question which is individual in character. The Grand Duchy of Luxembourg, for example, restricts itself purely and simply to this approach, protecting persons belonging to a minority only by means of rules of equality and non-discrimination.

However, the mere application of the principle of non-discrimination will not always make it possible to protect minority groups sufficiently, nor to take account of their particular characteristics or specific interests. It is even possible that a strict application of the principle of non-discrimination would result in discrimination against certain minorities. For this reason several States have introduced specific positive measures to be taken in favour of certain categories of individuals in order to redress the imbalances resulting from differences. 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 in Albania, Austria, Canada, Croatia, in the Constitutions of certain German Länder, in Greece, Hungary, Italy, Norway and Slovenia. The use of this mechanism of positive discrimination indicates that we are passing from a strictly individual conception of the protection of minorities to a more collective conception, for individual protection alone, through classic fundamental rights, is no longer regarded as sufficient. The minority group is not simply the sum of its members but represents a distinct entity which itself enjoys rights. In fact, almost all the States provide for affirmative action and have adopted a collective approach to the problem.

In general, the evolution of the legal systems considered permits of a conclusion that an approach to minorities questions which is increasingly adopted simultaneously takes account of their individual and collective aspects (eg. Albania, Austria, Canada, Croatia, Germany and Poland). This is a positive evolution capable of making the protection granted more effective.

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 this is corrected by mechanisms of affirmative action. Most often, they seek to go further in the measures they take in favour of their minorities. Specific rights are then granted to them, these obviously differing in practice according to the needs of each type of minority and to the States' willingness to meet those needs.

a) Linguistic rights

The countries where there are linguistic minorities (who often simultaneously constitute ethnic 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. Apart from Liechtenstein and Portugal, which have no linguistic minorities, virtually all States have regulated this question in domestic law. In Greece, Poland and Turkey the question of the right of minorities to use their mother-tongues is regulated neither in the Constitution nor by law, but by international treaties, which are, in principle, directly applicable in domestic law.

In general, all the States - without stating this expressly - accept the freedom of the individual to use the language he/she wishes in the private sphere. This right is rarely guaranteed expressly by the Constitution (Belgium), but is quite often safeguarded implicitly. In addition, this is a principle of general application which goes beyond the question of minority protection.

The question of the use of languages in the public sphere, that is, in relations between private individuals and public authorities, and between the latter, or in public signs of an official type, is much more complex.

Greece and Turkey have not provided for regulations governing the matter. The non-Muslim minorities in Turkey as well as the Muslim minority in Greece benefit from those provisions of the 1923 Treaty of Lausanne relating to minority languages (especially Articles 39 and 40) which concern private usage as well as usage in the judicial domain. 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 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 Sorban minority has the right to use its language in judicial and administrative matters at the level of the Land. The new Constitutions of the Länder of Brandenburg and Saxony, adopted in 1992, expressly protect the right of the Sorban minority to preserve and develop its language and culture. In the regions occupied by this minority, all road signs are bilingual. In Austria, Article 8 of the Constitution also makes German the only official language of the Republic and confers on the ordinary legislature the duty to establish rules concerning the public use of minority languages. The laws in force (the 1976 Law on Ethnic Groups and its implementing decrees) guarantee to persons belonging to the Slovene and Croat minorities the right to use their language before the judicial and administrative authorities of the regions where they are represented, or before all the authorities in the districts where the largest proportion of the minorities resides, or before certain authorities in the whole region (Carinthia, Burgenland). In municipalities where the Slovene minority accounts for 25 per cent, place names are bilingual.

The case of the Grand Duchy of Luxembourg is rather particular since Luxembourgeois 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, they use Luxembourgeois, French or German, according to need. One cannot thus speak of a law which

is aimed at linguistic minorities (in the current sense of the term), but of the regulation of the use of different languages used in the Grand Duchy.

