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THE FRAMEWORK CONVENTION FOR THE PROTECTION OF NATIONAL MINORITIES

1. HISTORICAL BACKGROUND

The Framework Convention is a multilateral treaty of the Council of Europe, which, unlike the European Council, is not an institution of the European Union. In fact, the Council of Europe was created in 1949 to achieve greater unity between its members for the purpose of safeguarding and realising the ideals and principles which are their common heritage. The fundamental work of the Council of Europe is based on three pillars: democracy, human rights and the rule of law. Even though the Council

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considered the situation of national minorities on several occasions throughout the 20th century, it was not until 1991 that the Steering Committee for Human Rights (CDDH) was given the task of considering, from both a legal and a political standpoint, the conditions in which the Council of Europe could undertake an activity for the protection of national minorities. This was influenced by the-then recent commitments regarding the protection of national minorities of the United Nations and the Conference on Security and Cooperation in Europe.

Finally, at the Vienna Summit in 1993, the Heads of State and Government of the Council of Europe member states decided to enter into legal commitments on the protection of national minorities. Thus, the Framework Convention for the Protection of National Minorities was signed in 1995. Unfortunately, not all member states of the Council of Europe are parties to the

Convention: some signed it but later did not ratify it (Belgium, Greece, Iceland and Luxembourg); others neither signed nor ratified it (Andorra, France, Monaco and Turkey). When the Framework Convention entered into force in 1998, it became the first binding multilateral legal instrument on the protection of national minorities.

2. SECTION II: RIGHTS, FREEDOMS AND OBLIGATIONS

To begin with, it must be taken into account that there is no international consensus on what a national minority constitutes, for this reason, the Convention itself does not provide a definition of *national minority*. Therefore, each party to the convention is left with a margin of interpretation to assess which groups are covered by the Convention in their territory. However, this decision must be made in good faith and

according to the general principles of international law.

The actual content of the Convention is divided into a preamble and five sections. The preamble is inspired by the first paragraph of the first article of the United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, and reflects the concerns of the Council of Europe and its member States.

The first section sets out the fundamental principles of the convention, one in particular is worth highlighting: the principle of free self-identification (Article 3.1). In other words, the right of every person belonging to a national minority to choose to be treated or not as such. It is important to emphasise that one cannot arbitrarily choose to be part of a national minority, as the person's opinion is linked to objective criteria relevant to the person's identity.

Section II sets out the social, political, and cultural rights and freedoms of national minorities, as well as the Parties' obligations. The rights of national minorities are both general (Article 4.1, the right to equality before the law); and specific in nature (Article 11.1, the right to use their surname and given names in the minority language). It also includes general freedoms, such as freedom of expression (Article 7; Article 9), and more specific freedoms such as the use of their minority language in public or in private, either orally or in writing (Article 10). The parties have the obligation to ensure that these rights are implemented by creating policies to promote the effective equality of national minorities. In addition, the convention prohibits the use of practices such as the forced assimilation of national minorities (Article 5); hindering the creation and use of written media (Article 9.3); or altering the demographic

proportions of national minorities to restrict the rights and freedoms in the Convention (Article 16), also known as gerrymandering.

Sections III and IV are relative to the interpretation and application of the Framework Convention and the monitoring mechanisms, respectively. Finally, Title V contains the final provisions of the Convention.

3. MONITORING MECHANISMS AND IMPLEMENTATION OF THE CONVENTION IN SPAIN

To ensure the effective monitoring of the implementation of the Framework Convention, section IV provides for the creation of the Advisory Committee, a body made up of 18 experts who assist the Council of Europe's Committee of Ministers in monitoring the Convention. The monitoring cycle of the Framework Convention is divided into five phases:

1. Every five years, each State Party submits a state report. The Advisory Committee also collects information from other sources, including alternative reports from civil society organisations.

2. A delegation from the Advisory Committee conducts a country visit. Country visits include meetings with officials, parliamentarians, representatives of minorities, NGOs, ombudspersons, National Human Rights Institutions, scholars, journalists, etc.

3. The Advisory Committee adopts an opinion. After the adoption of the first draft report, the confidential dialogue phase gives the State two months to submit factual observations and clarifications. The final opinion is adopted at the following plenary meeting.

4. Once the final opinion is adopted, State authorities can submit their final comments within 4 months. From the day the opinion is adopted, the State may request its publication. At the latest, the opinion is made public on the day on which the 4-month period for submission of comments expires.

5. The Committee of Ministers of the Council of Europe adopts a resolution containing recommendations addressed to the State concerned.

4. THE CURRENT SITUATION IN SPAIN

For the time being, Spain only recognises Spanish citizens belonging to the Roma community as a national minority. Although the Advisory Committee found the implementation of the Convention in Spain in 2020 satisfactory, the recommendations for immediate action contained in the latest report (2020), the

Advisory Committee urges the Spanish authorities to:

1. Extend the application of the Convention to include persons who are not Spanish citizens; ensure better access to and improve knowledge about current legislation and existing legal remedies that especially affect Roma people; and increase funding for legal assistance.
2. Strengthen the human and financial resources of the Ombudsman's office.
3. Include the term 'anti-Gypsyism' explicitly in article 22.4 of the Spanish Penal Code.
4. Intensify intercultural education and introduce the history and culture of the Roma people in textbooks, teaching materials and educational curricula.
5. Improve programmes to reduce absenteeism and school drop-out rates among Roma children.



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