

**The Council of Europe Framework Convention for the Protection of National
Minorities and its Impact on Central and Eastern Europe**

KINGA GÁL

European Centre for Minority Issues, Germany

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I. Introduction

A. *The Framework Convention as a 'success- document'*

The Framework Convention for the Protection of National Minorities of the Council of Europe¹ can be regarded as a direct, although belated result of the changes after 1989 in Central and Eastern Europe. While the OSCE Copenhagen Document (1990) started a process of strengthening minority protection in general and put minority rights into political declarations of intent, the Framework Convention was another milestone in this process, converting the political declarations and intents into legal terms, becoming, as often stressed, the first legally binding international instrument generally devoted to minority protection.

However, it has to be admitted that by its nature (being adopted by governments of the member states with diverging views and aims), the Convention is far from being wholly satisfactory, yet probably the best one could get².

- This Convention contains mostly programme-type provisions concerning the rights of minorities which leave the State Parties a measure of discretion in the implementation of the objectives enshrined through national legislation and governmental policies. The articles of the convention, and the convention as a whole, allow for rather flexible interpretations as to what persons belonging to national minorities are entitled to and what governments should do. States are encouraged to adopt the approach they find most suitable for local conditions. This is one of the reasons, most probably, why this Convention can be regarded as a success story, taking into account the impressive number of states of Eastern and Central Europe which rushed to sign the convention in January-February 1995, and subsequently also ratified it relatively quickly. By now almost all countries from the post communist block are part to the Convention, while several European Union (EU) countries such as Belgium, France, and Greece have not ratified the Convention so far.
- Another reason for this successful ratification process might be that it does not define the subjects of the Convention. As there was no definition of minorities included in the text, several states took the occasion to interpret their understanding of the subject of this legal document. Therefore, they added declarations to the ratification of the convention. Some of the countries, such as Bulgaria, Denmark, Estonia, Germany, Switzerland and the Former Republic of Macedonia have ratified the Convention with

¹ The Framework Convention for the Protection of National Minorities was adopted by the Committee of Ministers of the Council of Europe on 10 November 1994. It was opened for signature on 1 February 1995 and entered into force on 1 February 1998 following the required number of ratifications (12). The Convention has been signed so far by 41 member states of the Council of Europe, as well as by Armenia, Azerbaijan and Bosnia-Herzegovina as a 'non-member' States, and ratified by 29 member states plus non members (data as of 25 July 2000).

² Stefan Troebst, Preface and acknowledgements, Implementing the Framework Convention for the Protection of National Minorities, ECMI Report #3. Flensburg: European Centre for Minority Issues, August 1999.

a declaration introducing restrictive interpretations of the term ‘national minorities,’ which has not been defined in the Convention.

- Further on, the Framework Convention imposes an obligation on signatory parties to report only every five years on its implementation.

It must be noted that according to some experts the circumstances allowing for a large room of maneuvering are among the weaknesses of the FC. While, on the contrary, others claim that the flexibility could lead to a much more efficient implementation and monitoring, than is the case with other human rights instruments³.

Also another crucial aspect should be taken into consideration: the desire of most of the signatory states in Central and Eastern Europe to become members of the so-called Euro-Atlantic structures. The European Union especially emphasised in its latest documents (see the Copenhagen political criteria: democracy, the rule of law, human rights and respect for and protection of minorities⁴) its interest in the protection of minorities, and the FC is regarded by all involved parties as an appropriate proof of individual performances in this sensitive domain⁵.

³ For example, the lack of definition of minorities leads to the lack of a strict distinction between “traditional national minorities” and the so-called “new minorities”, and there is no requirement established for these national minorities to be citizens of the given country. This vague terminology may leave room for interpretation also in a more positive direction. See Troebst, op.cit.

⁴ The Copenhagen meeting of the European Council in June 1993 made a decisive step towards enlargement - the Member States declared it formally as an explicit goal of the Union. The heads of states and governments agreed upon “the associated countries in Central and Eastern Europe that so desire shall become members of the Union. Accession will take place as soon as an associated country is able to assume the obligations of membership by satisfying the economic and political conditions. According to these Copenhagen criteria, membership requires that the candidate country: (1) has achieved stability of institutions guaranteeing democracy, the rule of law, human rights, and respect for and protection of minorities; (2) the existence of a functioning market economy, as well as the capacity to cope with competitive pressure and market forces within the Union; (3) the ability to take on the obligations of membership, including adherence to the aims of political, economic and monetary union”. In this context associated countries were defined as those countries with which the EU had already concluded or planned to conclude Europe Agreements. The adopted membership-criteria became the basis of negotiations and pre-accession strategy with the applicant countries, the last condition implying full acceptance of the *acquis communautaire*, including participation in all three pillars established by the Treaty on European Union.

