

## Protecting Jews as a National Minority in European States

### Policy Brief<sup>1</sup>

#### Background

1. The Framework Convention on the Protection of National Minorities (FCPNM) was created to prevent ethno- or nationalist conflicts in Europe after the Cold War. The FCPNM was designed to protect national minorities, and to promote tolerance throughout society. The Preamble refers to the protection of national minorities as being essential to stability, democratic security and peace. It emphasizes the components of a pluralist and genuinely democratic society. It also identifies the need for tolerance and dialogue to enrich society.
2. The central purpose is to protect the distinct identities and cultures of National Minorities within a State. This includes protecting, promoting and implementing the existing human rights of people belonging to National Minorities. Minority rights are a central part of human rights law, designed to ensure people may access their fundamental human rights without discrimination and as equal persons before the law. To do this for members of a National Minority requires positive action to ensure that their distinct identities and cultures are protected.
3. The word “framework” was included to show that the Convention is not directly applicable in domestic law, but rather that States are under a legally-binding duty to ensure that their domestic legislation and its practical application are compatible with the Convention’s principles.
4. The Convention and the individual articles allow for flexible interpretations as to the definition of a national minority,<sup>2</sup> what they are entitled to, and what governments should do to implement those rights. States are required to create and implement laws and programmes most suitable for local conditions to achieve the protection of National Minorities.

#### Definition of a National Minority

6. The Convention purposefully does not provide a specific definition of a National Minority that all States must uphold. The FCPNM focuses on ethnic, religious and linguistic groups. States distinguish between “old” minorities and “new” minorities or immigrants by focusing on National Minorities’ longstanding ties with the country. Some also require that members of National Minorities are citizens of the States.
7. National Minorities are groups with distinct identities who have been present for hundreds or thousands of years in a State, and have a societal culture of preserving their distinct identity. States must protect them continuing to do so. Immigrants and new minorities voluntarily abandon their societal culture, and only hold formal equality rights aimed at promoting their integration into society.<sup>3</sup>

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<sup>1</sup> This summary was prepared by Professor Dr Rosa Freedman for the European Jewish Association, March 2026. Any errors remain the fault of the author.

<sup>2</sup> See section XX

<sup>3</sup> Kymlicka, *Multicultural Citizenship, A Liberal Theory of Minority Rights* (Oxford: Clarendon Press, 1995)

8. States provide specific protections to National Minorities. These are in addition to anti-discrimination laws that protect all minority groups. The difference is that protections for National Minorities are specifically aimed at preserving the group and its distinct identity, culture and features.

#### Jewish Inclusion as a Protected National Minority as it Currently Stands

7. Currently five models for Jewish inclusion exist across the States Party:
  - (i) A specific piece of legislation sets out a list of the State's National Minorities. Jews are explicitly recognised as a National Minority and afforded FCPNM rights.
  - (ii) A specific piece of legislation sets out a list of the State's National Minorities. Jews are not explicitly recognised as a National Minority in that list. They only have protections and rights under general laws on protecting minorities.
  - (iii) The State does not have a specific list of National Minorities. Instead they are protected as National Minorities under general laws on protecting ethnic/racial, religious, or linguistic minorities. Jews are recognised as an ethnic/racial minority as well as religious or linguistic or both.
  - (iv) The State does not have a specific list of National Minorities. Instead they are protected as National Minorities under general laws on protecting ethnic/racial, religious, or linguistic minorities. Jews are recognised as religious or linguistic minority or both, but not an ethnic/racial one.
  - (v) The State explicitly declares that it does not have any National Minorities. Jews have protections and rights under general laws on protecting minorities.

#### Our Aim for Jewish Inclusion as a Protected National Minority Across all European States

8. Jews meet the Convention criteria to be protected as a National Minority as a religious group, and as a linguistic group, and as an ethnic/racial group. This must be recognised in all European States where Jews live. This can be done either by explicitly including Jews on the list of National Minorities, where such a list exists, or by protecting Jews under all three categories under general laws on protecting minorities. This is crucial to recognising Jews as a National Minority as opposed to simply a minority group.
9. Jews have longstanding ties across all European countries. Jews have lived in Europe for more than 2000 years. Many countries have had Jews living in their lands for centuries.
10. Jews are more than a religious group or a linguistic minority. Jews have been recognised explicitly as an ethnic or racial group so that it is protected as a National Minority in all three areas.

