

The Framework Convention for the Protection of National Minorities provides in Article 15 that “*The Parties shall create conditions necessary for the effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs, in particular those affecting them.*”

2. Are there institutional arrangements that guarantee (or facilitate) effective political representation of persons belonging to minorities? For example, a Second Chamber in Parliament, the federal structure of the State, specific “minority institution” (such as a Council of Minorities or a dedicated Ombudsperson, or electoral mechanisms (quotas, separate lists for minorities).

The Advisory Committee highlighted, with respect to participation in public affairs, “that persons belonging to national minorities should be given real opportunities to influence decision-making, the outcome of which should adequately reflect their needs. (*Thematic Commentary on the effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs, 2008*, hereafter *Thematic Commentary no.2*, para. 71) and that “particular attention should be paid to equal participation of women and men belonging to national minorities, as well as youth perspectives.” (*Thematic Commentary No.2*, para.70)

The Advisory Committee underlined that “the participation of persons belonging to national minorities in electoral processes is crucial to enable minorities to express their views when legislative measures and public policies of relevance to them are designed” and while states “are sovereign to decide on their electoral systems [...] it is important to provide opportunities for minority concerns to be included on the public agenda. This may be achieved either through the presence of minority representatives in elected bodies and/or through the inclusion of their concerns in the agenda of elected bodies” (*Thematic Commentary No. 2*, paras. 80-81). As regards constitutional guarantees for the representation of persons belonging to national minorities in elected bodies, they “need to be coupled with effective implementing legislation and accompanying measures within reasonable time” and persons belonging to national minorities [should] participate or [be] consulted in the process of drafting such legislation and monitoring its implementation.” (*Thematic Commentary No. 2*, paras. 80-81). The Advisory Committee also encouraged states “to strengthen the participation of persons belonging to national minorities, including those in a disadvantaged position, in local elected councils” (*Thematic Commentary No. 2*, para. 84). At the same time, “electoral provisions aimed at promoting a balanced presence of women in elected bodies can be designed to have a positive impact on the participation of women belonging to national minorities in public affairs” (*Thematic Commentary No. 2*, para. 85).

The provision of reserved seats, shared between various national minorities or designed for one group, is one of the ways in which the representation of persons belonging to national minorities can be ensured in elected bodies. Such arrangements “have in a number of cases proved to be a useful means to enhance participation of persons belonging to national minorities in decision-making. The ‘shared seats’ system is particularly adapted to the needs of numerically small minorities. For such an arrangement to have a significant impact on the participation of all the national minorities represented through the shared seat(s), ... [e]lected representatives occupying shared seats should take due care to represent the concerns of all persons belonging to national minorities in the constituency.” (*Thematic Commentary No. 2*, para. 92). “[I]t is important that the minority representatives elected are effectively involved in decision-making processes” and “[they] should have a real possibility to influence decisions taken by the elected body, including those not strictly related to national minorities. It is therefore important that they have speaking and voting rights in the elected body and that their role is not limited to a mere observer status.” (*Thematic Commentary No. 2*, para. 93). According to the Advisory Committee, “the mere establishment of such arrangements does not automatically provide persons belonging to national minorities with a genuine and substantial influence in decision-making.” (*Thematic Commentary No. 2*, para. 94). In some cases, members of parliaments representing national minorities have a ‘veto-type’ right over draft legislation directly affecting them. The Advisory Committee has noted, however, that ‘veto’ rights can usually be invoked only in relation to legal acts concerning exclusively the rights and status of persons belonging to national minorities. Hence, it might not be sufficient to guarantee the proper involvement of minority representatives in issues which do not concern them directly or exclusively” (*Thematic Commentary No. 2*, para. 97)

4. Are there institutional arrangements and/or political practices that *de facto* exclude persons belonging to minorities from effective participation in decisions at the national – and, where appropriate, regional level – concerning the minority to which they belong?

