The protection of the political rights of the Russian-speaking minorities in Estonia and Lithuania in a context of The Framework Convention for the Protection of National Minorities

by

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1. Introduction

Indication of the problem:

After the dissolution of the Union of Soviet Socialist Republics (USSR) when three Baltic States (Estonia, Latvia and Lithuania) regained their independence the question of national minorities has become a big issue in these countries. In each of these States Russian-speaking minorities form one of the biggest national minority groups. The negative attitude by the national majority of the States towards Russian-speaking minority group is largely based on the historical background (almost 50 years lasting occupation of the Baltic States by the USSR), making the position of this minority group more vulnerable. For the aim of this thesis, two States with different size of Russian-speaking national minorities have been chosen. First of all it is Estonia, where the Russian-speaking minority forms the largest minority group of the State. The fact that in Estonia a significant number of these people do not have citizenship leads to a problem that people cannot enjoy all their rights (the so-called ‘non-citizens’). This causes a situation that people who live permanently in the country but do not have citizenship cannot participate in political life. For instance, according to the State’s law, they cannot vote or be elected which can be seen as a violation of the right of national minorities to participate in the political life. Another chosen State is Lithuania. Even if the situation there is not as dramatic as in Estonia, the problems related to the rights of the Russian-speaking minorities also exist, for instance a lack of representation in different State institutions. The effective protection of the political rights of all the groups of society is one of main indicators of the democratic State. That is why it is of particular importance to ensure the protection of political rights of the Russian-speaking national minorities in Estonia and Lithuania where they form a big part of all the population of the State.

The protection of Russian-speaking minorities is important not only for the situation within the States but also for their international relationship. The way Estonia and Lithuania treat Russian-speaking minorities has an impact not only on their own relationship with Russia but also with the whole European Union. The Russian Federation may explain some of its less favorable actions towards these countries by their inappropriate attitude and treatment of Russian-speaking minorities. Since good relationships with the Russian Federation are important for the security as well as for the economic situation of the Baltic countries, the lack of legislation and protection of rights of the Russian-speaking minority group can have some consequences for these States and for the European Union as a whole. This is one more reason why
the protection of this minority group requires additional attention both on the national and international level.

Since their independence, Estonia and Lithuania are improving legislation on human rights, including the protection of national minorities. Moreover, the membership of the European Union and other international organizations requires the implementation of particular international treaties into national law which could possibly guarantee the effective protection of Russian-speaking minorities. One of the fundamental conventions for the protection of national minorities is “The Framework Convention for the Protection of National Minorities” (the FCNM) adopted by the Council of Europe in 1995. The FCNM became of particular importance and caused great expectations among national minorities and human rights scholars since it is the first Convention which particularly focuses on the rights and freedoms of national minorities.

Even though the FCNM was adopted in 1995 in Estonia and Lithuania it has entered into force much later, respectively in 1998 and 2000.1 Articles 4(2) and 15 of the FCNM directly reflect the right of national minorities to effectively enjoy their political rights on a non-discriminatory basis.2 Moreover, there are a number of provisions in the FCNM which have established a list of obligations for the institutions of the Council of Europe in order to ensure the protection of national minority groups in the Member States which are parties of the FCNM. The question remains how the rights provided in the FCNM were implemented into the national legislation of Estonia and Lithuania and if the work of institutions of Council of Europe was effective enough which would help to understand if protection of the political rights of Russian-speaking minority group has improved after the ratification of the FCNM.

**Research goal:** to evaluate the changes made for the protection of the political rights of Russian-speaking minorities in Lithuania and Estonia after the ratification of the FCNM.

**The Central question:** How has the protection of the political rights of the Russian-speaking minorities in Lithuania and Estonia changed after the ratification of the FCNM?

**Originality of the topic:**

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Many human rights experts and scholars were analyzing the impact of the FCNM on national minorities’ rights. At the same time many experts were analyzing the situation of the Russian-speaking national minorities in the Baltic States, including the protection of their political rights. However, there is no research done, so far, on examining the link between the position of the political rights of Russian-speaking national minorities in Estonia and Lithuania and the ratification of the FCNM. Since it is one of the main legal instruments for the protection of the rights of national minorities it is important to understand whether the FCNM has some influence on the protection on Russian-speaking minorities in the countries mentioned above and, in case of the positive answer, whether this influence was effective.

First of all, this research starts with the analysis of the category of Russian-speaking national minorities. Secondly, the situation of the political rights of Russian-speaking national minorities in Estonia and Lithuania before the ratification of the FCNM is identified. It is followed by the establishing the provisions of the FCNM which refer to the protection of political rights of national minorities. After the provisions related to political rights of national minorities are defined, the implementation of these provisions by Estonia and Lithuania is analyzed and compared. It is mostly done by analyzing the monitoring cycles of the implementation of the FCNM in these two countries. There is also included a brief description of the monitoring mechanism of the FCNM. After that, the changes for the protection of the political rights of Russian-speaking national minorities in Estonia and Lithuania, possible caused by the ratification of the FCNM, are analyzed. The research is finished by providing a number of recommendations how the work of the monitoring bodies of the FCNM could be improved in order to ensure better protection of the rights of national minorities.
2. What kind of national minorities do the Russian-speaking national minorities belong to?

Before analyzing the situation of the position of Russian-speaking minorities in Estonia and Lithuania it is important to understand what exactly we mean by using the term “Russian-speaking minorities”.

In the first place, it is important to note that by the term “Russian-speaking minorities” in this research are not only meant ethnically Russian people, but also people who have another nationality (for instance Ukrainians, Belarusians, etc.) but consider the Russian language as their main language. Such concept of understanding this term is taken from the report of European Centre of Minority Issues (ECMI) “Minorities and Majorities in Estonia: Problems of Integration at the Threshold of the EU” in which Russian-speaking minorities are considered as “millions of former Soviet citizens who predominantly use Russian in their everyday life and who have been living outside the Russian Federation since the dissolution of the Soviet Union, mostly in the former Soviet republics.”

Further, it is necessary to take a look at the historical background of this minority group. In the period between the First and Second World War when all three Baltic countries were independent states, the number of people belonging to Russian-speaking minority groups was not so high. According to the census of 1934 ethnic Russians in Estonia consisted about 8 percent of the population. It is important to note that only half of them were indigenous people. At the same time the number of people belonging to this particular group in Lithuania was even smaller. It made up only around 2.5 percent of population. Due to this factor the term of Russian-speaking minorities was never used before the Second World War.

The situation has changed during the period of the USSR when all the citizens could move more freely within its territory. That was the time when many Russians have moved to the Baltic States and it was caused by several reasons. One of the major reasons was the russification campaign of the Baltic States. That was politics, mostly executed by Joseph Stalin, when many ethnic Russians from different parts of USSR had to move to these countries as workforce to newly introduced heavy industry there.

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4 P. Järve, C. Wellmann Minörity and Majorities in Estonia: Problems of Integration at the Threshold of the EU (Flensburg: ECMI 1999) 43 (Table 1)
Subsequently the family reunion factor had also increased the number of Russian-speaking minorities in these countries. Another reason of such great expansion of Russian-speakers were the living conditions which at that time were slightly better in the Baltic States than in many other regions of the USSR. Therefore, many Russian-speakers had moved to these States to search for a better life. As a result, at the time of regaining independence 30.3 percent of the population of Estonia consisted of Russian-speaking minorities\(^6\) and significantly less, only around 10 percent in Lithuania.\(^7\) After the collapse of the USSR, when Estonia and Lithuania regained independence, the way in which the respective of governments approached this minority group was very different. In Article 1 of the Law on Citizenship of the Republic of Lithuania there is a list of people who are or may become citizens of Lithuania.\(^8\) Lithuania opted for so called “zero version”. According to this legal act citizenship was granted to everyone who wanted and by that time was living in Lithuania without any additional requirements. Even though the Citizenship Act adopted in 1991 was more restrictive, it did not put unnecessary burden which would become an obstacle for a large group of people to gain a citizenship.\(^9\) Estonia took a distinct path and, in 1992, re-adopted the Citizenship Act of 1938 which excluded a large number of Russian-speakers from citizenship and formulated additional conditions to awarding citizenship to people who arrived to Estonia after the Second World War (people who have moved there before 1940 and their descendants gained citizenship automatically).\(^10\) The biggest barrier became a condition regarding sufficient knowledge of the Estonian language and the Constitution of Estonia. Due to such high number of Russian-speaking people in these regions many people found it not necessary to learn the language of the country they were living in, which in the end caused the difficulty for them to get citizenship. One of the reasons why Estonia has adopted such laws could be that it has used these laws as means to safeguard the political and demographic domination of ethnic Estonians over national minorities, mostly Russian-speakers since it

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\(^6\) 2000 Population and Housing Census: Citizenship, Nationality, Mother Tongue and Command of Foreign Languages II (Tallinn: Statistical Office of Estonia, 2001) Table 8

\(^7\) Department of Statistics of Lithuania <http://web.stat.gov.lt/uploads/42_Lietuvos_gyventojai.pdf?PHPSESSID=52ed8715203ee4329474cf2506c0f580>


\(^10\) В.В. Полещук (ed) Проблемы прав национальных меньшинств в Латвии и Эстонии (Москва, Русская Панорама, 2009) 110
was the biggest national minority group. Due to significantly smaller number of Russian-speakers, Lithuania did not experience this problem and could award with citizenship most of the Russian-speaking minorities.

