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**ADVISORY COMMITTEE ON THE FRAMEWORK CONVENTION FOR THE  
PROTECTION OF NATIONAL MINORITIES**

**COMMENTS OF THE GOVERNMENT OF SWITZERLAND  
ON THE THIRD OPINION OF THE ADVISORY COMMITTEE ON THE  
IMPLEMENTATION OF THE FRAMEWORK CONVENTION FOR THE  
PROTECTION OF NATIONAL MINORITIES SWITZERLAND**

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(received on 15 November 2013)

## **INTRODUCTORY REMARKS**

The Advisory Committee on the Framework Convention for the Protection of National Minorities (“the Framework Convention”) adopted its third Opinion on Switzerland at its 46th meeting on 5 March 2013. The Opinion was transmitted to the Permanent Representative of Switzerland to the Council of Europe on 17 June 2013. Switzerland was then invited to submit written comments by 17 October 2013. The deadline was extended to the end of November 2013, by agreement with the head of the Framework Convention Secretariat, to take account of the difficulty involved in consulting the many stakeholders – in particular, the 26 cantons – during the summer period and of the resulting delay.

Switzerland is pleased that the Advisory Committee delegation which made an official visit to the country from 5 to 7 November 2012 was able to meet numerous representatives of the federal administration, the federal parliament and cantonal and municipal authorities. Switzerland is particularly pleased about the value added by the trips to the canton of Aargau to visit two stopping places for Travellers and to Bienne to find out about the bilingual classes in the town’s schools. The direct meetings with representatives of all the recognised national minorities, several NGOs and Muslim representatives helped the Advisory Committee delegation to gain a practical and precise insight into the situation of persons belonging to national minorities and other communities in Switzerland. Switzerland therefore welcomes the fact that the visit enabled the Advisory Committee to gather all the information needed for the evaluation exercise in a fully transparent manner. In this connection, Switzerland wishes to stress the great importance it attaches to the constructive dialogue it maintains with the Advisory Committee.

Switzerland received with great interest the Advisory Committee’s third Opinion on Switzerland. The detailed and perceptive findings of the Advisory Committee bear witness to its careful scrutiny of the situation of the minorities in Switzerland and its attention to the outstanding issues. Switzerland appreciates the opportunity given to it to make comments.

These comments are addressed to the authorities of the Council of Europe by the Federal Department of Foreign Affairs, on behalf of the Swiss Federal Council, which is responsible for foreign affairs and answers for Switzerland’s fulfilment of its international obligations. However, many areas, in particular spatial development and education, fall within the purview of the cantons, which are therefore responsible for ensuring application of the Framework Convention.

The drafting of these Comments was co-ordinated by the Directorate of Public International Law of the Federal Department of Foreign Affairs, in close collaboration with all relevant departments of the federal administration, namely:

- Federal Office of Culture
- Service for Combating Racism
- Federal Office of Statistics
- Federal Office of Justice
- Federal Office of Migration
- Federal Office for Staff Matters
- General Secretariat of the Department of Finance
- Federal Office of Communication

- Armasuisse
- Federal Chancellery (language policy adviser).

The Federal Commission against Racism, an extra-parliamentary commission answerable to the Department of Home Affairs, also helped with the drafting of these comments.

All cantons together with the Conference of Cantonal Governments, the Swiss Conference of Cantonal Directors of State Education and the Swiss Conference of Directors of Public Works, Land-use Planning and Environmental Protection were invited to state their positions. Municipalities and towns were also consulted, through their representative associations, as was the Foundation, “A Future for Swiss Travellers”.

These Comments, like the Swiss Government’s third Report on the implementation of the Framework Convention, were drawn up in/translated into the four national languages of Switzerland, namely French, German, Italian and, for the first time, Romansh. The third Opinion of the Advisory Committee, issued in English and French, was also made available in these four languages by the Confederation. All these documents will be published on the official website of the Federal Department of Foreign Affairs and will thus be available for consultation by a broad public.

To facilitate reading, the Comments of the Swiss authorities have been directly incorporated into the document setting out the third Opinion on Switzerland. They are identified by **grey shading**. Considering that the Advisory Committee’s main findings (Chapter I) reiterate the more detailed article-by-article findings in Chapter II, the comments essentially concern the latter. Likewise, comments on the “Executive Summary” and on the “Issues for immediate action” at the start of the Opinion are mainly made at the appropriate points in the article-by-article findings.