⁵ In February 2000 accession negotiations started with Bulgaria, Latvia, Lithuania, Malta, Romania and Slovakia. These countries joined the first round of countries where negotiations started already in 1998 (Cyprus, the Czech Republic, Estonia, Hungary, Poland and Slovenia. The European Council at Copenhagen in June 1993 agreed that the associated countries in central and Eastern Europe that so desire shall become members of the Union. At the same time it stated that accession would take place as soon as a country is able to assume the obligations of membership by satisfying the economic and political conditions. The Union's capacity to absorb new members, while maintaining the momentum of European integration would also be an important consideration. Since then, all ten associated countries of central and Eastern Europe have applied for membership and the Council has initiated the procedure of consulting the Commission, in accordance with Article O of the Treaty on European Union. Impact Study, The Effects on the Union's Policies, of Enlargement to the Applicant Countries of Central and Eastern Europe July 15, 1997 - Agenda 2000.

B. Core Issues under this Convention

The core questions in overall ethnic management, minority – majority relations and for effective protection and promotion of minority- identity, regulated in the Framework Convention can be divided into five main areas.

- (1) The less problematic provisions, although the basic ones are related to the *right of non- discrimination, protection of cultural, linguistic, religious identity* of the individuals belonging to such minority communities. (arts. 4, 5 and 6 under the FC).
- (2) More debated and tension causing questions are related to *linguistic rights, language use* in private and in public, in education, media, culture and official contacts. Language rights, as cultural rights with a collective dimension can be regarded as the most sensitive issues in minority protection, and as such in overall ethnic management. (arts.10 ,11)
- (3) Strongly linked to linguistic rights are *educational rights* (to learn the minority language and to be instructed in a minority language on all educational levels), which constitute the key problems for minorities and these rights are the ones which states are less generous to promote (arts.12, 13).
- (4) *Effective participation and representation* (art.15) in decision-making on different levels of the administration as well as local self-governments is also very important for national and ethnic minorities, as the improvement of their other basic rights are strongly related to the fact of whether they are able to influence the decision taking in this regard or can put pressure on the adoption of basic laws, improving their effective protection. This is especially the case in Central, Eastern and South-eastern Europe where participation in political life and administration are regarded as extremely useful in order to achieve any improvements and have decisions implemented.
- (5) *Trans-frontier co-operation* is mostly important in the life of minority communities living in border regions. There exist lively contacts across the borders in central Europe (Euroregions⁶) as well as are under development in Southeastern Europe with the help and influence of the European Union and Council of Europe projects⁷(art 18).

⁶ For example Carpathian Euroregion, Danube-Körös-Maros Euroregion, involving countries such as Poland, Ukraine, Slovakia, Hungary, Romania.

⁷ For example the joint project of the European Union and Council of Europe “National Minorities in Europe” started in 1994, or the project in the framework of the Congress of Local and Regional Authorities of the Council of Europe “Local Democracy Embassy”, etc.

II. Impact of the Council of Europe Framework Convention on the multilateral and bilateral relations in Central and Eastern Europe

A. Bilateral Treaties

Regulation of the status of national minorities in the legal system of the countries in Central and Eastern Europe is the result mostly of two trends.

(1) On the one hand, it is a result of establishing efficient system of protection of overall human and citizens rights (part of which the protection of persons belonging to national and ethnic minorities) through constitutional protection of minorities and provisions of special acts on education, media, elections or through separate legal acts.

(2) On the other hand, it could be regarded as a result of political striving for establishing good neighbourly relations with neighbouring states and, in consequence, stabilisation of their geopolitical position in Central or Eastern, Southeastern Europe as clear requirement for any step towards Euro-Atlantic integration. This process was started by the Polish - German bilateral treaty (1991) and is still continuing with the latest treaty being the Treaty between Romania and Moldova.

In this context, following the clear message of the EU and NATO, almost all candidate countries have signed bilateral treaties with most of their neighbours. The accession negotiations with the European Commission had and still have a stimulating role in the process of concluding treaties between the neighbouring countries⁸.