With respect to the participation of persons belonging to national minorities in the executive, the Advisory Committee noted that “effective participation can be advanced by various means such as the introduction of posts assigned for minority representatives in the executive at all levels. **Measures excluding persons belonging to national minorities from accessing public posts are potentially discriminatory.**” (Thematic Commentary No. 2, para. 128)

5. Are there legal, administrative or other barriers that prevent persons belonging to minorities to participate effectively in cultural, religious, social, economic or public life?

The Advisory Committee considers that “participation in social and economic life covers a wide range of issues, from access to adequate housing, health care, social protection (social insurance and social benefits), to social welfare services and access to work. Participation [...] in economic life implies both access to the labour market, public and private, and access to business and other self-employment opportunities. These are, in turn, closely linked to property rights and privatisation processes”. Effective participation requires the removal of “barriers which prevent persons belonging to national minorities from having equal access to various spheres of economic life and social services and to promote their equal access to employment and market opportunities and to a range of public services, including social housing and health care” and, in term of equal opportunities, “the promotion of participation of persons belonging to national minorities in economic and social life and in benefits and outcomes in the social and economic spheres, which includes, among others, the right to benefit from economic development, health services, social security and other forms of benefits (Thematic Commentary No. 2, paras. 24-27).

At the same time, “persons belonging to different minority groups face different obstacles to their participation in socio-economic life. Persons belonging to **some groups, such as the Roma and Travellers or indigenous peoples, are more at risk of suffering forms of exclusion from socio-economic** life than persons belonging to other national minorities or the majority population. These groups may require specific measures to address their needs.” (Thematic Commentary No. 2, para. 25)

The Advisory Committee has highlighted that “specific measures [should be taken] to increase the opportunities for persons belonging to minorities living in **peripheral and/or economically depressed areas**, such as rural, isolated and border areas, war-damaged areas or regions affected by deindustrialisation, to participate in socio-economic life”. (Thematic Commentary No. 2, para. 42)

“**[Residency requirements imposed]** by employers or by the state as a prerequisite for recruitment, or for registering and running private business [...] can affect in a disproportionate manner persons belonging to certain national minorities. [...]”. They “can also hinder their access to basic social rights, such as healthcare, unemployment services and pension entitlements. Persons belonging to national minorities which have a nomadic lifestyle also face obstacles to participation in socio-economic life when residency-related requirements are not adapted to their lifestyle.” (Thematic Commentary No. 2, para. 54)

The Advisory Committee has also noted that “**undue or disproportionate language proficiency requirements** in order to access certain jobs or in the provision of goods and services, especially in the private sector, can hamper access to employment and social protection of persons belonging to national minorities. [...] Access to basic social benefits and to certain public services should not be hampered by undue language or residency requirements.” At the same time, “where language proficiency requirements are a legitimate condition for access to certain jobs, notably in the public service, language training courses should be made available to prevent discrimination of persons belonging to national minorities.” (Thematic Commentary No. 2, para. 55)

“**Substandard housing conditions**, often coupled with the **physical/spatial separation** of persons belonging to certain national minorities, in particular Roma and Travellers, considerably affect their ability to participate in socio-economic life and can result in their further poverty, marginalisation and social exclusion. This is frequently made more acute by the lack of legal provisions securing their residency rights and by their vulnerability to forced evictions, including as a consequence of processes of property restitution” (Thematic Commentary No. 2, para. 57)

“Persons belonging to certain national minorities face particular **difficulties in their access to health care**, a situation which results from different factors, such as discrimination, poverty, geographical isolation, cultural differences or language obstacles. Difficulties in the access to health care have a negative impact on the participation of persons belonging to national minorities in socio-economic life.” (Thematic Commentary No. 2, para. 61)