In Spain, Castillian is the principal official language. The "other Spanish languages" enjoy official status on the territory of the Autonomous Communities whose Statutes of Autonomy provide for "coofficial" languages. The statement of "coofficiality" implies the right of every citizen to express himself or herself in Spanish or in the regional language in his or her relations with those public authorities which have defined competences applying to the Autonomous Community in question.

In Belgium, the three national languages, French, Dutch and German, have the status of official languages. Their use by, and in relations with, government departments, as well as in the fields of justice and social affairs, are the subject of very detailed and complex legislation which, based essentially on the principle of territoriality, does not always provide ideal protection for groups or linguistic minorities. This principle is also to be seen in Switzerland, where German, French, Italian and Romansh constitute the four national languages, the first three being official languages. Freedom of choice of language has been characterised by the Federal Court as an unenumerated constitutional right. But its practical weight is considerably limited by the principle of territoriality, which can justify cantonal measures which operate to maintain the traditional limits of linguistic regions and their homogeneity. It is therefore solely in relations with federal authorities that an individual enjoys a true right to use one of the three official languages of his choice. This is because, by contrast, the right of cantons to prescribe the use of a particular language in relations between individuals and the public administration is not disputed. In Canada, the use of languages in the official sphere has produced and is still producing abundant measures of regulation. English and French are the two official languages, and linguistic laws are tending to establish a generalised official bilingualism. In Cyprus, legislative, executive and administrative acts and documents must be written in the two official languages (Greek and Turkish). Texts published in the Official Gazette are written in the two languages. Official documents addressed to a Greek or to a Turk should be in the respective language. Legal proceedings take place and judgments are drawn up in Greek if the parties are Greek, in Turkish if the parties are Turkish and in both Greek and Turkish if one party is Greek and the other Turkish. Any person may address the authorities in Greek or in Turkish as he chooses. In Italy, while Italian is the only official language of the Republic, German enjoys exactly the same status as an official language in the region of Trentino-Alto-Adige, particularly in the province of Bolzano where the German-speaking minority which constitutes about two-thirds of the population is concentrated. 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 domain. In the provinces of Trieste and Gorizia, where there is a Slovene minority, an interpretation service is placed at the disposal of its members for communication with the authorities. Finally, in Finland, the Constitution gives both principal languages, Finnish and Swedish, exactly the same official status, which is itself elaborated by law. The Constitution provides that the right to use the Sami language in communications with the authorities is regulated by law, which states that Samis have the right 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 matters which concern them.

Article 6 of the Constitution of the Slovak Republic provides that Slovakian is the official language throughout the territory of the Slovak Republic. The Constitution, in its Article 34(2)(b), guarantees to persons belonging to a national minority, under the conditions provided by law, the right to use their language in official communications. This constitutional provision is elaborated upon in Law No. 428/1990 Coll. on the Official Language of the Slovak Republic, which provides in Article 6(2) for the right to use the language of a national minority in one's official communications with the organs of government, provided that the number of persons belonging to a national minority in a determined region constitutes at least 20% of the population of that region.

In the Russian Federation, legislation on languages is particularly complex.

In the whole of the territory of the Russian Federation, Russian, having the statute of official language, is the language of communication between countries through existing historical and cultural traditions (Article 68, paragraph 1, of the Constitution of the Russian Federation, Article 2, paragraph 2, of the Law on the languages of the peoples of the Russian Federation). At the same time, Article 68, paragraph 2, of the Constitution of the Russian Federation provides for the competence of the Republics within the Russian Federation to establish their official languages in their own rights, and the Law on the Languages of the Peoples of the Russian Federation provides for the right of the Republics to take decisions on the Statute of the languages of the peoples living in their territory. In regions of compact residence where a population does not have its own nation-state and nation-territory community or where it lives outside such a community, the language of the population of this region may be used simultaneously with the Russian language and the official languages of the Republics in official matters (Article 3, paragraph 4).