Taking all this into account it would be wrong to refer this minority group as to traditional or old minorities since to this group belong national minorities who had been living in a certain territory for longer period of time, and by many scholars they are called “historical communities”. Considering the attitude of the government of Estonia when they, followed by the Germany’s example, included in the scope of the FCNM only members of the ethnic groups which traditionally resided in Estonia and excluded Russian-speaking minorities who arrived after Second World War, the conclusion can be that they are usually not considered as an “old” minorities. At the same time it is hard to refer to them as “new” minorities. This term is mostly used to define the group of minorities who after Second World War moved to European countries because of economic boom. The reasons which forced the Russian-speaking minorities to move to the Baltic States differ fundamentally from the reasons for which minority groups moved to European countries. This specific historical and political background makes them distinct from the classic perception of “new minorities”. There are still ongoing discussions on the question to which group of national minorities Russian-speakers in the Baltic States belong to. Nevertheless, what is quite clear from the above is that the Russian-speaking minorities in the countries mentioned are not typical minority groups and regardless to any qualification require specific attention.

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14 Ibid.
3. What was the situation of the political rights of Russian-speaking minorities in Estonia and Lithuania before the ratification of the FCNM?

In this chapter will be discussed the capacity of all Russian-speaking minorities to exercise their political rights under the national laws of Estonia and Lithuania, before the FCNM entered into force in these States.

3.1. The case of Estonia

As was mentioned above, when Estonia became an independent state a significant number of individuals belonging to the Russian-speaking minority did not obtain Estonian citizenship. To be more precise, 32 percent of the population did not have citizenship in the year 1992. This large number of non-citizens also led to a number of problems for Russian-speakers. One of the most important of these problems will be discussed further on in this thesis.(Chapter 4.2)

Before proceeding it is necessary to distinguish three categories of Russian-speaking minorities in Estonia since this distinction has an effect on the enjoyment of political rights.

First of all, there are a number of Russian-speakers who have citizenship which gives them the possibilities to have an influence on the countries’ political decision making process. These people gained citizenship because of several factors. Some of them received it since them, or their ancestors, have moved to Estonia before 1940. Another reason is that they fulfilled the required criteria for naturalization established in the Citizenship Act of 1938, which reentered into force in 1992, and the Citizenship Act of 1995. Moreover, Article 8 of the Constitution guarantees the right to become a citizen of Estonia by birth to every child of the citizens of Estonia. This right, guaranteed by the Constitution, provided an opportunity for those Russian-speaking minorities who owe a citizenship of Estonia, also to gain a citizenship for their new born children. Consequently, that increased a number of Russian-speakers who appeared to have a citizenship. However, it is important to note, that a large part of this minority group who did not have a citizenship could not enjoy this right provided by the Constitution of Estonia.

15 Citizenship and Migration Board, Yearbook 2006 (Tallinn 2006) 13
The second group of Russian-speaking minority is non-citizens. The biggest part of them did not fulfill all the specific requirements to gain the citizenship under the national law such as, for instance, having the sufficient level of knowledge of Estonian language or history of Estonia. Moreover, many of Russian-speakers did not apply for citizenship since they found it unnecessary and wrong to apply for citizenship of the country they used to live big part of their life or even were born there. This group of people believes that the policy, chosen by the government, to award the citizenship is unfair and humiliating for them.\textsuperscript{18} Tension on this question did not disappear and the problem is still not solved, even after more than twenty years of independence. There is also another group of Russian-speaking minorities who have a citizenship of the Russian Federation or another State but who permanently live in Estonia. Many of these people do not claim for the Estonian citizenship since they do not want to lose their link with another State. This is the often case with Russian Federation, since people entitled to live in Estonia by holding a residence permit, still can freely cross the border with Russian Federation and, thus, avoid all the migration issues.

This diversity among Russian-speakers in Estonia leads to different levels of availability of political rights for the respective groups.

The main national act, the Constitution of Estonia adopted in 1992 establishes a number of provisions which can guarantee rights of national minorities. First of all Article 12 prohibits any discrimination based on nationality, race, language, origin or on other grounds. Furthermore, Article 9 of the Constitution provides the following: “The rights, freedoms and duties of each and every person, as set out in the Constitution, shall be equal for Estonian citizens and for citizens of foreign states and stateless persons in Estonia.”\textsuperscript{19} These are general principles of non-discrimination of national minorities established in the Constitution. Furthermore, the Constitution as well as other more specific legal acts contains more provisions which have a direct impact on the enjoyment of political rights of Russian-speaking minorities.

First of all, the Constitution guarantees for every Estonian citizen who has attained a particular age (depending on the right he wants to exercise) the right to vote, to be elected to Riigikogu (national Parliament) or to be nominated to the position of the president of Republic. In the last case the citizenship

of Estonia has to be gained by birth (Articles 57, 60, 79).\textsuperscript{20} Article 2 of The Riigikogu Election Act adopted in 1994 repeated the provisions of the Constitution and allows only citizens of the Republic of Estonia to vote or to be elected as a member of Riigikogu.\textsuperscript{21}

From these provisions it is clear that Russian-speaking minorities who do not have citizenship cannot enjoy the most important political rights and cannot influence any political decision making process on a national level. Nevertheless, they have such rights on a local level. In 1993 the Law on Local Government Council Elections\textsuperscript{22} was adopted which allowed the non-citizen of Estonia who have permanent residence permit to participate in the elections of local governments. This right was also limited, though. Non-citizen could vote, but not run for the office of the local government. In the Local Government Council Election Act, adopted in 1996, similar provisions can be found. Even though aliens who fulfill certain conditions can participate in the local voting process, only Estonian citizens may run as candidates for the local government council.\textsuperscript{23} Even with such limitations, the only political right of non-citizens was important for them, especially in areas of the biggest settlement of Russian-speaking minorities. For instance, as noted in the Estonian Human Development Report of 2007, during the elections of local governments the overall voters turnout was only 49.7 percent, while the turnout of non-citizens (most of whom are Russian-speaking minorities) was 85 percent.\textsuperscript{24} This information provided by the Electoral Committee of Estonia shows a big interest of non-citizens of Estonia for participation in the political life of the country they live in.

The Russian-speaking minorities who have citizenship of Estonia have a broader scope of the political rights. However, the following facts show that the influence they can have on the political decision making process is also quite limited. The number of Russian-speakers elected to Riigikogu in the first years of independence was very low. During the first elections of Riigikogu in 1992 there was not even one representative of Russian-speaking minorities elected. After four years the situation slightly improved and in the elections of 1995 six members of Riigikogu elected were representatives of this

\textsuperscript{20} Ibid.
minority group.25 In order to increase the possibility to be elected during the elections in 1995, two “Russian” parties (Russian party in Estonia and Estonian United People’s Party) made an alliance which was named – “Our Home is Estonia”. Taking into account the scope of the Russian-speaking population of Estonia, 6 representatives out of 101 members in Riigikogu was highly unproportional. This led to inability of representatives of Russian-speaking minorities to actually influence the political decision making process and made it almost impossible for them to improve the position of Russian-speaking minorities in the country.

Such small number of elected representatives of Russian-speaking minorities was due to the following reasons. First of all, ethnic Estonians (who constitute the majority of the population of Estonia) because of all the political tensions between them and Russian-speakers, normally did not vote for “Russian” representatives in Riigikogu. More importantly, a large part of the Russian-speaking minority group did not have citizenship and therefore could not participate in these elections. The lack of citizenship also decreased the number of Russian-speakers who could run for candidates for Riigikogu. Finally, the small number of “Russians” in the national Parliament (as well as in the local elections) can be explained by the high language proficiency requirements for electoral candidates established in national law. This law was later criticized by the Committee of Ministers of the Council of Europe. As it was mentioned above a large number of this minority group did not know the Estonian language at all or not at a sufficient level. Such high requirements were especially unnecessary in the regions where Russian-speakers composed the significantly biggest part of the population.

The possibilities of the Russian-speaking minorities in Estonia to exercise the right to political life and public affairs before the ratification of the FCNM were quite limited. The national legislation strongly reduced the number of people who could vote during the elections to the governmental institutions and even more limited number of people who could be elected. At the same time, the political power of elected representatives of Russian-speaking national minorities was very small. Due to the small number in Riigikogu their political voice was rarely heard. The situation was slightly better in the local governments where representatives of Russian-speaking national minorities could vote regardless of their citizenship status as long as they were permanent residents of that area. Nevertheless, the big changes in the national politics were necessary in order to provide national minorities with all the rights they should be entitled with.