The provisions dealing with minority rights in the bilateral treaties strongly bear the imprint of international and regional instruments on minority issues. One can find in these treaties provisions quoted almost word for word from several legally binding (Framework Convention) and non-binding documents on the rights of national minorities, such as the UN Declaration on Minorities (1992),⁹ the CSCE Copenhagen Document (1990), as well as the Council of Europe Parliamentary Assembly Recommendation 1201 (1993)¹⁰. The bilateral treaties give legal force to these documents through their incorporation into the agreements. By inclusion of appropriate minority clauses in these

⁸ The most relevant treaties in this regard are the bilateral treaties adopted between Poland and The Federal Republic of Germany (1991, considered as a model solution of the issue of minority protection), the Czech and Slovak Republic (1991), The Russian Federation (1992), the Republic of Belarus (1992) and the Republic of Lithuania (1994). The treaties between Hungary and Ukraine, Slovenia, Croatia, Slovakia and Romania (all signed and ratified between 1991 and 1996) are all containing detailed provisions for minority protection; between Romania and Hungary (1996); Ukraine (1997 detailed article (art.13) on minority protection, as well as Moldova (2000). Croatia has signed bilateral treaties with Hungary and also bilateral agreements on the rights of members of national minorities in 1992 with Italy and 1995 with Hungary. Treaty between Ukraine and Romania, and Slovakia, as well as agreements between Ukraine and Moldova, Lithuania and Russian Federation.

⁹ United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, adopted by General Assembly resolution 47/135 of 18 December 1992.

¹⁰ Parliamentary Assembly of the Council of Europe Recommendation 1201 (1993) on an additional protocol on the rights of national minorities to the European Convention on Human Rights, Assembly debate on 1 February 1993 (22nd Sitting).

treaties, Poland and Hungary have played a significant role in re-establishing principles of protection of minority rights in Central Europe.

B. The Instrument of the Central European Initiative for the Protection of Minority Rights

The Central European Initiative instrument for the protection of minority rights (1994) was also drafted and adopted with a clear view to follow and where necessary enlarge the framework of minority protection established by the Framework Convention. Therefore, the Council of Europe experts were often consulted during the drafting of this document adopted by the foreign Ministers of the CEI countries (by that time Austria, Bosnia-Herzegovina, Croatia, Hungary, Italy, Macedonia, Poland and Slovenia) in November 1994. This particular instrument also established its own monitoring through the institution of the Working Group on Minorities.

III. Implementation of the Framework Convention and regulation of the status of national minorities through the national legal framework

A. Constitutional provisions and principles. Domestic legislation

Legal provisions existing in these countries governing minority protection were adopted during the early 90's and have a common approach: they are based on the principle of non-discrimination with provisions of positive support and protection of individual rights of persons belonging to national minorities¹¹, based on OSCE and Council of Europe standards and recommendations. Therefore, these provisions mostly follow the requirements of the Framework Convention, and even are in accordance with these minimum requirements (rarely exceeding them: Hungary or Slovenia). This provides another reason why all the countries in Central and Eastern Europe could easily ratify this document.

¹¹ Collective rights of minorities and a certain degree of minority self- government or cultural autonomy are enshrined only in the Hungarian, Slovenian and to some extent in the Croatian constitution and legal system.

Most of the new Constitutions of the states in Central and Eastern Europe declare the primacy of international undertakings over national laws¹². This is an important principle when looking at the status of national minorities and their protection system in the different states of the region in general and at the status of the Framework Convention in national legislation in particular. All these Constitutions deal with the status of minorities mostly referring to the basic rights of non-discrimination and identity protection of the minorities living in the country¹³. The basic principles are enshrined in the Constitution, while further special measures are transmitted to normal legislation (educational rights, linguistic rights, rights in the field of political participation, and freedom of religion).

More problematic is the definition of the titular nation and state, as well as of the description of the status of co-existing national and ethnic minorities. The acknowledgement of minorities and their right to preservation of their special identity in the constitution may positively influence the general legal framework and openness of the society for affirmative action in favour of minorities. In contrast, if the constitution stipulates the idea of one nation - one state it is difficult to find any justification for differentiation in favour of minority groups and to adopt special laws in this regard. In conformity with the unitary and national character of the state, in all these countries only one official language is accepted: that of the majority. Therefore, the 'nation – state' constitutional concept determines the position of the minority languages within the overall legislation and within everyday use¹⁴.

Deriving from the constitutional framework, the national legislation strongly reflects the spirit of the constitution. Therefore the status of ethnic and national minorities described by the constitution influences to a large extent the whole legal system in this field and even more it has a strong impact on the attitude of the administration towards the application and implementation of the legislative acts in this regard.