The Law on Languages of the Peoples of the Russian Federation obliges the organs of legislative, executive and judicial power of the Russian Federation to guarantee and to safeguard the social, economic and legal protection of all the languages of the peoples of the Federation of Russia.

The knowledge or lack of knowledge of the language cannot serve as a reason for limiting the linguistic rights of the citizens of the Russian Federation. Any violation of the linguistic rights of the peoples and of the individual has as a consequence the responsibility according to the law (Article 5, paragraphs 1 and 2).

According to the provisions, the Law establishes the modalities of the use of the languages of the peoples of the Federation of Russia in areas of legislation, administration and judicial procedure. In the higher legislative organs of the Russian Federation, work is carried out in the official language of the Russian Federation. The use of the official languages of the Republics within the Russian Federation is also allowed. The same modalities are observed for discussions of bills and other texts of a regulatory character (Article 11). In the activities of the organs, organisations, enterprises and establishments of the Russian Federation, the official language of the Russian Federation, the official languages of the Republics within the Russian Federation and the other languages of the peoples of the Russian Federation are used (Article 15). This principle forms the basis of the activities of the Constitutional Court of the Russian Federation, the Supreme Court and the Supreme Arbitration Court of the Russian Federation, other organs responsible for the protection of the laws of the Russian Federation as well as

organs responsible for the protection of corresponding laws of the Republics within the Russian Federation (Article 18).

In other States, linguistic legislation seems to be less developed. The Constitutions are limited to affirming the right of linguistic minorities to express themselves freely, to preserve and to develop their cultural and linguistic identity (cf. Article 26 of the Constitution in Albania and Article 15 of Chapter 2 of the Instrument of Government in Sweden), or they even tend to place minority languages on an equal footing with the official language (Kyrgyzstan).

b) Rights in the educational field

In the educational field, there are two principal aspects touching upon minorities that must be emphasised: the linguistic aspect, that is the question of education in the language or languages of minorities and also the teaching 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 principally concerns religious minorities but possibly also ethnic minorities.

i) Linguistic minorities

It may be noted that almost all States here considered provide, in their Constitutions or by law, for the teaching of minority languages, at least at primary and secondary level in State schools. In an increasing number of States, persons belonging to certain minorities can equally benefit from instruction in their respective languages (cf. the replies from Albania, Austria, Canada, Croatia, Finland, Greece, Hungary, Italy, Kyrgyzstan,Norway, Poland, Romania, Slovakia, Slovenia, Sweden, Switzerland and Turkey). However, the system and organisation of teaching of the languages of minorities, or in those languages, vary from country to country (schools and/or classes separate from or jointly with the majority; influence of the minority on appointment of teachers and principals of the minority's schools, etc.).

Instruction in minority languages is generally restricted to certain regions where the minorities concerned are grouped together, as for example in Italy teaching is carried out in German only in the schools of the province of Bolzano (where there are also provisions for Ladin minorities) and in French in the Valle d'Aosta, where moreover it is for everyone half in French, half in Italian; teaching in Slovene is generally provided where that minority is present (in certain communes of the Friuli-Venezia Giulia region). In Canada teaching in the minority language is provided where numbers justify it. In Austria it is provided in Kärnten, where the Slovene minority is to be found, and in Burgenland, where the Croat and Hungarian minorities live. In Germany the teaching of Sorb takes place in Brandenburg and Saxony. The Belgian, and also the Swiss, 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, exhaustively set out in the law, where teaching must be carried out in the language of the minority (in Belgium) or can be (in Switzerland) when there is a certain number of requests. In Spain, the scope of the rights of Autonomous Communities in respect of the teaching of regional languages is presently the subject of proceedings before the Constitutional Court. But teaching of the other languages is always provided.

In Russia, the level of education which can be reached in the mother-tongue is determined with respect to the numerical size of a given minority, the concentration of its residence and several other concrete factors.