### Third Opinion on Switzerland adopted on 5 March 2013

#### EXECUTIVE SUMMARY

The system of protection of the rights of persons belonging to national minorities is well-developed in Switzerland.

Significant improvements have been achieved in the last few years for persons belonging to linguistic minorities as a result of the adoption of new laws, both at the federal and cantonal levels. This has provided a consolidation of the institutional and legislative framework protecting persons belonging to linguistic minorities and has led to the strengthening of legal certainty with regard to the use of the four official languages.

The institutional and legislative framework, strengthened by the adoption of new linguistic laws, promotes the minority languages and the lesser used official languages in Switzerland. It does not aim per se to protect “persons”, as stated above.

In spite of these improvements, however, Switzerland continues to be confronted with a number of challenges. Amongst these, the main challenge remains the overall situation of Travellers which continues to raise serious concerns. The issues resulting from the shortage of stopping places and transit sites has not significantly improved in the last ten years and Travellers continue to be faced with difficulties to maintain their itinerant lifestyle.

While discrimination is not generally considered an issue of concern within broader society in Switzerland, including within minority communities, the existing anti-discrimination legislation and legal remedies are still little known or used by the public at large since there is no comprehensive anti-discrimination law. It appears that the frequency of public manifestations of intolerance by some political parties has increased.

It is still difficult for persons belonging to the Italian speaking minority and the Romansh speaking minority to use their own language in the federal administration as well as be effectively and proportionately represented in administrative structures.

In the French version, it would be more appropriate, and more in line with the developments that have occurred, to say that persons belonging to the Italian speaking minority and the Romansh speaking minority “[...] *continuent* à rencontrer des difficultés [...]”. The French term “*toujours*” is ambiguous and liable to cause confusion.

With regard to the Romansh speaking minority, it should be noted that Romansh-speakers cannot claim the right to use their own language as a working language in the *federal* administration as Romansh is a semi-official language of the Swiss Confederation (cf. Article 9 of the Federal Law on Languages).

## Issues for immediate action

➤ **The Advisory Committee reiterates its call on the authorities to intensify their efforts to remedy the severe shortage of stopping places and transit sites for Travellers as soon as possible. Determined measures must be adopted in order to strongly encourage all the federal, cantonal and municipal stakeholders of the importance and need of addressing Travellers' problems under national spatial development plans. Furthermore, sites in a state of disrepair must be renovated and awareness campaigns conducted among municipalities, the general public and private landowners in order to facilitate spontaneous stops;**

As explained below in paragraphs 48-55, the Swiss authorities are aware of the difficulties encountered by Travellers and are committed to finding solutions. The shortage of stopping places and transit sites is indeed *severe*. It could hardly, however, be described as "*criant*", which is the term used in the French version. The French translation of this term is erroneous, therefore, and needs rectifying.

Note that it is in the *cantonal* structure plans that consideration must be given to the needs of Travellers. Since spatial development is a matter for the cantons (Art. 75, paragraph 1, of the Constitution), there are no "*national*" spatial development plans. The government does, however, have an important role to play when cantonal land-use plans are being approved, by sensitising cantons to Travellers' needs.

➤ **The Advisory Committee calls on the authorities to adopt adequate measures to combat manifestations of racism, to condemn publicly and without delay all forms of intolerance, including in political discourse and on the Internet and to intensify efforts to promote diversity and tolerance within Swiss society;**

As explained below in paragraph 68, the Swiss authorities are endeavouring to improve the integration of foreigners. They are also committed to achieving harmonious co-existence between persons of different cultures and faiths and to preventing all forms of discrimination and intolerance.

➤ **The Advisory Committee strongly encourages the authorities to increase their efforts to implement all the commitments relating to the linguistic rights of persons belonging to national minorities laid down in the Federal Law on the National Languages and Understanding between the Linguistic Communities so as to ensure, in practice, full equality among the official languages of the Confederation and to enable persons belonging to linguistic minorities to use their own language in the federal administration and to be effectively and proportionately represented in administrative structures.**

As explained below in paragraphs 87 and 121, this recommendation is partially obsolete as regards the representation of linguistic minorities in the federal administration because it disregards the recent developments that have occurred in these areas since November 2012. It should therefore be modified accordingly.

Given the Swiss institutional framework, furthermore, it would be more appropriate to talk about "effective" rather than "full" equality, which is the term used above. For one thing, Romansh is a semi-official language of the Confederation and Romansh-speakers in the federal administration cannot claim the right to use it as a working language. And for another, the Federal Ordinance on Languages (OLang) sets *percentages* to be achieved in order to ensure fair representation of the linguistic communities.