Two different legal systems exist in addressing minority rights. The first one handles minority rights through a general law on minorities, the second one addresses minority

¹² Exception being the Constitution of the Ukraine (art.9), "International treaties that are in force, agreed to be binding by the Verkhovna Rada of Ukraine are part of the national legislation of Ukraine".

¹³ See the Constitutions of Croatia, Hungary, Romania, Poland, Slovenia, Slovakia, and Ukraine and of the former Yugoslav Republic of Macedonia. See also the Charter of Fundamental Rights and Freedoms, i.e. the constitutional law from 1993 of the Czech Republic.

¹⁴ For example, according to the Romanian Constitution (art.1.1) "Romania is a sovereign, independent, unitary and indivisible National State", as well as the "State foundation is laid on the unity of the Romanian people" (art.4.1).

A different wording is used by Czech Constitution (1992, art 1): "The Czech Republic shall be a sovereign, united and democratic law-governed state, based on respect for the rights and freedoms of man and of the citizens". The Macedonian Constitution enlists the minorities living in the country in its Preamble, while according to its constitutional concept, the Republic of Macedonia is a unitary state, in which sovereignty derives from the citizens and belongs to them. On the other hand, the Constitution of the Republic of Croatia (Historical Foundation, par.3) declares the Croatian state as a unitary, "national state of the Croatian nation and the state of members of autochthonous national minorities: Serbs, Czechs, Slovaks, Italians, Hungarians, Jews, Germans, Austrians, Ukrainians and Ruthenians and the other who are its citizens, and who are guaranteed equality with citizens of Croatian nationality and the realisation of national rights (...)"

questions through specific acts, such as language law, education law or law on local self-governments.

(1) *Laws on national minorities* reinforce generally accepted international minority rights while adapting them to the particular needs of minorities living in the respective country. In addition these laws mostly establish a special regime of minority protection in the form of a certain type of minority self-government. The best example is the Hungarian legislative act from 1993¹⁵, which established the system of minority self-governments while recognising the right to cultural autonomy of minorities living in Hungary on the basis of collective rights. Ukraine does not establish any special regime by its Law on National Minorities (1992), but provides basic individual minority rights.

Croatia has passed a *Constitutional Law on human rights and freedoms and on the rights of ethnic and national communities and minorities* (1992) based on promotion of collective minority rights and providing cultural autonomy for “ethnic and national communities or minorities (art.5), but also a *Constitutional Law on the non-application of the Constitutional Law on Human Rights and Freedoms (1995)*¹⁶. However, in early June 2000 the Croatian Sabor passed a whole set of legislative acts. *The amendments of 1995 of the Constitutional Law were revoked and also a new law on minority language use has been adopted.*

According to the *Law on Self-governing National Communities in Slovenia*, the right to self-government to the autochthonous minorities (Italians and Hungarians) has been guaranteed to be exercised in defined territories. These self-governing institutions of national minorities decide about internal problems of their group. On the national level, the Italian and the Hungarian self-governing minority communities have been established that participate in the full range of decision-making on issues concerning the entire community¹⁷. However these far-reaching provisions are only guaranteed for the above mentioned two autochthonous minority groups and not for other minorities living in the country, such as Roma or Serbs, Croats or Bosniaks.

Drafts of a general legislative act on national minorities proposed by different national minorities, as well as of the government exist and were submitted to the Parliament in *Romania*, but even after the democratic coalition government came to power such a law is still pending before the Parliament. The draft Act on National Minorities in *Poland* is in the parliamentary work in the Sejm to be adopted by the end of the year (2000). To the

¹⁵ Act LXXVII of 1993 on the Rights of National and Ethnic Minorities.

¹⁶ According to the first law a special status allowing for a far reaching cultural autonomy was attached to districts in which more than 50% of the population belongs to a minority. However, this provision has been suspended since 1995¹⁶, and also were suspended all those provisions that relate to special rights and protection of those ethnic and national communities or minorities that according to the census of 1991 presented more than 8% of the overall population of Croatia, until the results of the first census of the population of the Republic of Croatia are published. Such census has not been taken, nor it is being prepared. Data from September 1999, Report on the Implementation of the Framework Convention of the Council of Europe on the protection of Minorities in Republic of Croatia, Croatian Helsinki Committee.

¹⁷ See in Council of Europe, Replies on the questionnaire (Slovenia).

same extent a draft law on national minorities is under preparation in the *Czech Parliament* to be adopted during the second half of 2000.