Denmark confines itself to providing for 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 Samis in their own 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 provided the number of pupils interested permits the creation of special classes. If not, teaching of the minority language will nonetheless be provided. In Switzerland, bilingual or trilingual cantons generally provide for instruction in minority languages. The local school administration in bilingual (Finnish and Swedish) municipalities in Finland is divided either between two separate school boards or between two distinct divisions of one common school board. Of the boards or divisions, the one administering schools for the Finnish-speaking population shall consist of members of this population, and conversely. In the Netherlands, part of the curriculum may be taught in Frisian. Furthermore, the study of Frisian is optional in the province of Friesland.

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. By way of example, one may cite Denmark, Poland, Slovenia and Sweden. In Germany, private schools of the Danish minority receive significant State subsidies.

ii) Religious minorities

In regard to the teaching of religion (the catechism) in schools, the system varies from country to country, regardless of whether the religions concerned are the predominant ones in the country or the minority ones (although one cannot always speak of a "religious minority" per se).

In several countries, religious education is carried out in State schools, while in other countries (generally more secular), this education is left to religious institutions and is given outside State schools (or in private schools).

In State schools, parents can decide that their children will not attend religious education classes. From a certain age, this decision resides in the pupils themselves. For example, the following situations can be noted :

Canadian law provides for a guarantee of the confessional rights of Catholics and Protestants; schools of this persuasion must be financed out of public funds, funds which are also provided to other schools. In Germany and in Austria, private religious or confessional schools which guarantee an education similar to that of other establishments may be recognised and financed by the State. In Belgium, Article 17 of the Constitution guarantees freedom of education and the free choice of parents in respect of the religious education of their children. Official education is neutral and provides a guarantee of an optional choice of instruction in the major recognised religions or of non-confessional ethics. In the Netherlands Article 23 of the Constitution provides that in principle public and private (mostly religious based) education will be financed

by the government on an equal footing. Finally, in Romania, the State guarantees freedom of religious education and the organisation of religious instruction in State schools.

In Finland, religious instruction is in public schools provided according to the religion of the majority of the children in the school. However, if there are at least three Lutheran or Orthodox children in the school, instruction for them shall be provided according to their religion. Children belonging neither to the Lutheran nor to the Orthodox Church shall be exempted from the Lutheran or Orthodox religious instruction if so required by their parents. If there are at least three such children of another common denomination, they shall, upon request of their parents, be provided with instruction in their religion. Other children exempted from religious instruction shall be provided with instruction in ethical principles.

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 individuals must be recognised as being able to enjoy and exercise freedom of thought, conscience and religion (rights which are guaranteed in the constitution 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. This is because some people may find themselves in a minority religious position and by reason thereof require special attention from the State.

i) Freedom of thought, conscience and religion

All the States whose systems have been considered recognise this fundamental freedom, whatever the terminology employed. Reference is thus made to freedom of religion, conscience, belief, worship, etc. For States parties to the European Convention on Human Rights, the protection extended in domestic law is complemented by Article 9 thereof which guarantees to every person freedom of thought, conscience and religion. This right "includes freedom to change his religion or belief or freedom, either alone or in community with others and in public or in private, to manifest his religion or belief, in worship, teaching, practice and observance".

Freedom of thought, conscience and religion has implications at both the individual and the collective level, which means that everyone has the right to choose a religion and that individuals of the same religion may come together to worship. The right of persons to practise the religion of their choice, in both public and private, individually and collectively, is a right which is generally recognised.

This freedom also implies a freedom to decline to choose a religion. Few States explicitly recognise unbelief; we can, however, cite the example of Kyrgyzstan. Implicitly, this right is recognised in other countries (under the negative aspect of the freedom of religion).

Another important point is that no one can be obliged to practise a given religion: no country recognises such an obligation, all citizens being free to choose a religion, or to leave it and join another religious community.