#### Framework Convention Rights and Obligations

11. The Convention sets out key normative areas where states must create laws to protect the rights of National Minorities as well as practical mechanisms for implementing the protection of those rights. Those practical mechanisms include consultation and dialogue, funding and resources, national and local programmes, amongst others.

12. The FCPNM covers a wide range of issues: the right to self-identification; development of culture; full and effective equality; tolerance and inter-cultural dialogue; freedom of association; right to religious belief and practice; access to the media; use of minority languages; use of minority names; inter-cultural education; minority education establishments; learning of and in minority languages; effective participation in public affairs; effective participation in economic, social and cultural life; prohibition against altering proportions of population; cross-frontier contacts; bilateral treaties.
13. The right to, and respect for, a minority's distinct identity is the most fundamental in the minority rights field. The main problem, as discussed above, is determining who constitutes a national minority for the purposes of the FCPNM. The right freely to identify oneself with a minority group, or to choose not to do so, is also fundamental to this area of law, as reflected in Article 3(1) of the Framework Convention.
14. The practical mechanisms are aimed at protecting rights and preserving National Minorities' distinct culture and identity. This is very important in the current context of the surge in antisemitism, and discussions on nationalism, immigration and minorities. National Minority status places obligations on the states to provide resources, whereas equality laws are solely focused on preventing discrimination rather than proactivity.

#### Why it matters for Jews

15. The rights of practice for religious or linguistic National Minorities can be limited to achieve a proportionate and legitimate aim. It must be limited for all groups equally. If Jews are also recognised as an ethnic or racial National Minority it would be more difficult to limit those same rights in that context. For example, where a country seeks to close all religious schools, Jewish ones will remain open if they also include preserving Jews' distinct culture and identity as an ethnic or racial National Minority.
14. Other religious practices are crucial to preserving Jews' ethnic or racial cultures and identity. Brit milah is crucial to a male Jewish child's identity. Similarly marriage and death rituals are crucial to maintain the group's distinct identity and culture.
15. National Minority status as an ethnic or racial group is important to protect participation in public life. Viewing Jews as an ethnic or racial group means recognising the group's human right of self-determination, which enables understanding of the discriminatory (sometimes genocidal) nature of anti-Zionist marches, protests and demands.
16. The aim for Jewish Inclusion as a protected National Minority requires a three-pronged approach:
  - (i) The first part of this approach is for Jews to have specific status as a National Minority as either named in specific lists or as protected in general law as ethnic/racial group as well as religious and linguistic.
  - (ii) The second part is for protection of specific rights needed for Jew as a National Minority to preserve their distinct culture and identity.
  - (iii) The third part is for practical mechanisms as models for that promotion and protection of rights.

## Recommendations

17. To prepare advocacy strategies for inclusion of Jews as having Protected National Minority status in each country where they live and where they do not currently have this status.
  
18. To prepare an advocacy strategy for inclusion of Jews as an ethnic / racial group as well as religious and linguistic in each country where they are not currently recognised as an ethnic/racial group.
  
19. To set out key rights specific to Jews that are needed within each country to preserve their distinct culture and identity.
  
20. To set out key practical mechanisms specific to Jews that are needed within each country to preserve their distinct culture and identity
  
21. In each country that includes Jews on a list of named National Minorities, ensure that the protections offered and practical mechanisms for implementation are adequate to preserve identity and culture.
  
22. In each country with a general approach to National Minorities, ensure that the protections offered and practical mechanisms for implementation are adequate to preserve identity and culture not only as religious practice.
  
23. Use the EJA Annual Conference to obtain best practice recommendations on practical mechanisms and implementation from across European States.