The *Law on the Special Legal Status of Gagauzia (Gagauz Yeri) in Moldova* (1994) can be regarded as a unique initiative among the post communist countries, because it provides territorial autonomy for the region inhabited by the Gagauz minority¹⁸.

(2) In the absence of a general minority act, minority related provisions are included in the Law on Education¹⁹ and Law on local self-governments²⁰ as well as acts on the media²¹ that contain provisions regarding the minority language use in the different fields in all the analysed countries.

The use of minority languages in public and within the administration are generally regulated by the *laws on local self- government or local authorities* (Romania, Macedonia²², or by special *laws on language use* (Slovakia or the very recent law adopted in Croatia).

B. *Good practices and good processes. Shortcomings*

- *Minority representation, effective participation in the decision taking.* A particular model of applying a specific threshold for minority parties in national parliamentary elections is in force in Romania. Here parties registered as organisations of citizens belonging to a national minority gain a seat if they win at least 5% of the votes of the average number of votes cast for one deputy. This allows also for small minorities to be represented in the parliament. Some countries in the region have *reserved seats* in

¹⁸ However, it has to be mentioned that in spite of the ratification of the FC and in spite of the generous status granted for the Gagauz minority in Chisinau, the language use, culture education did not improve visibly after 5 years. The Moldavian laws simply do not take into account the autonomy status, while the Gagauz laws do not respect the Constitution of Moldova.

¹⁹ Law on Education in Romania (Law no.84 of 1995 which is being amended and supplemented now by the Parliament. Act on the educational system (1991) and Resolution of 24 March 1992 in Poland or the Law on Education in the Ukraine. It has to be mentioned the Law of the confirmation of the European Charter on Regional or Minority Languages in Croatia (The National Gazette, Inter.Agreements 18/97), according to which there is no obligation for Croatia to organise higher education level studies in regional or minority languages, as it is exempt from Art.8.par.1.1 of this Convention.

²⁰ Law on general administrative procedure and Law on Municipality Statutes in Croatia, Law on the Local Public Administration in Romania (Law No. 697/1991, amended by law no. 24/1996); Law of Ukraine on local self-government in Ukraine.

²¹ Law on Croatian radio-television in Croatia, Law on Radio and Television Broadcasting in Romania (Law no.48/1992); Act on Radio and Television Broadcasting (1993, art.21) in Poland or Act on radio and television in Hungary, or Law of Ukraine on state support of mass media and social protection of journalists.

²² In the case of FYROM the Law on Local Self Government envisages in those units of self-governments where majority (over 50%) or significant (over 20%) of persons belonging to minorities are living, in addition to the Macedonian language and Cyrillic alphabet, the language and alphabet of the minority concerned are also in official use within the municipal council. Where the minority population constitutes a majority the minority language is in official use also in public services institutions and enterprises and accordingly names are written in both languages, Art. 25 of the Law on Local Self-Government.

the national parliament for minority representatives. This is the case in Slovenia, where the Hungarian and Italian national minorities elect their own deputies to the National Assembly, or in the case of Croatia where a minority of more than 8% of the population is entitled to compete for proportional representation in the parliament, while all the minorities below this threshold are assigned an overall number of 5 seats²³. Provisions of the Acts of 1991, 1993 and 1997 on elections to the Sejm in Poland also included special electoral preferences for minority organizations.

- *Parliamentary Committees for minority issues or the institution of an ombudsperson.* In most of the countries in the region parliamentary committees exist for dealing with minority issues²⁴, mostly in the framework of the general human rights questions. In other countries in the region the institution of Ombudsman was established with a mandate covering misconduct on part of the authorities in human rights and/or minority rights questions. Those bodies or ombudspersons appointed by parliament without special mandate for minority issues have the task to monitor the activities of public bodies and protect human rights in general by investigating complaints. This is the mandate of the Czech, Croatian, Macedonian and also the Romanian Ombudsperson. There exists the institution of Parliamentary Commissioner for National and Ethnic Minorities established by the Law on National and Ethnic Minorities in Hungary with a clear mandate to also examine individual complaints on discriminatory acts against minorities as well as to adopt recommendations and initiate administrative measures.
- *Government offices on/for national minorities.* In Romania, a Minister for National Minorities has been appointed, the minister himself being a Hungarian delegated by the Democratic Alliance of Hungarians in Romania. In 1998 an Inter-Ministerial Committee for National Minorities was established (although neither the Minister nor the Committee was for example informed about the elaboration of a state report on the enforcement of the Framework Convention - prepared exclusively by the Foreign Ministry). Similar institutions exist in almost all the analysed countries in the region. The Governmental Commissioner for Human Rights in the Czech Republic is also Chairman of the Council for National Minorities and Chairman of the Inter-Ministerial Commission for Roma Affairs involved in the preparation of the draft law on the protection of the rights of national minorities.
- *The role of minority organisations/parties in coalition governments.* In most of the cases where democratic forces are in the government as a result of elections of the mid 90's it is interesting to see that the most important and powerful minority organisations have become part of the government coalitions. These improvements were mostly due to the fact that the democratic parties would not been able to form a