There are persuasions which do not recognise the right of apostasy but this has no relevance for State law. Furthermore, in certain countries which have a "state religion", problems may arise in relation to payment of "ecclesiastical taxes" (treated like State taxes) which must be paid in principle by all persons domiciled in the country. In Switzerland, Article 49(6) of the Constitution provides that no person is bound to pay taxes which are specifically designed to offset the actual costs of the church of a religious community to which he or she does not belong.

Freedom of religion and conscience is not unlimited, certain restrictions thereon being accepted. As in the European Convention on Human Rights (Art.9 (2), these restrictions are appropriate to any democratic society. In the regulations of several States, the formula provided is that the exercise of this freedom cannot be contrary to public morality or to public order. By contrast, in the German Basic Law, freedom of thought, of conscience and of religion appears as a fundamental right without restriction. Restrictions on this right can therefore only result from other fundamental rights or constitutional values and then must respect the principle of proportionality.

ii) 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 communities must first obtain recognition.

The legislation of States such as Hungary require that certain specific conditions be fulfilled in order to create a religion. Among these conditions, it can be noted 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).

Austrian legislation also has a system of "religious communities recognised by the State". This is not relevant to freedom of belief and worship but certain "privileges" are granted only to "recognised religions".

In Italy, relations between the minority religious communities and the State are regulated by law on the basis of special agreements between the State authorities and the representatives of the religious communities (Article 8 of the Constitution).

Other States grant a special degree of protection to some religions without any requirement of prior recognition. 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.

iii) The right to create educational establishments

There are several States which expressly recognise the right of religious communities to create their own educational establishments (see for example the replies of Canada and Germany). The new Constitution of Croatia provides that "religious communities are free, in conformity with the law, to .... open their own schools...".

In other countries, the establishment of private religious schools falls under either freedom of education and religion or public freedom in general, guaranteed under the Constitution. But there, too, the question arises of the extent to which these schools receive public subsidies and can award qualifications recognised by the State.

d) Cultural rights

It is generally accepted that the members of minorities have the right to preserve and develop their own culture. Thus, for example, Article 34(1) of the Slovak Constitution provides: "Citizens who, within the Slovak Republic, are members of national minorities or ethnic groups are guaranteed the right ... to develop their own culture ... and to maintain ... their cultural institutions". 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 several countries allow minorities or persons belonging to minorities access to means of communication such as television and radio. They have the right to form associations to develop their cultural identity, through the press or other publications, through the theatre and a wide variety of cultural events, sometimes with the financial aid of the State.

It is exceptional for a Constitution to contain express rules for the promotion of the culture of ethnic minorities. The new Constitutions of the German Länder of Brandenburg and Saxony nonetheless stipulate a right in respect of the Sorban minority to the effect that its culture and language shall be preserved and promoted. According to a project for the revision of the Constitution which is now being discussed in Finland, the Samis and the Roma (in particular) should see the right to support and develop their language and culture recognised.
Moreover, legislation concerning the promotion of minority cultures in certain specific domains exists in a certain number of States (for example, in Austria). Switzerland has adopted a law in favour of the culture of the Italophone and Romanche minorities.

i) Radio and television

An examination of the legal systems here considered reveals that there are several possible models of participation by minorities in radio broadcasting and television.

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 own language. Examples of this are found in Austria, Finland, Hungary, Italy, Luxembourg,Norway, Portugal, Romania, Russia, Slovakia, Sweden and Switzerland, as well as other States. Sometimes, as in Switzerland or Finland, there are radio stations transmitting only in the minority language.

So as not to cut off all contact with their country of origin and their culture, Hungary and Italy, for example, have extended the practical possibility to minority groups to receive television or radio programmes from their mother countries, by means of appropriate technical equipment.

In general, the receiving of television and radio programmes from abroad is free to the extent that the geographical situtation and technical possibilities allow for it.