As regards various aspects of participation in public affairs, the Advisory Committee underlined that “the right of every person belonging to a national minority to freedom of peaceful assembly and freedom of association as stipulated in Article 7 of the Framework Convention implies, inter alia, the right to form political parties and/or organisations. **Legislation which prohibits the formation of political parties on an ethnic or religious basis** can lead to undue limitations of this right. Any limitation should, in any case, be in line with the norms of international law and the principles embedded in the European Convention on Human Rights.” (Thematic Commentary No. 2, para. 75). While registration of national minority organisations and political parties may be subject to certain conditions, such requirements “should, however, be designed so that they do not limit, unreasonably or in a disproportionate manner, the possibilities for persons belonging to national minorities to form such organisations and thereby restrict their opportunities to participate in political life and the decision-making process. This concern, inter alia, numerical and geographical conditions for registration.” (Thematic Commentary No. 2, para. 76)

At the same time, there is a need to “ensure that parties representing or including persons belonging to national minorities have **adequate opportunities** in election campaigning. This **may imply the display of electoral advertising in minority languages**. The authorities should also consider providing opportunities for the use of minority languages in public service television and radio programmes devoted to election campaigns and on ballot slips and other electoral material in areas inhabited by persons belonging to national minorities traditionally or in substantive numbers” (Thematic Commentary No. 2, para. 77)

The Advisory Committee has also noted that “when electoral laws provide for **a threshold requirement**, its potentially negative impact on the participation of national minorities in the electoral process needs to be duly taken into account. Exemptions from threshold requirements have proved useful to enhance national minority participation in elected bodies.” (Thematic Commentary No. 2, 2008, para. 82)

The Advisory Committee has also “underlined that due attention should be paid to the possible negative impact of certain **residency requirements** on the participation of persons belonging to national minorities in local elections. (Thematic Commentary No. 2, para. 82)

It also emphasised that “when considering **reforms leading to constituency changes**, [it should be ensured] that they do not undermine the opportunities of persons belonging to national minorities to be elected.” When considering reforms which aim to modify administrative boundaries, “the authorities should consult persons belonging to national minorities and carefully consider the possible impact of such reforms on their participation in public affairs. “[States] should not adopt measures which aim to **reduce the proportion** of the population in areas inhabited by persons belonging to national minorities or to limit the rights protected by the Framework Convention. On the contrary, administrative reforms in such areas should aim inter alia to increase opportunities for minority participation. (Thematic Commentary No. 2 paras. 88-90]

“Although it is legitimate to impose certain restrictions on non-citizens concerning their right to vote and to be elected, such restrictions should not be applied more widely than is necessary. While **citizenship requirements** can be applied in relation to parliamentary elections, State Parties are encouraged to provide non-citizens belonging to national minorities with a possibility to vote and to stand as candidates in local elections and governing boards of cultural autonomies. Citizenship should not be a condition for persons belonging to national minorities to join trade unions and other civil society associations. This is particularly important in State Parties where citizenship policy has been in a state of flux. (Thematic Commentary No. 2, para. 101)

“**Language proficiency requirements** imposed on candidates for parliamentary and local elections are not compatible with Article 15 of the Framework Convention. They negatively affect the effective participation of persons belonging to national minorities in public affairs.” (Thematic Commentary No. 2, para. 102)

In the view of the Advisory Committee “ways of promoting the recruitment of persons belonging to national minorities in the public sector, including recruitment into the judiciary and the law enforcement bodies” should be identified. “Participation of persons belonging to national minorities in public administration can also help the latter better respond to the needs of national minorities.” (Thematic Commentary No. 2, para. 120). However “measures which aim to reach a rigid, mathematical equality in the representation of various groups, which often implies an unnecessary multiplication of posts,

should be avoided. They risk undermining the effective functioning of the State structure and can lead to the creation of separate structures in the society” (Thematic Commentary No. 2, para. 123)

“**State language proficiency requirements** placed on public administration personnel should not go beyond what is necessary for the post or service at issue. Requirements, which unduly limit the access of persons belonging to national minorities to employment opportunities in public administration, are not compatible with the standards embedded in the Framework Convention. Where necessary, targeted support should be provided to facilitate the learning of the official language for applicants or personnel from national minorities.”(Thematic Commentary No. 2, para. 126)