25 The Riigikogu <www.riigikogu.ee> accessed 21 September 2013
3.2. The case of Lithuania

The position of Russian-speaking minorities in Lithuania before the ratification of the FCNM differed drastically from the situation in Estonia. The main reason was historical background which led to a significant difference of a number of people belonging to this minority group. In 1990 when Lithuania regained independence, there were only around 10 per cent Russian-speaking national minorities.\(^{26}\) It is hard to provide more concrete data, since it is unclear how many representatives of Ukrainian or Belarusian origin considered Russian language as their main language. However, according to information provided by the European Commission which is based on the scientific research executed in 1990s “Approx. 96% of the Russians, about half of the Ukrainians, Belarusians and Germans, nearly one third of the Jews and Poles, and smaller percentages of other minorities declare Russian to be their mother tongue.”\(^{27}\) The reasons for such diverse number of Russians in these countries according to Peter Van Elsuwege could be, first of all, that Lithuania in the USSR was considered more as an agricultural country which reduced a number of Russian migrant workers. Moreover, “the higher birth rate of Catholic Lithuania in comparison to Protestant Estonia and Latvia guaranteed a consistent majority of ethnic Lithuanians.”\(^{28}\) These reasons, among the possible others, led to the fact that at the time when the Baltic States became independent, Lithuania did not suffer such a strong threat of extinction of its own nation as it happened in the case of Estonia and, thus, could adopt more favorable legislation for national minorities.

As it was already mentioned, according to the Law of citizenship of Lithuania adopted in 1989, every resident could decide whether or not he wants to get a citizenship of Lithuania without any aggravating requirements. Thus, it led to the fact that over 90 per cent of all inhabitants of Lithuania expressed their positive will and gained the citizenship.\(^{29}\) Consequently, the problem of statelessness in Lithuania does not occur while it became a big subject for discussions and criticism in Estonia.

The political rights of national minorities, first of all, are guaranteed in the Constitution of Republic of Lithuania adopted by citizens of Lithuania during the Referendum in 1992. Firstly, Article 33 guarantees for all the citizens “right to participate in the governance of their State both directly and through their democratically elected representatives as well as the right to enter on equal terms in the State service of the Republic of Lithuania.” Moreover, as it is established in Article 34, every citizen who has reached the age of 18 has a right to vote during all the elections. Furthermore, any citizens who are not younger than 25 or 40 years old can be elected respectively to the Seimas (the Parliament of Lithuania) or become the president of the Republic. For the last position there is established an additional requirement – the citizenship has to be gained by origin. The requirements for these elections, in relation to national minorities, do not differ much from the ones established in Estonia. Both countries require a person participating in elections to be a citizen of the State. However, the absence of stateless people in Lithuania reduces this problem to a minimum comparing with the situation in Estonia. The significant difference between these two States is related to the local government elections. While the Law on Local Government Council Election of Estonia, adopted in 1993, allows the permanent residents who do not have citizenship of the State at least to vote during the elections, Article 119 of the Constitution of the Republic of Lithuania did not provide the right for residents of the administrative units who do not have citizenship not only to be elected as a members of municipal councils, but also to vote. In addition to the Constitution, the same rights regarding the participation in elections are established in the Law of Republic of Lithuania on Presidential Elections, the Law on Elections to the Seimas and the Law on Elections of Municipal Councils.

The political rights of national minorities were also protected by adopted in 1989 and amended in 1991 the Law on National Minorities. Article 2 of this legal act guaranteed for national minorities a right to be

31 Ibid. Art 34
32 Ibid. Art. 56, 78
34 Ibid. Art. 119
represented at all levels of governmental institutions.\textsuperscript{38} It has to be noted that the Law on National Minorities, which ensured a wide scope of rights, was very important for national minorities and Lithuania became a first State in Central and Eastern Europe who adopted such kind of law.\textsuperscript{39} Moreover, Lithuania was an innovator on establishing “The Department of National Minorities and Lithuanians Living Abroad to the Government of the Republic of Lithuania” (the Department) in 1989. The main task of the Department is to protect and safeguard the rights and interests of national minorities, including the encouragement of national minorities to participate in public and political life. Moreover, with the aim to increase the participation of national minorities in political life, in 1995 the Department established the Council of National Communities which had representatives of twenty national communities among its members.\textsuperscript{40}

All this considered it is clear that Lithuania granted a wide scope of political rights to the Russian-speaking minorities even before the adoption of the FCNM. Even if most of these rights can be enjoyed only by citizens of Lithuania, the number of non-citizen is not so high, comparing with Estonia, which reduces to minimum the number of Russian-speaking minorities who cannot enjoy their political rights.

Despite the fact that Russian-speaking minorities have a wide scope of political rights, their representativeness in governmental institutions is not high. From the beginning of the existence of the independent State of Lithuania, the Russian-minority group showed political activeness and willingness to influence the political decision making process. In 1995 the political organization - The Union of Russians in Lithuania was founded. Moreover, in 1996 a group of Russian minorities gathered into a political party - The Alliance of the Lithuanian citizens. Both of these organizations were participating in a number of elections to the Seimas and to municipal councils. However, none of them had success in the elections to the Seimas during the first decade of Lithuania’s independence. Only during the elections of 2000, The Union of Russians in Lithuania who has joint the coalition of Social Democrats got three mandates of the Seimas. Furthermore, a number of representatives of Russian-national minorities were members of other different political parties who was slightly more successful, for instance in the elections of 2000, six representatives of the Russian-speaking national minority, members of other political parties,

\textsuperscript{40} Tautiniu Bendrijų Namai <http://old.tbn.lt/en/?id=29> accessed 8 November 2013
were elected to the Seimas, while in the elections of 1996 only two representatives.\textsuperscript{41} The political organizations established on ethnic bases were more successful during the elections to the municipal councils, particularly in the areas where a larger population of Russian-speaking national minorities reside. In 2000, at the election to the municipal councils 3 representatives of the Alliance of the Lithuanian Citizens were elected in the city of Visaginas as well as 7 representatives of the Union of Russians of Lithuania received mandates in the Klaipeda City Council.\textsuperscript{42} From the case in Lithuania, it is clear that it is easier for national minority groups to have more representatives in the local government elections. In particular, it is more often the case in areas where a bigger settlement of national minority groups is found.

The “Russian” political parties in Estonia were slightly more successful during the elections to the Parliament in the first decade of the State being independent. However, while comparing these two countries, it is important to remember that the minority group of Russian-speakers in Estonia is about three times bigger than in Lithuania. Thus, “Russian” political organizations had less chances of success in Lithuania taking into account the potential voters, consisting of members of national minority groups. But the overall policy for the protection of political rights of the Russian-speaking national minority, before the ratification of the FCNM, in Lithuania was notably more favorable then in Estonia.

4. Which provisions of the FCNM refer to the protection of political rights of the Russian-speaking minorities?

The protection of political rights of people is one of the major aspects of a truly democratic country. Already in 1966, the International Covenant on Civil and Political Rights (ICCPR) established a number of provisions which guaranteed political rights to people. In particular Article 25 guaranteed for all the citizens’ rights such as “to take part in the conduct of public affairs” and “to vote and to be elected at genuine periodic elections”. At the same time Article 2(1) of the ICCPR established a requirement for the States to guarantee these rights without any discrimination, including discrimination on the grounds of national or social origin. Nevertheless, there is no specific provision established to protect political participation of people who belong to national minorities. A Norwegian human rights scholar Asbjorn Eide notes that even though according to Article 25 political rights are ensured only for citizens, States are allowed to go beyond this request and provide such rights for non-citizens as well. Estonia and Lithuania in this case are good examples since they allow the non-citizens to vote during the local government elections and in the case of Lithuania, also to be elected to the municipal councils.

As a result, on the international level political rights of citizens were already protected against any kind of discrimination before the FCNM entered into force. The question arises if the FCNM has made any positive changes or improvements for this protection.

The FCNM was adopted by the Council of Europe in 1994 and entered into force in 1998. It gained particular importance since it is the first legally binding treaty for the protection of national minorities. Since in the first Article is stated that: “The protection of national minorities and of the rights and freedoms of persons belonging to those minorities forms an integral part of the international protection of human rights, and as such falls within the scope of international co-operation” Rainer Hofmann concluded that “the FCNM is to be considered a member of the European family of human rights treaties

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with consequences attached to its interpretation.”

The FCNM contains provisions which guarantee a variety of rights for national minorities as well as obligations for Member States to ensure that these rights are implemented in domestic legislation. There are two articles in the FCNM which directly reflect the right of national minorities to use their political rights on a non-discriminatory basis: Article 4(2) and Article 15.

The second paragraph of Article 4 establishes that States Parties “undertake to adopt, where necessary, adequate measures in order to promote, in all areas of economic, social, political and cultural life, full and effective equality between persons belonging to a national minority and those, belonging to the majority. In this respect, they shall take due account of the specific conditions of the persons belonging to national minorities.”

According to one of the drafting bodies of the FCNM, the Ad Hoc Committee for the Protection of National Minorities (CAHMIN) ‘adequate measures’ means that they have to be in conformity with principle of proportionality. Moreover, it is required that such measures would not extend beyond what is necessary in order to achieve a goal, both in time and in scope.

It is emphasized in paragraph 3 of Article 4 of the FCNM that all the measures which are adopted in accordance with paragraph 2 of the same Article should not be interpreted as contrary to principles of non-discrimination and equality.

It is a very important paragraph since the adoption of special measures by many can be considered as providing some privileges for national minorities. This approach is wrong since the intent of the drafting bodies of the FCNM while adopting such special measures was to take into account the vulnerable position of national minority groups. They require special attention since in most of the cases it is more difficult for national minorities to exercise political rights, to effectively participate in decision-making process and consequently to protect interests of their minority groups.