The various minority groups can also be involved in the management of national channels. Thus, in Finland, in Germany, and in Austria, linguistic and social groups are represented in the administrative bodies of the national channels.

ii) Press, theatre and publications

In many cases, States give aid to the minority press as well as to the theatre, notably in Austria, Finland, Germany,Norway, Romania, Russia and Slovakia.

iii) Encouragement of societies aiming to promote the culture and identity of minorities

In all countries where there are minorities there exist cultural societies founded by persons belonging to minorities, which aim at promoting the culture of these minorities. They have the status of private associations or enjoy a special status under the law. Often, they receive State subsidies.

D. THE PARTICIPATION OF MINORITIES IN POLITICAL LIFE

As noted above in connection with the "institutional" dimension to the protection of minorities, a federal or regional State allows for the recognition of a certain autonomy in the minorities resident in the State territory. They can thereby be attributed their own territory in which they can conduct policy through autonomous institutions. (The federal or regional structure of certain States as a means of protecting minorities will be the subject of a separate study).

In addition, minorities participate in different ways in the political life of the State in which they are present. After having examined their right to form cultural and political groupings, we will look at the way in which States take account of the presence of minorities on their territory in the establishment in the country of political and administrative sub-divisions as well as in electoral policy.

1. Freedom of association in general

a) Do minorities enjoy this freedom?

In general, freedom of association is recognised either by the Constitution or by the law (see also Art. 11 of ECHR). But express references to minorities in this connection are not always to be found. In most countries, the general principle which applies to all citizens of the State is interpreted in a wide manner and extends to persons belonging to a minority. In any case, no State denies this freedom to persons 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. This is the case in Norway and Switzerland, as well as in Finland, where "everyone, even a foreigner, is entitled to join an association". The criterion of nationality is therefore no longer relevant to the determination of entitlement to this freedom.

But even in the absence of specific provisions, it can be seen that nowhere is the right restricted to nationals.

b) Conditions for the exercising of this freedom

Evidently, this freedom is subject to certain restrictions. These restrictions generally rely for their justification upon the safeguard of constitutionally recognised interests such as national security, public safety, the defence of public order, the prevention of crime, the protection of public health or morals, or the protection of the rights of others. Moreover, these restrictions apply to the right to freedom of association in general (see European Convention for the Protection of Human Rights, Article 11 (2) and are not specific to associations concerning minorities.

c) Does this freedom have a transfrontier element?

Some States foresee the possibility of an extension of this right such that persons belonging to a minority can create associations open to persons domiciled in another country (Germany, Croatia, Slovenia). In general, there seems to be no problem in setting up associations open to persons domiciled abroad. The purpose of such a system is to encourage contacts with the country of origin. The case of Finland can also be cited, where the applicable legislation requires only that the President of the association and at least half the members of its governing body be domiciled in Finland, conditions which can also be fulfilled by foreign nationals.

2. The right to form political parties

In general, States have not adopted specific rules on political parties representing minority rights. They must fulfil the same conditions as other political parties. In Germany, two Länder (Schleswig-Holstein and Saxony) have provisions in their Constitutions to facilitate the election of representatives of minorities, without guaranteeing them a minimum representation in the corresponding legislative body. Romania has specific rules on associations of citizens belonging to minorities in extending to them special guarantees in respect of election to Parliament.

In Turkey, it is forbidden to create a political party of a national minority which favours a language or culture other than Turkish. All political parties must abstain from putting national unity into question and from promoting regionalism.

3. Adaptations of electoral law in favour of minorities

Representation in political institutions tends to make participation by minorities in public affairs more effective and is one way of protecting minorities' interests. The problem arises both at national and at regional and municipal levels.

a) The division of the country into electoral districts

In general, States do not proceed to the establishment of electoral districts by reference to the existence of minorities, whatever their nature. However, it may be noted that in Finland, the

Province of Aland forms a special electoral district which elects 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. In Switzerland, the cantons form the electoral districts for the election of the Federal Parliament and consequently minorities are represented.