²³ This way, one seat is assigned to more than one minority (one seat for the Czech and Slovak Minorities and another seat for Ruthenian, Ukrainian, German and Austrian minorities. See in Council of Europe, Replies on the questionnaire.

²⁴ Examples are: Committee for Human Rights and the Rights of Ethnic and National Communities or Minorities in Croatia; Commission for Ethnic Communities of the Slovenian Parliament, chaired by minority representatives; Council for Inter-Ethnic Relations as a permanent working body of the Parliament of Macedonia.

government without the votes of these minority parties/associations. These minority associations can be regarded as representing the balance in the government; they have quite clear programs and represent voters with stable voting preferences. This is the case in Slovakia since 1998 or in Romania, where the Democratic Alliance of Hungarians has been a member of the coalition government since 1996.

Especially important is the *minority representation in the local self-governments* where these communities live. In several cases (Hungary, Romania, Poland, Slovenia) the application of laws on Local self-government or electoral laws enabled the parties, alliances representing minority communities to hold power. This actually means that at least in certain municipalities the principle of subsidiarity can be implemented.

- One basic precondition for the realisation of the rights regarding identity protection and promotion for national minorities is the possibility of *being informed in one's mother tongue*. Significant results have been achieved in the last years in all countries in Central, Eastern Europe in this regard as to the language programs in state television or radio, as well as in private TV and radio stations (in particular the local private stations are extremely useful in this regard)²⁵.

An important factor in the overall protection of human rights but especially in the effective protection and promotion of minority rights consist of the NGOs dealing with human rights and/or minority issues in the region. Their special importance is due to the fact that they replace the duties and overtake the tasks of the authorities in several cases and contribute to the development of a civil society, the spread of democratic principles and rule of law. In several cases members of minority communities become aware of their rights and possibilities mostly through *NGO work* and not from governmental sources. (This is the case quite recently with the implementation and monitoring of the Framework Convention).

Based on the shadow reports prepared by these NGOs some main common deficiencies can be evidenced in the region:

- The question of *reliability of the official census data* comes up regularly when minority protection is analysed in these countries. Especially questioned is the number of Roma in almost all of the countries in the region. In the case of Slovenia, Croatia the status of non-Slovene or non-Croat former permanent residents who are denied citizenship is problematic.
- An important factor for overall minority protection, as well as for the effective participation of minorities in political life in general and in elections in particular is the *question of financing*. Lack of minimal finances could render meaningless even the most generously guaranteed rights and hinder implementation of even the basic international standards.
- *Dissemination of negative stereotypes related to national and in particular ethnic minorities through the media*, as well as political statements using hateful language

²⁵ Good examples can be found in Bulgaria; in Croatia; in Macedonia in Albanian and Turkish language; in Romania especially in Hungarian and German language; as well as in Slovenia.

that could easily be regarded as incitement, promoting hatred and intolerance are quite common in several states in the region. Although these are strictly forbidden by domestic laws and also by the Framework Convention, the phenomenon still exists and is quite usual especially regarding the Roma population.

- As one of the main tools to overcome unemployment and workplace discriminations is strongly linked to the existence of well prepared minority intellectuals, *secondary and tertiary education has become a key issue* during the recent years. High-level education for minorities and in the minority language could help the minorities to get important positions and to become part of the *elite* of the whole society; this would stop the immigration process of the young generations.
- A serious problem of the whole region is *the integration of Roma into the society while preserving and promoting their special identity*. The Roma issue is and will be in the future the most problematic issue in the framework of overall minority protection in the region of Central, Eastern and South East Europe. The focus during the last years was mainly on *national* minorities and less on *ethnic* minorities in these countries, although Roma issues would be a core problem of any multiethnic society that would like to promote diversity. Although all international undertakings above enlisted and analysed refer to the same extent to the Roma ethnic communities, their rights are far from being effectively protected to the same extent in the Czech Republic or Hungary as in Slovenia or Romania.