Another very important article for the protection of national minorities (including the Russian-speaking minorities in countries mentioned above) is Article 15 of the FCNM. This article sets up the requirement

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for the States to “create the 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”.\textsuperscript{50} Compared with the ICCPR, this provision goes further by establishing the requirement that the participation of minorities in public life has to be effective. The Ad Hoc Committee for the Protection of National Minorities (CAHMIN) in paragraph 80 of Appendix V of its Meeting Report has stressed that the main aim of Article 15 is “to encourage real equality between persons belonging to national minorities and those forming part of the majority”.\textsuperscript{51} In the same paragraph CAHMIN also brings a number of measures which can be used by States Parties to promote the full and effective participation of national minorities in a public life. CAHMIN offers means such as consultation with people belonging to national minorities on the legislative and administrative measures which may affect these minority groups as well as involving them in all the process of creating regional development plans or projects. Both measures mostly relate to questions which may have an effect on national minority groups.

In its report CAHMIN considers the establishment of representative institutions is one of the best ways to achieve this goal. There are two aspects which may have an effect on the establishment on such institutions. First of all, national minorities have to be willing and able to establish representative institutions which can protect their interests. The second aspect is that States have to establish all appropriate means for these institutions to be effective and influential on important and relevant decisions.

Another measure offered by CAHMIN is effective participation of minorities in decision-making process and elected bodies at both, regional and national levels. This is a very difficult measure to fulfill. First of all, the problem may occur with non-citizens, as it is in Estonia where a large group of people have been excluded from citizenship. A solution could be to provide a right for non-citizens with a long-term residence permit to participate in local elections. It is partly done in Estonia where non-citizens can vote during the election for a local government.

Another problem is the low number of representatives on national Parliaments or local governmental bodies. As Marc Weller noted after the examining Advisory Committee Opinions on Czech Republic
(2002) and Lithuania (2003), the Advisory Committee has encouraged States to take effective measures to build all the necessary conditions to increase the participation of national minorities in all the levels of decision-making process as well as to provide some measures which could help the representatives of national minorities to be “heard” during the decision-making process, particularly when such decisions have direct affect on the life of national minorities of the States.\textsuperscript{52} CAHMIN and the Advisory Committee may only advice and encourage the State Parties, but the main responsibility is on the State to find and use all the possible measures which can help them to provide the conditions for effective participation of national minorities in public affairs.

While the ICCPR establishes more general provisions on political protection of people against any kind of discrimination, Articles 4(2) and 15 of the FCNM provide more specific provisions on the protection of political rights of national minorities. The main difference with the ICCPR is that the FCNM requires the protection of political rights has to be effective and that equality for enjoying these rights between national minorities and majority has to be established. Thus, in the FCNM, unlike in the ICCPR, the provisions include precisely national minorities and establish more precise obligations for the State Parties for the better protection of political rights of national minorities.

\textsuperscript{52} Marc Weller \textit{The Rights of Minorities in Europe, A Commentary on the European Framework Convention for the Protection of National Minorities} (Oxford University Press 2005) 442-443
5. How have Estonia and Lithuania implemented provisions referred to the political rights of the FCNM?

5.1. The monitoring mechanism under the FCNM

For each legal act to be not only ratified by the States, but also implemented into national legislation properly a monitoring system should be established. Accordingly, the monitoring procedure established in the FCNM is one of the best ways not only to control how States are implementing the obligations under the FCNM but also to help them with recommendations and advices in order to guarantee the best possible protection of rights and freedoms of national minorities.

According to Article 24 of the FCNM the monitoring procedure is the obligation of the Committee of Ministers of Council of Europe. In the same article it is established that this monitoring procedure has to be based on States reports.\(^{53}\) The reports have to be submitted on regular bases and regardless the will of the States are public.\(^{54}\) In order to make the work of the Committee of Ministers productive and efficient in the field of the protection of national minorities, the FCNM has established an assisting instrument for that – the Advisory Committee. The main function of the Advisory Committee, as established in Article 26 of the FCNM, is to evaluate measures taken by the Member States for the implementation of the FCNM.\(^{55}\) The Advisory Committee submits to the Committee of Ministers an impartial and independent opinion. In order to adopt an Opinion, the Advisory Committee, first of all, is examining all the possible information provided by the State Parties in their reports. Moreover, it collects additional information by cooperating with other different institutions and organizations. And finally, one of the most significant ways to come to the reasoned opinion is States visits. Such visits became of particular importance since during them the members of the Advisory Committee have an opportunity to meet the representatives of national minorities as well as different NGOs which are dealing with human rights. During such meetings the national minorities and NGOs have a possibility to indicate existing problems and, thus, help the Advisory Committee to formulate a more impartial opinion. After the opinion of the Advisory Committee


\(^{54}\) Resolution (97) 10, Rules Adopted by the Committee of Ministers on the Monitoring Arrangements under Articles 24 to 26of the Framework Conventionfor the Protection of National Minorities (Adopted by the Committee of Ministers on 17 September 1997at the 601st meeting of the Ministers' Deputies) Art 20-21
\(<https://wcd.coe.int/ViewDoc.jsp?id=587887&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383>\) accessed 16 November 2013

\(^{55}\) Framework Convention for the Protection of National Minorities (Strasbourg 1995) Art 26
is adopted States can comment on it and only after that the Committee of Ministers is adopting Resolutions which include conclusions and recommendations for the States on how the protection of national minorities can be improved. After the Resolution of the Committee of Ministers is adopted, many countries are organizing follow-up seminars in order to present the Resolution and recommendations made by the monitoring bodies of the FCNM to different participants including the representatives of national minorities. Such seminars are very welcomed and encouraged by the monitoring bodies since, as it is indicated in the 2006-8 Activity Report of FCNM Advisory Committee, they “have proved an excellent way to discuss the recommendations of the Committee of Ministers and the Advisory Committee at the national level, and to consider legal and practical modalities to implement them.”

The supervisory procedure under the FCNM, the same as any other monitoring mechanism, can be effective only if States Parties are willing to cooperate and are ready for a constructive dialogue with the monitoring bodies of the FCNM.

5.2. How has Estonia implemented provisions referred to the political rights of the FCNM?

Estonian Riigikogu ratified the FCNM in 1996 but it entered into force only in 1998. Since there is no definition of national minorities established in the FCNM, Estonia has made a declaration while ratifying the Convention in which was defined the term of national minorities in a way it is understood and used by Estonia, which means in practice that it limits the definition of national minorities only to citizens of Estonia who resides on its territory. Due to that, the problem of non-citizenship in Estonia persists and a large group of individuals belonging to national minorities, who live in this country for a long term but do not hold its citizenship, is excluded from protection of their rights under the FCNM.


5.2.1. Personal scope of application of the FCNM in Estonia

Estonia has already passed three cycles of monitoring. The first one caused the biggest critique concerning the political rights of national minorities. The biggest concern of the monitoring bodies in all the cycles was the personal scope of application of the FCNM which has a direct impact of the possibilities of Russian-speaking minorities to enjoy their political rights. Taking into account the big number of Russian-speaking minorities who do not own the citizenship of Estonia, both monitoring bodies - the Advisory Committee in its first opinion on Estonia adopted in September 2001 followed by the Resolution of Committee of Ministers adopted in June 2002 - shared the opinion that the lack of citizenship can be a reason of discrimination and an obstacle to equality and full enjoyment of rights provided in the FCNM. That is why the monitoring bodies recommended for Estonia to improve the process of naturalization. According to the Advisory Committee, the largest barrier for that are the existing language requirements. As a method of solving this problem the Committee saw the creation of a new system of language testing. Moreover, the Advisory Committee in paragraph 18 of its opinion noted that Estonia should widen the scope of people who can enjoy their rights under the FCNM in their declaration and include not only national minorities who are citizens of Estonia but also other persons belonging to national minorities, especially non-citizens. If Estonia would do so, the biggest group of Russian-speaking minorities would be covered by the FCNM and would have more possibilities to enjoy their political rights. However, in its second Report submitted in 2004 Estonia has showed unwillingness to change this provision of the declaration.

Even if Estonia did not change the personal scope of application of the FCNM after the first monitoring cycle, it had made a number of improvements referred to the naturalization process which had caused a rise of naturalization. First of all, a number of provisions was established which provided people willing to apply for citizenship with all the necessary information for this procedure. Different organizations, including national minorities associations, were involved in distribution of such information. Further, a new procedure was established for testing the knowledge of the Estonian Constitution and the Citizenship Act for applicants for citizenship. These changes increased the number of applicants who could pass these exams and consequently increased the number of Russian-speakers who was awarded the citizenship. Furthermore, in the amendments to the Citizenship Act which entered into force in 2004, Estonia has established that the language training expenses will be covered by the State for those who successfully pass the examination on language and on the knowledge of the Constitution. The last development was
both complimented and criticized by the Advisory Committee. In its Advisory Opinion the Committee declared that Estonia should establish more opportunities to receive free of charge language training courses for those who have low incomes, but are willing to gain citizenship. In general, both the Advisory Committee and the Committee of Ministers emphasized many positive steps Estonia had undertaken to increase naturalization process. However, they also stressed that the number of non-citizens who cannot enjoy all the rights provided by the FCNM was still very high and recommended Estonia to make further improvements regarding the naturalization process.