**ADVISORY COMMITTEE ON THE FRAMEWORK CONVENTION  
FOR THE PROTECTION OF NATIONAL MINORITIES**

**THIRD OPINION ON SWITZERLAND**

1. The Advisory Committee adopted the present Opinion on Switzerland on 5 March 2013 in accordance with Article 26 (1) of the Framework Convention and Rule 23 of Resolution (97) 10 of the Committee of Ministers. The findings are based on the information set out in the State Report received on 16 January 2012 (hereafter “the State Report”) and written information from other sources, as well as on the information obtained by the Advisory Committee from the government and non-governmental organisations during the visits to Aarau, Bern, Bienne and Spreitenbach from 5 to 7 November 2012.

It was on 26 January 2012 that the State Report was sent to the Advisory Committee.

2. Section I below sets out the Advisory Committee’s main findings regarding the fundamental questions relating to the implementation of the Framework Convention in Switzerland. These findings reflect the more detailed article-by-article findings set out in Section II, which deals with the provisions of the Framework Convention on which the Advisory Committee has substantive questions to raise.

3. These two sections make frequent reference to the action taken on the findings made under the system for monitoring the Framework Convention in the Advisory Committee’s first and second Opinions on Switzerland, adopted on 20 February 2003 and 29 February 2008 respectively, and in the corresponding resolutions adopted by the Committee of Ministers on 10 December 2003 and 19 November 2008.

4. The concluding remarks set out in Section III might be used as the basis for the next Conclusions and Recommendations of the Committee of Ministers on Switzerland.

5. The Advisory Committee is looking forward to continuing its dialogue with the Swiss authorities and with the representatives of the national minorities and other stakeholders involved in implementing the Framework Convention. It urges the authorities to publish this Opinion on its receipt, in order to promote a transparent process involving all the relevant parties. The Advisory Committee also draws the attention of States Parties to the fact that on 16 April 2009 the Committee of Ministers adopted new rules on the publication of Advisory Committee Opinions and other monitoring documents, in order to improve transparency and facilitate early information sharing among all the parties concerned on the findings and conclusions of the monitoring procedure (cf. Resolution CM/Res(2009)3 amending Resolution (97) 10 on the monitoring mechanism laid down in Articles 24-26 of the Framework Convention for the protection of National Minorities).

## I. MAIN FINDINGS

### Monitoring procedure

6. Switzerland continues to adopt a positive co-operative approach to the monitoring procedure of the Framework Convention. The authorities were particularly constructive and helpful as regards the organisation of the third visit to the country from 5 to 7 November 2012. This visit, which was organised at the invitation of the Swiss Government, provided an opportunity to engage in direct dialogue with the parties concerned. The additional information received from the government and other sources, including representatives of the national minorities, proved highly useful. The meetings took place not only in Bern but also in Aarau, Bienne and Spreitenbach.

7. The Advisory Committee notes that Switzerland published the second Opinion on 30 January 2008 and that this document and the corresponding Resolution of the Committee of Ministers were put on line on the website of the Federal Department of Foreign Affairs in order to make the information on the Framework Convention and the Opinion of the Advisory Committee accessible to the general public. These documents were published in the national languages of the Swiss Confederation, namely German, French, Italian and Romansh.<sup>1</sup>

It was on **2 September 2008**, not 30 January 2008, that Switzerland published the second Opinion, after it was adopted by the Advisory Committee on 29 February 2008 and forwarded to the Swiss authorities on 25 April 2008.

The second Opinion and the corresponding Committee of Ministers resolution were published in the three main official languages of the Swiss Confederation, namely French, German and Italian. It was during the third monitoring cycle that the State Report was first translated into Romansh.

8. The Advisory Committee welcomes the holding in Bern on 7 April 2011 of a seminar on the situation of the Travellers minority. This event enabled representatives of the authorities and representatives of the Travellers' umbrella organisation, *Radgenossenschaft der Landstrasse*, and the Foundation "A Future for Swiss Travellers" (hereafter named "the Foundation") to discuss the conclusions of the second monitoring cycle and the future means of implementing the Framework Convention. Various civil society organisations and the media took part in this seminar.