In Russia, the electoral legislation of certain subjects of the Federation take into account the presence of minorities. Thus, Article 112 of the Constitution of the Republic of Sakha (Iakontie) provides that "in the areas of compact residence of the small Northern populations, electoral districts with the smallest number of electors may be created.

b) The formation of minorities into 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 and 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 for federal elections in Belgium).

This question can be linked to whether or not minorities have their own electoral districts; if the division of the country into districts does not favour the vesting of a degree of autonomy to its minority components, minorities will evidently have to merge with other political parties in order to ensure that they have a degree of representation in national institutions.

c) Special measures for the attribution of seats to representatives of minorities interests

Some States have made provisions which make it possible to take account of the existence of minorities on their territory for electoral purposes.

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 the superior courts. A number of seats in the national Parliament is also reserved for those minorities which do not reach this threshold. Similarly, in Denmark, legislation makes provision for two seats to be given to representatives from the Faroe Islands and two to representatives from Greenland. In the German Länder, the parties of the Danish and Sorban minorities are exempted from the rule according to which a political party must obtain more than 5% of the national vote in order to be represented in Parliament. Romania also makes special provision for associations of citizens belonging to national minorities, seats in the lower house being reserved for them on certain conditions. In Switzerland, linguistic criteria have had a certain influence on the mode of election of the principal confederal organs (the National Council, the Council of States, the Federal Council and the Federal Court). This is also applicable to certain bilingual Cantons.

It is evidently easier to give guarantees to minorities which are concentrated in a particular area than to minorities which are scattered throughout the national territory. In the latter case, other criteria have to be applied in order to ensure them some representation. Yet States can require that the minority constitutes a certain percentage of the total population in order to have seats in the political institutions.

It should be noted that the majority system can penalise candidates from the minority (when the latter is spread over several constituencies). The same is true of the proportional representation system combined with relatively small electoral constituencies, where minority lists can have difficulty in reaching the quorum required to obtain a seat in one constituency (this situation occurred in Austria when the regional election system was reformed in Carinthia). A similar effect (prejudicial for minorities) can occur when only the parties which obtained a certain percentage of the votes nationally in the first round are allowed to take part in the "second round" (as is the case under the new 1993 Italian electoral law in its proportional application).

4. Their representation in institutions

It is rare for States to establish a structure designed to guarantee in general the participation of minorities in political institutions. It is advisable in this respect to distinguish between concentrated minorities and dispersed minorities. In the former case, the minority will be represented in central institutions if the region where the minority is in the majority is in itself represented. The most concrete examples are Belgium and Switzerland. In Belgium, special measures have been taken both in the Constitution and by law to ensure the effective participation of minorities in political life. Such participation (and more particularly the francophone minority at the national level) is provided for at all levels of government - executive, legislative 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 also benefits from mechanisms quite similar to those used at federal level to protect the Francophone minority. In Switzerland, the mode of election to the principal confederal organs is influenced by the will to represent the various linguistic regions equitably. Proportional representation in the cantonal districts operates to provide a guarantee that all national languages will be represented in the National Council (lower chamber). In the Council of States (higher chamber), the rule of equal representation of each canton has the effect that the voice of a canton from a minority language group will be directly represented. In accordance with a customary rule, at least two representatives of latin cantons must sit on the Federal Council (the federal executive power). Finally, Article 107 of the Federal Constitution stipulates that the three official languages must be represented in the Federal Court. In Italy, in the province of Bolzano, in the Trentino-Alto-Adige, the membership of the provincial and local government executive bodies is corrected to ensure an adequate representation of the different linguistic communities, including the Ladin communities.