It has to be noted that in the second opinion and resolution of the monitoring bodies there is no sentence which criticizes Estonia on excluding a large number of national minorities who have long-term residence permit but are lacking citizenship of Estonia. This sentence was however inserted in the Third Advisory Opinion where the Committee encouraged Estonia “to reconsider this formal exclusion of significant numbers of residents which retains a strong symbolic importance among minority communities in Estonia.”58 It is important to include this sentence since even after all the improvements made by Estonia to increase the level of naturalization, the number of Russian-speaking national minorities who do not have citizenship remains very high. In its third report Estonia shows further improvements on making the process of naturalization easier and more accessible. Very important provisions established in the Citizenship Act are the ones which simplify the procedure for persons under 15 years old to apply for citizenship of Estonia. It was done by relieving these children from citizenship examination requirements if they pass equivalent language tests in school. In its report Estonia also indicates an increased number of applications of minors for naturalization which shows that this measure was effective.59 Another beneficial amendment was the possibility for new born children to gain citizenship of Estonia even if their parents are stateless but live permanently in Estonia. However, this provision was also criticized in the recommendations of the Advisory Committee. The Committee found that the time limit of one year to register a child as a citizen decreases the naturalization process and encouraged Estonia to consider the possibility to gain citizenship automatically unless the parents of the child object.60

To sum up, on the question of naturalization, Estonia showed its willingness to cooperate with the monitoring bodies of the FCNM and by following their recommendations successfully improved legislative and administrative mechanisms in order to decrease a number of stateless people who cannot enjoy all political rights. However a big concern of monitoring bodies remains the Estonian interpretation of the term “national minorities” which exclude a big number of Russian-speaking national minorities which Estonia during all the monitoring cycles failed to change.

### 5.2.2. The capability of representation of Russian-speaking national minorities in the governmental institutions

Article 15 of the FCNM has established an obligation of the State to create the conditions for national minorities to be able to participate effectively in public affairs. Even before Estonia became a party of the FCNM, Russian-speaking minorities who reside in Estonia for a long period of time, even if they do not hold citizenship of Estonia, could vote and enjoy some of their political rights on the local level. As mentioned above, this right was granted in the Local Government Council Election Act (1996). Later, in the first opinion of Advisory Committee, it was emphasized that participation in public affairs is beneficial for national-minorities.

However, there was another important issue on the possibility for effective enjoyment of political rights which had drawn attention of monitoring bodies. The Advisory committee has criticized the high language proficiency requirements established in the Law of Parliament Elections of 1994 and in the Law on Local Government Council elections. The Committee found these requirements a violation of Article 15 of the FCNM since they are a burden for effective participation in public affairs for national minorities. The opinion of the Advisory Committee as well as the need of compliance with other international treaties brought Estonia to the amendment of above mentioned legal acts. Already in the first Comments of the Government of Estonia on the Opinion of the Advisory Committee on the Implementation of the FCNM in Estonia was stated that the language requirements for the candidates to parliamentary or local elections are abolished by amendments established in 2001 in the Riigikogu Elections Act and in Local

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Government Council Election Act. That was a big achievement for Russian-speaking minority of this country taking into account that for many of them the language requirement was decisive and was restricting their possibilities to enjoy political rights provided by the FCNM and other international treaties. These amendments were also noted in the second opinion of the Advisory Committee for Estonia as a positive development for the implementation of the FCNM into national legislation, consequently for the protection of rights of national minorities.

5.2.3. The consultative mechanism with national minorities during the political decision making process

As proposed by CAHMIN, one of the measures to achieve effective participation of national minorities in public affairs is the consultation with representatives of these minority groups which can be done by the establishment of representative institutions. In Estonia such measure was founded in 1993 when the President of the Republic of Estonia decided to assemble a Round-table. It had a form of a conference in which the representatives participated of national minorities as well as of non-citizens who were permanently residing in Estonia. Another group of participants were representatives of political parties. The Round-table was established with the purpose to elaborate recommendations and proposals on different aspects concerning national minorities and stateless people. Even though the foundation of the Round-table had an affirmative impact on the implementation of Article 15 of the FCNM into Estonian national law, the Advisory Committee in its first opinion stated that since the Presidential Round-Table was more like an expert body, further improvements related to consultations were necessary. An improvement was achieved in 2003, when the structure of Round-table was changed and the position of a chamber of representatives of national minorities was established which benefited representativeness. Nevertheless, in the second opinion for Estonia, the Advisory Committee was still insisting on further development of the consultative bodies to have an influence in decision-making process concerning national minorities. With the intent to comply with the opinion of monitoring bodies of the FCNM, Estonia has established the Estonian Cooperation Assembly (EKK) under the Office of the President. The main aim of this Assembly, as it noted in Estonia’s Third Report, is “to develop a dialogue between all nationalities in Estonia and increase the importance of civil society organizations in improving inter-

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ethnic relations and tolerance in society." In 2010, as part of the EKK, a Round-table of Nationalities was established in order to involve representatives of different groups of Estonian inhabitants to participate in discussions on important issues. However, according to the Advisory Committee, this attempt did not improve the process of implementation of Article 15 of the FCNM into Estonian legislation since, as noted in the Advisory opinion, “the Round-Table cannot be considered representative nor can it be viewed as an effective consultation mechanism in the sense of Article 15 of the Framework Convention”. During the third monitoring cycle for Estonia, the monitoring bodies repeated themselves and recommended to the Estonian authorities to develop consultation structures in order to establish an opportunity and the conditions for the representatives of national minorities to actively participate in decision-making processes and public affairs related to them.

All the amendments mentioned made by Estonian government during the three monitoring cycles prove that Estonians actively cooperating with the monitoring bodies of the FCNM in order to incorporate Article 15 into national legislation and, by doing that, to improve the position of national minorities in the area of public affairs and decision-making processes. However, according to the opinions of the monitoring bodies of the FCNM, full and effective participation of national minorities in public affairs, even of the largest group— the Russian-speakers, is not yet reached. Estonia should adopt more drastic amendments into domestic legislation in order to ensure that the significant majority of national minorities can exercise all the rights guaranteed by the FCNM.

5.3. How has Lithuania implemented provisions referred to the political rights of the FCNM?

Lithuania was one of the first States who signed the FCNM and did that in February 1995. However, the FCNM became effective only in 2000 after the Seimas adopted a law on ratification of the FCNM. It is surprising that it took longer time for Lithuania to ratify this Convention then for Estonia who has bigger and more obvious problems related to national minorities. Lithuania has adopted a number of measures to ensure the implementation of the FCNM. First of all, the Standing Committee for Compilation of

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Information on the Implementation of the Framework Convention in Lithuania was established with the aim to compile “on the basis of Article 25 of the Convention, the first communication of information on the legislative and other measures taken by the Republic of Lithuania to give effect to the principles of the Convention.”\textsuperscript{67} Moreover, the Government of the Lithuania adopted Resolution No. 520 “On the procedures of the Implementation of the Provisions of the Framework Convention for the Protection of National Minorities of the Council of Europe”.\textsuperscript{68} The adoption of the mentioned Resolution shows a willingness of the Government of Lithuania to provide the proper implementation of the provisions of the FCNM.

In 2001 the government submitted the First Report on the implementation of the FCNM in the Republic of Lithuania to the Secretary General of the Council of Europe and at the moment the third monitoring cycle is in process. With the purpose to obtain all necessary information from NGOs, representatives of government, national minorities and other independent sources to submit the fair and holistic opinion, the Advisory Committee visited Lithuania during first two monitoring cycles. The Government of Lithuania was actively helping to arrange these visits which indicate the willingness of the authorities to cooperate with the monitoring bodies of the FCNM.

5.3.1. Personal scope of the application of the FCNM in Lithuania

In all three submitted reports, Lithuania showed a flexible and open approach to the personal scope of the application of the FCNM which was welcomed by the Advisory Committee in all its opinions adopted in relation to Lithuania as well as in both Resolutions of the Committee of Ministers. This approach resulted in the fact, that the actions of the Government towards the implementation of the FCNM are covering a large group of people. The standpoint taken by Lithuania is contrary to the one chosen by Estonia, where a big group of inhabitants, in particular long-term residents, who do not have citizenship of Estonia, is excluded from the application of the FCNM.

Even though Lithuania showed an open and flexible approach to the personal scope of the application of the FCNM, the issue of citizenship still occurred during the monitoring cycles. The problem caused the


new Law on Citizenship adopted in 2002, which appeared to be more restrictive then the Law on Citizenship adopted in 1989. Article 18 of the newly adopted law underlines the situations when the citizenship of Lithuania can be lost. One of these situations is “acquisition of citizenship of another state”. However, the prohibition of the dual citizenship is not absolute and the second paragraph of Article 18 establishes that:

“Subparagraph 2 of paragraph 1 of this Article shall not be applicable to:

1) persons who held citizenship of the Republic of Lithuania prior to 15 June 1940, their children, grandchildren and great-grandchildren (provided that the said persons, their children, grandchildren or great-grandchildren did not repatriate);

2) persons of Lithuanian descent whose parents or grandparents are or were or one of parents or grandparents is or was Lithuanian and the person considers himself Lithuanian.”