9. While regretting that the State Report was submitted with 23 months delay, the Advisory Committee notes with satisfaction that during the drafting of the Report, extensive consultations were held with associations representing national minorities, and that the latter were involved in drafting the report. The authorities also consulted civil society during the drafting of the report. In order to ensure even greater transparency in the monitoring procedure, the Advisory Committee recommends broad dissemination of the present Opinion in the relevant official and minority languages.

The third Opinion on Switzerland was immediately translated into German and Italian. There are also plans for it to be translated into Romansh. Likewise, the relevant comments by the Swiss Government will be translated into German, Italian and Romansh. Translating the third Opinion into the various official languages of Switzerland was essential for the extensive

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<sup>1</sup> The official languages of the Confederation are German, French and Italian. Romansh is an official language for relations between the Confederation and Romansh speaking persons as well as within the canton of Graubünden.

consultations held with the cantons and municipalities. This effort partly accounts for the delay in submitting the present Comments.

### **Overall assessment of the implementation of the Framework Convention following the first two monitoring cycles**

10. Since the second monitoring cycle Switzerland has maintained a consistent policy of supporting persons belonging to national minorities. In particular, significant improvements have been achieved in the last few years for people belonging to linguistic minorities.

11. However, the problem of stopping places and transit for Travellers remains a question of deep concern.

### **Legislative framework and institutional structures**

12. The Swiss authorities have continued their inclusive approach to the personal scope of application of the Framework Convention, acknowledging that one main challenge is currently the possible recognition of further linguistic, cultural or religious communities as national minorities, in the light of the increased diversity of Swiss society.

13. The legal and institutional framework concerning the protection of national minorities has been considerably improved since the last monitoring cycle. An important step was the adoption of a comprehensive legislative federal framework that overcomes some discrepancies and thereby creates greater equality.

14. The Advisory Committee particularly welcomes the entry into force, respectively on 1 January 2010 and on 1 January 2012 of two important laws relevant to persons belonging to national minorities: the Federal Law on the National Languages and Understanding between the Linguistic Communities (hereafter: Law on Languages, LLC) and the Federal Law on the Promotion of Culture (LEC).<sup>2</sup>

### **Discrimination and intolerance**

15. Discrimination and intolerance are not generally considered an issue of concern within broader society in Switzerland including minority communities even if there are persistent reports of generally discriminatory attitudes, including instances of intolerance, against some groups. The Swiss Government considers that the existing legal basis currently offers sufficient protection against discrimination. It nonetheless recognises that very few cases of discrimination are taken to court and explains this situation by the fact that the victims of discrimination are often deterred from taking legal action by fear and uncertainty as well as the financial risk associated with such legal proceedings. Consequently, the existing legislation could be more frequently applied if the public at large and potential victims of discrimination had a better knowledge of it. It is therefore regrettable that there has been no progress towards the drafting of new comprehensive anti-discrimination legislation. The authorities consider that such legislation is unnecessary in view of the legal framework currently in force but this restrictive approach is not shared by the Federal Commission against Racism (CFR) and other decision-makers who consider the norms in this field incoherent and largely unknown by the general public. The Advisory Committee agrees with the latter findings and considers that there is a clear need for a new, comprehensive anti-

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<sup>2</sup> The Federal Law on the National Languages and Understanding between the Linguistic Communities was enacted on 5 October 2007; the Federal Law on the Promotion of Culture (LEC), was enacted on 11 December 2009.



discrimination law. More determined measures from the authorities are also needed to ensure better knowledge among the Swiss society of the relevant legislation and the available remedies.

16. It seems that the frequency of public manifestations of intolerance by some political parties increased following the result of the 2009 popular initiative on the prohibition of the construction of minarets. Even though Switzerland is characterized by a system of direct democracy which the government considers as essential for open public debates on issues of general concern, the system of popular initiatives may result in incompatibility with the protection of fundamental human rights in Switzerland. The Advisory Committee welcomes the fact that the authorities demonstrated a clear determination to tackle these challenges.

### **Travellers**

17. The Travellers continue to face serious difficulties, particularly in connection with the housing conditions linked to their itinerant lifestyle. Although efforts have been made to address the problem of this community in a comprehensive way in the aftermath of the 2010 Report of the Foundation, cases of discrimination and negative prejudices continue to be reported. The overall situation of Travellers still raises serious concerns as the problem of the shortage of stopping places and transit sites has not significantly improved in ten years. The financial and staffing capacities of the Foundation are not yet sufficient to provide adequate solutions. More efforts are needed from the federal authorities to make sure that the cantons will create further stopping places and transit sites as a matter of priority. There is also scope for improvement in society's acceptance of the Traveller community's identity as well as in Travellers' participation in decision-making, especially at inter-cantonal level. It is therefore important for the authorities to put particular emphasis on organising legal and social structures so that the national minorities can keep their culture alive.