With regard to dispersed minorities, other States have adopted such concrete measures, but which do not reach every level of political life. They are rather concerned with one or other of the executive, legislative or judicial powers. Finally, some States have created bodies for the management of problems relating to minorities. These bodies are generally confined to a consultative power. Thus, in Romania, there is the Council for National Minorities. Austria has

a system of "Councils for ethnic groups" for each such group. In Finland, separate committees have been set up for Sami affairs and Roma affairs, as well as a delegation for the Province of Åland (a concentrated minority), whose function is to favour relations between the national Government and these various groups. Under the Constitution, Sami representatives have a right to be heard on matters concerning this minority. In Norway, a consultative Sami Parliaòent is established. In Hungary there is a national body for the self-management of minorities. In Cyprus, the Armenian, the Maronite and the Latin religious minorities each elect a representative to the Chamber of Representatives, which, however, has only a consultative vote. In the Netherlands, a national consultation Council in which all ethnic minority groups are represented discusses all major policy initiatives and can make recommendations with regard to them.

V. THE DUTIES OF MINORITIES

It is rare for a particular duty of loyalty to be imposed on minorities, beyond the general obligation to respect the laws in force applicable to all citizens. In the rare cases where such a duty exists, it is imposed upon all citizens independently of whether or not they belong to a minority. Thus, in Romania, all citizens including those belonging to national minorities have the same "duty of sacred fidelity to the country". Such appears also to be the case in Greece, where a special duty derives implicitly from the Constitution as well as from legislation, the non-respect of which can result, under certain conditions, in the loss of Greek nationality. In Spain, the Houses of Parliament, as well as some autonomous Assemblies, have imposed as a condition precedent to obtaining full parliamentary status the requirement of a vow or promise to respect the Constitution.

VI. THE QUESTION OF SUBMINORITIES

The question of subminorities arises when, on a portion of the national territory, the members of the majority group at national level find themselves in the position of a minority. Only four of the States here considered have special regulations protecting subminorities, namely 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. Here it enjoys a protective mechanism similar to that enjoyed by the Francophone 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 a subminority; in the Province of Aland, 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 statute of the autonomous Trentino-Alto-Adige region provides special measures for the Italian-speaking subminority of the province of Bolzano.

VII. PROTECTION MECHANISMS

Granting minorities a great number of specific rights and guaranteeing the broadest respect for their identity is one thing; it is also necessary that the effectiveness of these protective measures, as outlined above, be ensured.

A. REMEDIES AVAILABLE TO MINORITIES

In general, the States here considered have been content to place in the hands of persons belonging to minorities the administrative and judicial remedies which are available to the population at large. However, in Italy, the region of Valle d'Aosta and the province of Trentino-Alto-Adige, along with the autonomous provinces of Bolzano and Trento and all regions having a special status, have the power to challenge before the Constitutional Court any legislative measures which are alleged to violate the rights, particularly those relating to the protection of minorities, guaranteed by their respective statutes of autonomy. Regional and provincial laws can also be challenged before the Constitutional Court by regional or provincial councillors who are members of a linguistic group.

While some States have created national organs whose task is to deal with affairs affecting minorities, these are generally not judicial organs whose decisions would bind State authorities. Thus, in Belgium there exists, in respect of linguistic minorities, the Permanent Commission for Linguistic Supervision and the Deputy Governor, and, in respect of 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 problems of interest to the minority. In Hungary, one can note the institution of a Parliamentary Commissioner for the Rights of National and Ethnic Minorities and also that of local spokesperson for minorities. In Poland, a Commission for National Minorities has been established as a consultative body to the Council of Ministers. 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 Ombudsman. Generally speaking, the function of the councils for minorities referred to in Part IV D 4 is to solve problems concerning minorities by way of negotiations with the authorities.

B. CRIMINAL LEGISLATION AGAINST RACIAL HATRED AND GENOCIDE

The criminal law of many States provides for post offences of incitement to racial hatred and to violence against minority groups such as ethnic and racial minorities. This special protection extends both to the groups themselves and to the individuals comprising them.