Thus, the prohibition of dual citizenship does not apply to people of Lithuanian origin. This provision of the Law on Citizenship is of a discriminatory matter for national minorities, since it is implying different standards depending on the ethnic origin. Moreover, it reduces the possibilities for Russian-speaking national minorities to exercise their political rights, since if they are willing to keep the citizenship of the Russian Federation or any other State they are nationals of, they are losing citizenship of Lithuania, which is according to Lithuanian legislation a prerogative to participate in the elections to the Seimas or President. In the Second Advisory Opinion for Lithuania, the Advisory Committee also establishes that: “the authorities should ensure, when examining and adopting the new law on national minorities, that this situation does not adversely affect the personal scope of application of the Framework Convention.”

According to the results of this Law, the authorities of Lithuania failed to comply with the last statement of the Advisory Committee. In order to comply with the scope of the FCNM as well as with other international and regional human right treaties, the government of Lithuania had made amendments to the Law of Citizenship. Eventually, in 2009 a new edition of this Law was adopted where mentioned paragraph was not included and, thus, since then, the regulations on dual citizenship apply on equal bases for all the citizens of Lithuania, regardless of their State of origin.

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70 Ibid. Art. 18(2)
5.3.2. The consultative mechanism with national minorities during the political decision making process

The big concern of monitoring bodies during both monitoring cycles occurred regarding the consultative mechanism which is, according to the CAHMIN, one of the measures to achieve effective participation of national minorities in public affairs. First of all, the lack of consultations with representatives of national minorities during the preparations of the Reports on Implementation of the FCNM was noted in both opinions submitted by the Advisory Committee. It has to be noted that during the preparations of the First Report such consultations did not take place at all. Lithuania took into account the critique of the monitoring bodies and during the preparations of the second report not only governmental institutions were invoked but also some discussions were held with the members of the Council of National Communities.\(^{72}\) However, according to the Advisory Committee, the level of consultations with minority groups was still very limited and has to be higher.\(^{73}\) During the preparations for the last Report, Lithuania took more actions related to consultations. As it is established in the Third Report submitted to the monitoring bodies, the draft of the Report was discussed with NGOs dealing with human rights and with the members of the Council of National Communities. Moreover, the comments received from the Centre for Human Rights and the Council of National Communities were taken into account.\(^{74}\) Although it is difficult to predict whether these consultations are enough according to the monitoring bodies, it is clear that the progressive measures taken by Lithuania to involve bigger amount of institutions and organizations in the preparation of the Reports show that the Government of Lithuania is seriously taking into account the considerations of the monitoring bodies. The situation was similar in the case of Estonia when during the preparation of the first Report very limited consultations with representatives of national minorities were held. However, already in the second monitoring cycle, Estonia actively included not only various governmental institutions, but also NGOs and representatives of national minorities during the preparations of the Report.\(^{75}\)

Another concern of the Advisory Committee related to the consulting mechanism is that national minorities are rarely consulted during the political decision-making process. It is particularly important

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when these decisions may directly concern issues related to national minorities. The consultations are usually made through the representatives of national minorities. In Lithuania such function belongs to the Council of National Minorities. As indicated in the First Report submitted by Lithuania, the key objectives of the Council are: “to observe how the laws related to the rights of national minorities are enforced in the Republic of Lithuania; to strive for the goal that all citizens of Lithuania belonging to national minorities participate and join cultural and public life of the country; to analyze draft laws and regulations related to national minorities and to submit proposals on their preparation and adoption to the Committees of the Seimas of the Republic of Lithuania, the Government, the Department of National Minorities and Lithuanians Living Abroad, Administrations of County Governors, district and town municipalities and other institutions.”

After the critique received from the monitoring bodies during the first monitoring cycles, the Government of Lithuania made positive developments and adopted the Regulation which, as it was required, clarified the membership and functions of the Council of National Minorities. Moreover, in 2003 the Director General of the Department of National Minorities and Lithuanians Living Abroad released Order No 28 which formed the Permanent Expert Group. The establishment of this body became an important development in the area of consulting national minorities since its main functions are: “to analyze laws and other legal acts and drafts thereof, release recommendations on the policy issues in the area of national minorities to the management of the Department of National Minorities and Lithuanians Living Abroad”.

Even though the functions provided to this Expert Group could contribute to the participation of national minorities in the political decision making process, in its Second Opinion on Lithuania, the Advisory Committee noted some negative aspects of its work. Firstly, this body was not consulted on a regular basis and, secondly, the meetings of the Permanent Expert Group were organized were rarely. One more way to organize the consulting mechanism, according to the Advisory Committee, is by establishing the systems for consulting national minorities for each ministry. Despite the fact that the monitoring bodies indicated the


lack of such systems during the second monitoring cycle\textsuperscript{80}, no changes were done regarding this issue till now. Another important development made by the authorities of Lithuania with the purpose to include national minorities in decision making process is the establishment of the position of Advisor on Minority Issues to the Prime Minister’s Office in 2006 who has to be consulted by the Government in cases affecting national minorities. The Advisory Committee in its second Opinion welcomed this development, yet, it also suggested further improvements for this position. First of all, it recommended that the post of the Advisor on Minority Issues should be permanent. Secondly, it encouraged the Government of Lithuania to ensure appropriate conditions for the Advisor to establish a regular dialogue with the national minorities.\textsuperscript{81} Despite the fact that Lithuania has received a number of critiques and recommendations from the Advisory Committee on the consultative mechanism during the political decision making process, it did not include this topic in the third Report and did not show whether any improvement were realized in this field or not.

Lithuania has done some positive steps to improve the consulting mechanism with national minorities in order to ensure the effective participation of them in political life and public affairs as it is required under Article 15 of the FCNM. However, it is still a case when the decisions are taken without the consultation with national minority groups even if these decisions may directly affect them. The same problem exists in Estonia, which leads to the conclusion that the number of people composing the minority groups does not affect the States willingness and effectiveness of taken actions to involve the national minorities into political decision making process.

\textbf{5.3.3. The capability of representation of Russian-speaking national minorities in the governmental institutions}

In both Advisory Opinions on Lithuania, the Advisory Committee expressed the concern that representation of the national minorities, including Russian-speaking national minority, in the governmental institutions is very low. With a link to the representatives of national-minority groups of Lithuania, the Advisory Committee notes that one of the reasons for low representativeness could be threshold requirements, which are both, in general and local elections too high for minority groups to

\textsuperscript{80} Ibid. par 160
achieve the required number of votes. One of them is established in The Law on Elections to the Seimas which does not make a distinction between political parties. It puts the requirement for the political organizations of national minorities to achieve the same 5 per cent of votes as all the rest of political parties have to. Keeping in mind the size of Russian-speaking minority group, this requirement can be an obstacle to achieve a bigger number of representatives in the Seimas. However, even after concerns expressed in the Advisory Opinions regarding this issue, Lithuania still has not adopted more favourable laws for national minorities to participate in the elections to the Seimas. Nevertheless, some positive amendments were made regarding the elections to municipal councils when a new revision of “the Law on Elections to Municipal Councils of the Republic of Lithuania” came into force in 2010. First of all, Article 34 establishes that “every person who meets the requirements established in Article 2 of this Law may nominate himself as a candidate, provided that his self-nomination is supported by signatures of not less than ten per cent of voters of that municipality when calculating for one mandate of municipal councilor, but at least 100 voters of that municipality.” That means that not only political parties can nominate the candidates to the municipal council, as it were before the amendments, but also self-nomination is possible. Moreover, Article 3 of the mentioned Law guarantees the equality between candidates who were nominated by political parties and self-nominated candidates. These amendments are of particular importance for those representatives of national minorities who do not have citizenship of Lithuania but are permanent residents, since according to the Law of Political Parties only citizens can be members of political parties. However, Article 2 of the same Law provides some limitations for the candidates. The most important limitation, related to the national minorities, is established in the third paragraph of Article 2 and provides that the candidates can be either citizens of Lithuania or citizens of any other European Union country. This requirement is fully consistent with the provisions of the Maastricht Treaty, but reduces the possibilities for Russian-speaking national minorities, who do not have the citizenship of any mentioned countries, to participate in the elections to municipal councils, even if they permanently reside in Lithuania.

82 Ibid. par 54
85 Ibid. Art. 3
87 Ibid. Art. 2(3)
One more possible obstacle for Russian-speaking national minorities to actively participate in political life and public affairs is the absence of knowledge of Lithuanian language at sufficient level. Even though this issue is not as problematic as in Estonia, still many representatives of Russian-speaking national minorities do not know Lithuanian language at sufficient level. Particularly, it is often the case in areas where the majority of inhabitants are Russian-speakers. In the first Advisory Opinion the critique of national minorities on the fact that there is no possibility of using the minority language “in television and radio programmes devoted to the election campaign” is mentioned. It is also emphasized that such an opportunity existed in the past. The access to information concerning election complaints in the Russian language would increase participation in political life of national minorities. Moreover, the Law on the State Language adopted in 1995 and amended in 2002 also in a way is limiting the opportunities for Russian-speaking minorities to participate in political life and public affairs. In this law the compulsory use of Lithuanian language in all institutions and organizations is imposed. As it is noted in the Second Advisory Opinion “Certain judgments adopted by Lithuanian courts on the use of minority languages are disconcerting as they have not taken due account of other laws protecting national minorities, the relevant provisions of the Constitution and of the Framework Convention.” Thus, there is still an open question whether the Law on the State Language is fully in line with the principles established in the FCNM.