### **Support for minority languages and education**

18. The Law on Languages (LLC) provides strong legislative guarantees regarding the use of the German, French, Italian and Romansh languages within the federal administration and in contacts between persons speaking these languages and the authorities. However, implementation of the law is still problematic for Italian and Romansh civil servants as civil servants belonging to other linguistic minorities groups often do not have the language skills necessary to provide adequate services in these two languages. Furthermore, as data by linguistic affiliation collected by the Federal Office of Personnel failed to take account of the level of responsibility in posts occupied by persons belonging to linguistic minorities, it is impossible to establish reliably whether linguistic representation is qualitatively balanced. Even though the Swiss Confederation supports linguistic exchanges in the federal administration and the cantons in order to promote multilingualism, targeted efforts are called for in this regard to ensure that the linguistic rights of all groups are upheld in accordance with Swiss legislation. Particular mention needs also to be made of the entry into force on 1 January 2008 of the language law of the canton of Graubünden, which significantly improves the legislative protection of Romansh and Italian in this canton.

As noted above in relation to the "Executive Summary", Romansh is a semi-official language of the Confederation. It is used only in dealings between the federal authorities and Romansh-speakers, but is not used as a working language in the *federal* administration. Such being the case, it cannot be asserted that "implementation of the law is still problematic for [...] Romansh civil servants".

Romansh is, however, a fully-fledged official language in the canton of Graubünden.

As regards taking account of the level of responsibility in posts occupied by persons belonging to linguistic minorities in data by linguistic affiliation, see the comments and updates provided in paragraph 121.

19. The minority language media continues to receive public support in Switzerland and the amount of Romansh language radio broadcasting is exemplary taking into consideration the overall size of the Romansh speaking minority.

20. Switzerland continues to invest considerable efforts in the teaching of and in minority languages and has recently developed linguistic exchanges geared to improving mutual understanding in the country, particularly in the schools. The provision of education in Italian and Romansh remains adequate.

### **Participation of minorities in public affairs**

21. Even if the Law on Languages (LLC) provides for the representation threshold of the linguistic communities in the federal administration, it appears that persons belonging to the Romansh speaking minority are still under-represented in managerial posts.

The same is true of the Italian-speaking minority.

As regards updating the targets for the representation of linguistic groups in the federal administration and the various processes under way, see the comments made in paragraph 121.

22. There is no effective consultative mechanism to ensure that the concerns of the Travellers at the inter-cantonal level are brought to the attention of the various local authorities that deal with issues of concern to this minority.

## II. ARTICLE-BY-ARTICLE FINDINGS

### Article 3 of the Framework Convention

#### Scope of application of the Framework Convention

##### *Recommendations from the previous two monitoring cycles*

23. During the previous monitoring cycles, the authorities were encouraged to continue their efforts to meet the needs of persons belonging to linguistic minorities, even outside their traditional areas of settlement, and to devote greater attention to the situation of Italian- and Romansh-speakers. Furthermore, the Advisory Committee recommended intensifying dialogue with persons belonging to the groups which are not covered by the Swiss Declaration<sup>3</sup> and adopting an open approach to the citizenship criterion, particularly with regard to Travellers.

##### *Present situation*

24. In Switzerland, the Framework Convention is in practice applied to national linguistic minorities, namely the French-, Italian- and Romansh-speaking minorities, persons belonging to the German-speaking minorities residing in the cantons of Fribourg and Valais, French-speakers in the canton of Bern, Travellers and members of the Jewish community.<sup>4</sup>

25. The Advisory Committee is pleased to note that the authorities continue to have a flexible approach regarding the scope of application of the Framework Convention. According to the authorities, the Declaration entered at the time of ratification of the Framework Convention facilitates a dynamic interpretation covering the linguistic minorities living outside their traditional area of settlement, and also persons belonging to other groups if they meet the requirements set out in the Declaration. The authorities consequently consider that other groups could be granted the protection provided by the Framework Convention if the criteria are fulfilled. The Advisory Committee notes with satisfaction that the authorities consider that this question must be regularly reconsidered and that consequently, as part of the consultations for the preparation of the third State Report, the cantons and municipalities were asked whether they thought that other linguistic, cultural or religious communities should be recognised as national minorities. Only the canton of Vaud considered that it might be justified to grant the Swiss Muslims national minority status.