In addition, the Advisory Committee considers “that any **numerical thresholds** established as a precondition for the applicability of certain minority rights must be interpreted flexibly” (Thematic Commentary No. 4, The Framework Convention: a key tool to managing diversity through minority rights. The scope of application of the Framework Convention for the Protection of National Minorities, adopted on 27 May 2016, para. 12)

6. **What are the benefits and/or challenges of recognizing and granting sectoral (for example, concerning sectors like education) or territorial autonomy to minorities?**

The Framework Convention for the Protection of National Minorities does not provide for the right of persons belonging to national minorities to autonomy, whether territorial or cultural. The Advisory Committee “found that, in the State Parties in which territorial autonomy arrangements exist, as a result of specific historical, political and other circumstances, they can foster a more effective participation of persons belonging to national minorities in various areas of life” (Thematic Commentary No 2, paras.133-134). As regards cultural autonomy arrangements, where they have been established, “these [...] are granted collectively to members of a particular national minority, regardless of a territory. They aim inter alia to delegate to national minority organisations important competences in the area of minority culture, language and education and can, in this regard, contribute to the preservation and development of minority cultures” (Thematic Commentary No 2, para. 135). The Advisory Committee noted that when states provide for cultural autonomy arrangements, “the corresponding constitutional and legislative provisions should clearly specify the nature and scope of the autonomy system and the competencies of the autonomous bodies. In addition, their legal status, the relations between them and other relevant State institutions as well as the funding of the envisaged autonomy system, should be clarified in the respective legislation. It is important that persons belonging to national minorities be involved and that their views be duly taken into account when legislation on autonomy arrangements is being prepared or amended.” (Thematic Commentary No. 2, para. 136). “When designing electoral systems for autonomous bodies, the representativeness of the national minority concerned should be a key consideration. Electoral systems for self-government arrangements should entail protection against possible abuse.” (Thematic Commentary No. 2, 2008, para. 137)

As regards the European Charter for Regional or Minority Languages, several of its provisions are important for the participation of speakers of regional or minority languages.¹ According to its Article 7.4, “*In determining their policy with regard to regional or minority languages, the Parties shall take into consideration the needs and wishes expressed by the groups which use such languages. They are encouraged to establish bodies, if necessary, for the purpose of advising the authorities on all matters pertaining to regional or minority languages.*” Article 11.3 requires “*Parties [to] ensure that the interests of the users of regional or minority languages are represented or taken into account within such bodies as may be established in accordance with the law with responsibility for guaranteeing the freedom and pluralism of the media.*” With regard to cultural activities, Article 12.1 requires Parties “*(d) to ensure that the bodies responsible for organising or supporting cultural activities of various kinds make appropriate allowance for incorporating the knowledge and use of regional or minority languages and cultures in the undertakings which they initiate or for which they provide backing; (e) to promote measures to ensure that the bodies responsible for organising or supporting cultural activities have at their disposal staff who have a full command of the regional or minority language concerned, as well as of the language(s) of the rest of the population; (f) to encourage direct participation by representatives of the users of a given regional or minority language in providing facilities and planning cultural activities;*”

It should be also noted that both the Advisory Committee on the Framework Convention for the Protection of National Minorities and the Committee of Experts of the European Charter for Regional or

¹ The European Charter for Regional or Minority Languages has a “à la carte” system. Provisions under Part II (Article 7) are applied by all state parties, while as regards Part III (Articles 8-14), parties are required to choose at least 35 of their provisions.

Minority Languages expect states parties to consult the national minorities/regional or minority language speakers in the preparations of the various reports to be submitted to the Council of Europe as part of the monitoring process and to organise follow-up meetings/implementation roundtables once the opinions/evaluation reports are made public.