IV. Conclusion

Looking at the impressive number of laws, decrees or government programs dealing with the protection of national minorities in Central and Eastern Europe one could easily assess that the Framework Convention played a positive role in this process and that the minorities in the region are adequately protected. However, as a conclusion of this study, I would rather stress the fact that with the adoption of the constitutional principles and domestic legislation, as well as with the ratification of the FC, the states in Central and Eastern Europe established the legal framework for an adequate minority protection, but did not automatically fulfil their obligations in this regard in practice.

The realisation of rights, the implementation of the undertakings is dependent on the political structure of the actual government and the political will of those in power. Therefore, we cannot speak yet (with the exception of a very few examples) about an institutionalised and applied minority protection system in the region, or about effectively implemented standards. Before speculating about the possible effects of the Framework Convention in the near future, one must first ask whether there is serious impact in practice in some of the State Parties, as there has traditionally been a large discrepancy in several countries (for example Slovakia, Romania, Ukraine or Moldova) between what is written in the law and the actual situation. Indeed, legal provisions can be curtailed by government decrees or circumvented by local decrees dependent on the actual political formation and political will of the actual government.

Let me give a clear example for the above statement: immediately following the ratification of the Framework Convention in Slovakia (September 1995), the controversial Law on the

State Language was adopted (November 1995), which contradicted several provisions of the Convention. It significantly limited the use of languages other than Slovak in schools, state institutions and media. After the new Slovak government took power, a clear political will was expressed to make progress in the area of minority rights. The Law on the Use of Minority Languages in Official Communications (entered into force on 1 September 1999) can be considered as a direct outcome of the new government programme and aims at fulfilling the commitments that Slovakia undertook since the new Slovak State was established. This law provides that persons belonging to minorities are able to use their language in official communications with public administrative organs and organs of local self-administration in those municipalities where the minority constitutes at least 20% of the population. However, this legislative act refers only to a limited field of language use, and in other areas the restrictive 1995 Language Law is still in force. In addition, this law is formulated in such a vague way and includes such a big number of outstanding conditions that it will be difficult to implement it.

In some of the countries an integrated strategy will be needed in order to be able to make the generous standards applicable in practice. Here minority issues cannot be seen only as an issue of legal framework or just of political will. It is true that these factors are the most crucial ones, but also the conflict potential caused by links between ethnicity and economic transition, as well as regional underdevelopment need to be addressed. In addition, even the most advanced legal framework will not say too much about the actual situation of the minorities and about the inter-ethnic relations in a given country – as big gaps can be identified between standards and practice almost everywhere in the region. Governments can and should be held accountable for the installation of a legal and institutional framework for minorities within the state under their obligations deriving also from the Framework Convention, but the actual stand of inter-ethnic relations in society is a more complicated process, which often relates to perceptions of history (should it be the communist decades or the inter-war period) and perceptions about own national identity. However, it is important to emphasise that economic, social problems and legacies of the past can not be regarded as an excuse for basic and adequate protection of overall human rights and of national minorities.

With the ratification of the FC by almost all the countries in the region a clear legal standard is in force that has to be implemented. All these states will also be measured by the way of implementation of this particular document. Therefore, the importance of the monitoring system established under the FC has to be stressed. And not only because of the fact that State Parties have the task to report on the stand of the minority protection, but also because of the possibility created by the Advisory Committee²⁶ to gather

²⁶ The Framework Convention provides that the Committee of Ministers of the Council of Europe shall monitor the implementation of the Convention and will be assisted in this task by an Advisory Committee (arts. 24-26). The duty of the Advisory Committee is to examine the State reports, prepare an opinion on the measures taken by the State Party and forward it to the Committee of Ministers. The Committee of Ministers will take the final decisions in the form of conclusions, and, where appropriate, will adopt recommendations addressed to the State Party concerned. The recommendations, conclusions of the Committee of Ministers, as well as the opinion delivered by the Advisory Committee will be made public jointly.

information also from additional sources to government reports. This decision contributed to the revival of the NGOs dealing with minority and human rights issues in the region (for the second time after the first big wave in 1989/1990). These NGOs play an important role in informing the society in general and the minorities in particular about the existence of such international standards and the everyday use of this standards (i.e, NGOs are the only source of information for minorities for example in the Ukraine, or Moldova). At the same time these NGOs prepare shadow reports on the actual stand of the minority protection in the given country (here the active role played by the Helsinki Human Rights Committees should be stressed), while the governments had to realise that the role of the NGOs cannot diminished in this field either, as the views of the NGOs are taken into consideration in Strasbourg.