The Government of Lithuania sees the submission of the possibilities for national minorities to learn a state language as one of the priorities. That is why a number of programmes were adopted by the authorities with the aim to provide Lithuanian language courses. One of such programmes is “The Programme for Standardization, Usage, Teaching and Dissemination of the State Language for 2006-2015” approved with Resolution No. 1777 of 15 September 2004 of the Government of the Republic of Lithuania. As is indicated in the Third Report of Lithuania for the implementation of the FCNM, a number of Lithuanian language courses were funded under this programme. It is important to provide

89 Ibid.
the possibilities for national minority groups to participate in the state language courses since it ensures equal opportunities for them to be integrated in political life.

Regarding the state language, at this moment in Lithuania there are more concerns in relation to education and the rules of writing personal names and surnames. However, it is important to remember that the lack of knowledge of Lithuanian language can be a barrier for Russian-speaking national minorities to participate in public affairs and the provision of more information in the language of national minorities could increase their participation in political life of the State. Moreover, this would help the authorities to reach the requirement of the effective participation of national minorities in public affairs as implied in the Article 15 of the FCNM.

The Government of Lithuania is adopting new laws, making some amendments to the already existing laws and establishing new governmental positions in order to ensure more effective participation of the representatives of national minority groups in political life and decision-making processes. Nevertheless, according to the monitoring bodies, the representativeness of the national minority groups in the governmental institutions remains very low and, as it is indicated by the monitoring bodies, the authorities of Lithuania, the same as of Estonia, have to find ways to increase the participation of national minority groups in all levels of political life.
6. How did the situation of the political rights of the Russian-speaking minorities in Estonia and Lithuania change after the ratification of the FCNM?

6.1. How did the situation of the political rights of the Russian-speaking minorities in Estonia change after the ratification of the FCNM?

More than 20 years passed since the independence of the Republic of Estonia and during all this time Estonia has faced the challenge of integrating national minorities. With the influence of the monitoring bodies of the FCNM as well as with other international and regional organizations, a number of legal acts and other programmes were adopted during the monitoring circles which have increased the possibilities for Russian-speaking minorities to enjoy their political rights.

First of all, the process of naturalization was facilitated and during the years of monitoring cycles the number of Russian-speakers who have gained the citizenship of Estonia increased and since 2000 till 2009, according to the information provided by Estonia in its Third Report, contained 40682 persons.\(^9\) Despite all this attempts, the number of stateless people remains extremely high – in 2009 the number of people with undetermined citizenship was 104852.\(^9\) Thus, the problem of statelessness which occurred during the first years of the existence of Estonia as an independent state is not completely solved.

The ratification of the FCNM did not change Estonian policy towards the term “national minorities”. Even after repeated recommendations of monitoring bodies, Estonian government insisted on their interpretation of this term and excluded from protection under the FCNM the non-citizens of Estonia. In the second report the national authorities stated, however, that such exclusion has a more “political-historical meaning”, than legal. Nevertheless, this interpretation constitutes a huge disadvantage for national minorities who are not covered by the FCNM and, consequently, see their political rights largely unprotected.

The situation of Russian-speaking minorities during the elections remains difficult. Even though amendments of the Riigikogu Elections Act were adopted which abolished language proficiency requirements for candidates to Riigikogu, the number of representatives of national minorities almost did not change and still remains extremely low. In the last elections hold in 2011 there was no Russian Party elected to Riigikogu. Nevertheless there were a few Russian-speakers elected as members of other


\(^{9\text{a}}\) Ibid.
Due to insufficient influence of the representatives of Russian-speaking minorities in Riigikogu, the trust of Russian voters in their representatives decreased. In spite of this, the biggest reason of such a low number of Russian-speakers in the Riigikogu remains the persisting statelessness which excludes a great number of potential voters from elections.

To sum up, the ratification of the FCNM had a positive impact on protecting political rights of national minorities in Estonia. Many legal acts and different programmes were adopted in order to increase the possibilities of Russian-speaking national minorities to participate in public life. However, the numbers of representatives in Riigikogu and stateless people show that the implementation process of provisions of the FCNM related to political rights of national minorities is not yet completed. This can also be concluded from the opinions and resolutions of the monitoring bodies concerning Estonia, while in each of them a number of issues are indicated which have to be changed to ensure compliance of Estonian national law with the FCNM and to fully and equally guarantee the political rights of all national minorities regardless their legal status.

6.2. How did the situation of the political rights of the Russian-speaking minorities in Lithuania change after the ratification of the FCNM?

After more than 20 years of independence the number of Russian-speaking national minorities significantly decreased, nevertheless it still is the second biggest national minority group of the State. In 2011 Lithuania held a Population Census which showed that at the moment only 5.8 per cent of ethnic Russians live in Lithuania. Such a big drop was mostly caused due to migration. However, it has to be kept in mind, that not only the number of Russian-speaking national minority decreased, but also all the population of Lithuania went down 17 per cent comparing with the year 1989.

Since regaining independence, the government of Lithuania saw the protection of rights and freedoms of the national minority as part of the protection of human rights. That was the reason why in the first decade of the independent State, the authorities were actively adopting legislation and establishing

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96 The Riigikogu <www.riigikogu.ee> accessed 16 October 2013
99 Ibid.
100 Birute Kazlauskienė “The implementation of the Framework Convention for the Protection of National minorities in Lithuania: present situation and future perspective” (Riga, 2005)
institutions which could ensure better protection of their rights. However, during the next decade a number of legal acts were adopted which had less favorable provisions for national minorities, such as the Law on Citizenship. The great impact at that moment had the monitoring bodies, since after their opinion and resolution the authorities made amendments and at the moment the provision which had a discriminative matter is excluded from that Law.

Despite the repeating opinions of the monitoring bodies for the implementation of the FCNM that the authorities have to ensure more effective participation of national minorities in political decision making process in order to be in line with the FCNM, the position of the Russian-speaking minority group in the Seimas did not change. During the last elections in 2012, the “Russian” parties did not have big success and only two representatives of the Russian-speaking national minorities are members of the Seimas at the moment.\textsuperscript{101} The same as in Estonia, “Russian” political organizations formulate the coalition with other parties to get higher chances to be elected to Seimas. As such, the political party Russian Alliance (established in 2002) only in coalition with a “polish” and “lithuanian” political parties managed to overcome required 5 per cent of votes. The situation also did not change much in the elections to the municipal councils. During the elections in 2011, only 3 members of the Political Party Russians’ Alliance and the same number of members of the Lithuanian Russians’ Union were elected. The same tendency took place during these elections as during the elections in 1990s. The representatives of the Russian-speaking national minorities are elected only in the areas where a bigger number of Russian-speaking inhabitants reside. Five of six elected members received mandates in Klaipeda city.\textsuperscript{102} Such distribution of votes is not surprising considered the fact that 19,6 percent of the population of Klaipeda are Russians.\textsuperscript{103} Seeing the results of the last elections in Lithuania, it is difficult to see the positive impact of the FCNM in this field. Even though the monitoring bodies were encouraging the government of Lithuania to take more measures to ensure effective participation of national minorities in political life, no changes of the representativeness in the governmental institutions of the Russian-speaking national minorities show that either the government of Lithuania is unwilling or unable to do so. The same problem occurred in Estonia, where the number of representatives of Russian-speaking national minorities even dropped during the last elections.

\textsuperscript{101} The Central Electoral Commission of the Republic of Lithuania <www.vrk.lt/lt/2012_seimo_rinkimai/statistika.html> accessed 12 November 2013
Nevertheless, it also has to be noted that during the first Lithuanian elections to the European Parliament a chairperson of the Polish political party was elected. Even though he is the only Lithuanian member of national minorities elected to the European Parliament and he is not a representative of Russian-speaking national minorities, it shows that the authorities of Lithuania have established an eligible background for the national minorities to effectively participate in the elections. Moreover, it gives a hope that in the future the representatives of Russian-speaking national minority of Lithuania will be also able to protect the rights and interests of minorities in the European Parliament.

During the monitoring cycles Lithuania has achieved better results with regard to the implementation of provisions of the FCNM related to political rights by improving the consultative mechanism. A number of positive amendments in governmental sector were made to improve cooperation with national minorities during the political decision making process. However, in 2010 one of the most important institutions of national minorities for the protection of their rights and interests - the Department of National Minorities and Lithuanians Living Abroad was reorganized. The protection of interests of national minorities was divided between two ministries. The Ministry of Education and Science of the Republic of Lithuania became responsible for the educational issues of national minorities and the Ministry of Culture of the Republic of Lithuania is responsible for the issues concerning the protection of rights of persons belonging to national minorities and upholding their culture. Generally speaking the rights of Russian-speaking minorities are still protected if the Ministries successfully fulfill their obligations. However, none of these Ministries is dealing with the political rights of national minorities. Moreover, none of them is performing the consultative function during the political decision making process as it was doing the Department of National Minorities and Lithuanians Living Abroad. Thus, after the reorganization of the Department the important element of ensuring an effective participation of national minorities in political life and public affairs, consultative mechanism, is less ensured.

All this considered it can be concluded that the ratification of the FCNM had some impact on the protection of political rights of Russian-speaking national minorities. The government of Lithuania had made some changes into national legislation as well as introduced a number of programmes and new positions to ensure better protection of national minorities rights and interests in order to comply with the provisions established in the FCNM. However, the results of the recent elections still show little representativeness of Russian-speaking national minorities and the reorganization of the Department of

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National Minorities and Lithuanians Living Abroad also reduces opportunities for national minorities to be “heard” during the political decision making process.

In the paper “Russians in Lithuania: Development of an Ethnic Group and Challenges of Social Integration 2001–2011” the authors note the positive approach and actions of the government of Lithuania towards national minorities in the first decade of the independent Lithuania. However, according to the authors, this tendency changed in the next decade and the policy of the development of integration was rather random and perfunctory.105 According to this statement, and the analyses above partly prove it, at the time when the FCNM entered into force in Lithuania the policy in this field had more negative aspects for national minorities comparing with the situation before the ratification of the FCNM which is contrary to the purpose and goal of the FCNM.

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7. What are further possibilities of the monitoring bodies of the FCNM on the protection of national minorities?

The work of the monitoring bodies of the FCNM has made a great influence on States to ensure more effective protection of the rights and freedoms of national minorities. However, cases of discrimination and less favorable treatment of national minorities still occur in all the countries and often it happens on a governmental level. The legislative and executive bodies of the states are primary organs that are in charge of ensuring the protection of the rights of national minorities. That is why the cooperation of the authorities of the States with the monitoring bodies of the FCNM is of particular importance. Even though many States are showing willingness to cooperate, the process of the implementation of the provisions of the FCNM is often slow and not very effective which proves that the work of the monitoring bodies of the FCNM still requires a number of improvements.

A big disadvantage of the adopted Advisory Opinions and Resolutions is that they do not have binding character. Moreover, the absence of negative consequences for the States in case of non-compliance with the recommendations of the monitoring bodies leave the room for governments to decide which recommendations they will accept and which they will not. All this decreases the possible influence of the monitoring bodies on States and, thus, the progress of the implementation of the provisions established in the FCNM completely depends on the willingness of the governments. The only possible consequence left which usually persuades the authorities to comply with the recommendations of the monitoring bodies of the FCNM is political pressure. A wish to avoid the, so called, “naming and shaming” effect may encourage States to work towards more effective implementation of the provisions of the FCNM into national legislation. However, the possibility not to publish opinions of the Advisory Committee is a way to avoid negative effect which these opinions may cause for the States. Thus, one of the ways to improve the influence of the monitoring bodies could be an obligatory publication of the opinions. On the other hand, this quite drastic measure may cause a reverse consequence. In order to avoid a negative outcome of the Advisory Opinion, the States, particularly the ones which have big problems concerning national minorities, may withdraw from the FCNM at all.

Another drawback of the supervisory system is the length of the monitoring cycles. Usually it takes a few years for the Advisory Committee to submit an opinion and for the State to receive the final Resolution of the Committee of Ministers. Such situation occurred in Lithuania where the process of drafting the third
report took place before the Resolution of the Committee of Ministers was submitted.\textsuperscript{106} A faster monitoring process would provide more efficient results for national minorities. However, it is not possible to organize it without sufficient resources. Hence, according to the former expert of the Council of Europe Advisory Committee on the FCNM, Alan Phillips, “As a priority, the Committee of Ministers should provide more resources for the Advisory Committee, for speedy and dynamic monitoring, and to promote effective implementation of the Committee of Minister’s Resolutions. This would include follow-up visits and advice, and dialogue with States and civil society on problematic issues between reporting cycles.”\textsuperscript{107} The follow-up visits and advices, mentioned by Alan Phillips, could help States to implement the recommendations by the monitoring bodies. Moreover, the Advisory Committee should analyze how the advices of both monitoring bodies are exercised in different States. The most successful of them the Committee should recommend for other States and thereby ensure more effective implementation of the provisions of the FCNM in more States. This could be also done in follow-up meetings and as a result it could fasten the implementation of the recommendations of the monitoring bodies in a particular State. Furthermore, such advices could also be published in order to provide access for all the States for this information.

Alan Phillips further suggests that the Committee of Ministers should regularly “review the situation in States where non-compliance with the FCNM has been identified.”\textsuperscript{108} He also recommends the submission of the progress reports by the States on the key issues.\textsuperscript{109} These measures would be very beneficial for national minorities since the time between the monitoring cycles is rather long and States may delay the improvement of the implementation of the FCNM. The reviews on regular bases would encourage the authorities of the States which have major problems with national minorities to take more active measures for the implementation of the FCNM in order to avoid bigger criticism.

The absence of the complaint procedure reduces the impact of the FCNM for national minorities in general. At the moment the national minorities, whose rights were violated, can bring their complains to European Court of Human Rights based only on the European Convention of Human Rights which

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\item [\textsuperscript{106}] Third Report Submitted by Lithuania Pursuant to Article 25, Paragraph 1 of the Framework Convention for the Protection of National Minorities (ACFC/SR/III(2011)005 rev, 23 April 2012) 4
\item [\textsuperscript{108}] Ibid.
\item [\textsuperscript{109}] Ibid.
\end{itemize}
\end{footnotesize}
contains only general prohibition of discrimination. Thus, the opportunity for national minorities to start a complaint procedure is very limited. That is why it would be of particular importance if there were established a complaint procedure under the FCNM to one of the organs of the Council of Europe. It would be also a great encouragement for the States parties to fasten the process of implementation of the procedures of the FCNM.

Such amendments could benefit for the improvement of the effectiveness of the monitoring cycles and work of the monitoring bodies in general. However, many of the mentioned possible amendments of the work of the monitoring bodies of the FCNM contain a danger that States parties would withdraw from the FCNM since they may not be willing to be bound so much by the norms established in the FCNM and consequences which non-compliance with them may cause. As a result, the amendments can be realized only if States parties are willing to ensure the effective protection of national minorities by using all possible and necessary means. Moreover, the lack of financial and human resources can also be an obstacle for these amendments to be accomplished.

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8. Conclusions

The similar historical background of Estonia and Lithuania still led to a number of factors which caused significant difference in a size of Russian-speaking national minorities in these countries. Nevertheless, despite the distinction of sizes of these minority groups most of the problems concerning them are similar in both States. The authorities of Estonia, as well as authorities of Lithuania appeared to have some difficulties regarding the implementation of the right to effective participation in political life and public affairs of national minorities. However, from the analysis above it is clear that Estonia, where the number of Russian-speaking national minorities reaches 30 percent of the population, met more challenges during the process of implementation of this right provided by the FCNM. The biggest challenge appeared to be the personal scope of the application of the FCNM.

The authorities of both States interpreted the personal scope of the FCNM similarly – it covers only those national minorities who are citizens of the States. However, the different situations regarding minority groups led to different consequences. The absence of a notable number of stateless people in Lithuania minimized this problem and no critique was received from the monitoring bodies regarding the personal scope of the application of the FCNM in Lithuania. That was not the case in Estonia where the number of stateless Russian-speakers is extremely high. Thus, the rights of a significant number of this national minority group are not protected by the FCNM. Despite the continuing criticism and encouragements of the monitoring bodies to expand the personal scope of the application of the FCNM, the authorities of Estonia refused to do so and, as a consequence, the political rights of a large number of Russian-speaking national minorities still cannot be guaranteed under the FCNM. This problem is caused by the lack of definition of the term “national minorities” in the FCNM as well as by non-binding status of the Resolutions of the Committee of Ministers of the Council of Europe which give a room for the States to decide who is included under the scope of the application of this Convention and, thus, to exclude a significant number of permanent residents belonging to national minorities, as it happened in Estonia.

Another problematic area appeared to be unsolved in both States. There are no positive changes in the number of representatives of national minorities in the governmental institutions in both States. Even though, the monitoring bodies of the FCNM kept emphasizing this problem, the improvements made by the governments of the States in this field appeared to be not enough. Despite the fact that the size of Russian-speaking minority group is almost 3 times bigger in Estonia, the results of the elections to the governmental institutions are extremely low for them in both States and did not improve after the FCNM.
entered into force. Hence, the FCNM cannot make a big influence on the increasing the number of representatives of the national minorities in the governmental institutions regardless the size of the minority groups.

In overall the ratification of the FCNM gave a positive effect in Lithuania and Estonia for the political rights of Russian-speaking national minorities. A number of amendments in national legislation were done, new institutions were established or reorganized during the monitoring cycles as well as different programmes for the improving the effectiveness of the participation of national minorities in political life and decision making process were introduced.

However, the refusal of the government of Estonia to widen the personal scope of the application of the FCNM, the inconsistent actions of the authorities of Lithuania after the ratification of the FCNM and no significant changes in the numbers of the representatives of the Russian-speaking national minorities in the governmental institutions demonstrate that even though the authorities of both mentioned States in general show their willingness to cooperate with the monitoring bodies of the FCNM, the absence of more drastic measures leads to the conclusion that the governments of these States are not ready to provide more favorable and effective opportunities for Russian-speaking national minorities to participate in political life and decision making process.

The ratification of the FCNM has some positive influence on the possibilities of national minorities to enjoy their political rights. However the impact of the FCNM on ensuring the entire scope of rights provided by this Convention for national minorities largely depends on the willingness of States to cooperate with the monitoring bodies of the FCNM. If States do not show their wish to cooperate, there is not much can be done by the monitoring bodies in order to ensure effective implementation of the FCNM. Particularly, in States where a larger group of national minorities exist and the situation between minority and majority is rather problematic the implementation process of the FCNM is slower and brings more challenges.
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