The monitoring mechanism established by the Framework Convention gave an impetus to the whole system of minority protection. But this is not all – hopefully the overall protection of human rights will gain a great deal both on international and domestic level from the work of the Advisory Committee.

BIBLIOGRAPHY

Frowein, Jochen and Bank, Roland (1999), "The Effect of Member States' Declarations Defining 'National Minorities' upon Signature or Ratification of the Council of Europe's Framework Convention", *ZaöRV, Heidelberg Journal of International Law*, 59, pp. 649-676.

Daftary, Farimah and Gál, Kinga (2000), "The New Slovak Language Law: Internal or External Politics?", paper presented at the *ASN Fifth Annual Convention*, Columbia University, New York, 13-15 April, 2000.

European Commission (1999), "Regular Report from the Commission on Progress towards Accession by each of the candidate countries." Brussels: European Commission, October 13, 1999.

Gál, Kinga (1999), "Bilateral Agreements in Central and Eastern Europe: A new interstate framework for minority protection?", *ECMI Working Paper # 4*. Flensburg: European Centre for Minority Issues, May, 1999.

Hofmann, Rainer (1999), "Implementing States Obligations under the Council of Europe Framework Convention for the Protection of National Minorities", *Europa Ethnica* 56, pp.1-9.

Neuss, Jurczek, Hilz (Ed.) (1999), *Transformationsprozesse im südlichen Mitteleuropa, Occasional Papers Nr.20*. Tübingen: Europäisches Zentrum für Föderalismus-Forschung, 1999.

Troebst, Stefan (1998), "The Council of Europe's Framework Convention for the Protection of National Minorities Revisited", *ECMI Working Paper #2*. Flensburg: European Centre for Minority Issues, December 1998.

Romania. Ministry for National Education in Romania. General Directorate for National Minorities (1999), "The Present-Day Educational System for National Education in Romania".

State reports:

Czech Republic:

Report Submitted By the Czech Republic Pursuant to Article 25, Paragraph 1 of the Framework Convention for the Protection of National Minorities, 1999, Council of Europe

Tomásková, Petra: Development of the Situation of Romany Minority in View of the Compliance with the Framework Convention, at: <http://www.riga.lv/minelres/reports>.

Hungary:

Report Submitted By Hungary Pursuant to Article 25, Paragraph 1 of the Framework Convention for the Protection of National Minorities, 1999, Council of Europe.

Hungarian Helsinki Committee, Report On the Situation Of Minorities In Hungary, September 1999, at: <http://www.riga.lv/minelres/reports>

Poland:

Lodzinski, Sawomir, Helsinki Foundation For Human Rights, Poland: The protection of national minorities in Poland, September 1999, at: <http://www.riga.lv/minelres/reports>

Romania:

Report Submitted By Romania Pursuant to Article 25, Paragraph 1 of the Framework Convention for the Protection of National Minorities, 24 June 1999, Council of Europe, ACFC/SR (99) 11.

Shadow report, Gabriel Andreescu, October 1999, at: http://www.riga.lv/minelres/reports/romania/romania_NGO.htm.

International Helsinki Federation For Human Rights, Annual Report 1999, at: <http://www.ihf-hr.org/reports/ar99/ar99rom.htm>

Slovakia:

Slovak Helsinki Committee: Report on the implementation of the Framework Convention of the Council of Europe on the Protection of Minorities in Slovak Republic, September, 1999, at: <http://www.riga.lv/minelres/reports>

Slovenia:

International Helsinki Federation For Human Rights, Annual Report 1999, at: <http://www.ihf-hr.org/reports/ar99/ar9slv.htm>

Ukraine:

Report Submitted By The Ukraine Pursuant to Article 25, Paragraph 1 of the Framework Convention for the Protection of National Minorities, 2 November 1999, Council of Europe, ACFC/SR (99)14.

Parallel report, at: <http://www.riga.lv/minelres/reports/ukraine>.

Biographical Note

The author is Vice-President of the Government Office for Hungarian Minorities Abroad in Budapest, Hungary. She was Research Associate for the European Centre for Minority Issues from 1997 to Spring 2001. She is a specialist in minority legislation in Central Europe, as well as within the context of the United Nations and the Council of Europe.