26. The Advisory Committee notes with interest that since 2009 the federal authorities have set up a platform for dialogue between the Federal Administration and the Muslim

<sup>3</sup> Declaration recorded in the instrument of ratification deposited on 21 October 1998 : “Switzerland declares that the following constitute national minorities within the meaning of the present Framework Convention in Switzerland: groups of persons numerically inferior to the rest of the population of the country or of a canton who are of Swiss nationality, who maintain longstanding, solid and enduring links with Switzerland and who have the desire to preserve together the components of their shared identities, including their culture, traditions, religion or language”.

<sup>4</sup> According to the federal population census of 2000, 63.7% of the population speak German, 20.4% French, 6.5% Italian and 0.5% Romansh. The Jewish minority accounts for 0.2% of the population and the total number of Travellers is estimated at 30 000, between 2 500 and 3 000 of whom still have an itinerant lifestyle.

Update: According to the 2011 structural survey, 65.3 % (± 0.1) of the permanent resident population listed German as their main, or one of their main, languages, 22.4% (±0.1) French, 8.4% (±0.1) Italian and 0.5 (±0.0) Romansh. From 2010, the respondents, i.e. persons aged 15 years or over and living in private households, were permitted to list several main languages. Up to three main languages per person were considered.

The Jewish minority accounts for 0.2% (±0.0) of the permanent resident population.

population in order to discuss issues relevant to them.<sup>5</sup> While stressing that they would continue their dialogue with the Muslim community on this subject, the authorities informed the Advisory Committee that the Muslim community had never officially expressed the wish to be recognised as a national minority. On the other hand, this community has voiced a desire to obtain religious minority status, which would enable it, in certain cantons, to finance places of worship, teach religion at school, provide burial sites and offer religious support to Muslims in hospitals and prisons.<sup>6</sup>

It is inaccurate to talk about a single “Muslim community” in Switzerland as there is more than one. Switzerland’s Muslims are divided into numerous, very diverse groups according to their beliefs and practices, as well as their languages and ethnic origins. There is no umbrella organisation that can claim to represent the majority of Muslims living in Switzerland.

There is no such thing as “religious minority status” in Swiss law. Regulating relations between the state and the religious communities is a matter for the cantons (Art. 72, paragraph 1, of the Constitution). Most cantons have a system whereby religious communities can be granted legal recognition, or recognised as institutions “of public interest” depending on their size and the length of time they have been present in Switzerland. Such recognition does not mean that the communities concerned enjoy special protection. It confers on the “official churches” various privileges such as the right to levy taxes on their members, collected by the state, to receive government subsidies or to provide religious education in public schools. The “official churches” may be subject to certain conditions such as financial transparency.

As well as the two Alevi communities in the canton of Basel-Stadt, which were recognised in 2012 as being of public interest, mention could be made of the Islamic community of Lucerne (Islamische Gemeinde Luzern - IGL), which is currently the subject of discussions in Lucerne canton about recognising the community as an institution governed by public law. The Vaud Union of Muslim Associations applied for recognition as an institution of public interest in the canton of Vaud after a cantonal law was passed in 2007 on the recognition of religious communities.

With regard to the “Dialogue with the Muslim population” instituted by the Confederation, it is important to add the following: the workshops held as part of this dialogue provided an opportunity to examine a number of issues and problems, to identify common aspirations shared by the Confederation and the Muslim population and also to outline and implement measures that could be taken by the Confederation within its areas of competence. The last workshop took place in April 2011. The outcome of the discussions was presented in the report “Dialogue with the Muslim population 2010 – Exchange between the federal authorities and Muslims in Switzerland”. The latter outlines the measures devised by the Confederation to encourage integration and equal opportunities for Muslims and to ensure peaceful co-existence between everyone living in Switzerland. The federal projects that were launched during the dialogue with the Muslim population have continued since April 2011. On 26 November 2012, policy makers representing the Confederation, the cantons and municipalities met with 18 Muslims who had been involved in the dialogue thus far. Participants at the meeting agreed that practical solutions in the five areas identified (recognition of Muslim communities, the need for mutual exchange of information between Muslims and non-Muslims within the population, initial and continuing training of persons giving religious guidance and the handling of religious diversity in schools, discrimination

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<sup>5</sup> This dialogue is conducted with 18 persons representing the diversity of individual origins and religious or non-denominational orientations in the Muslim community.

<sup>6</sup> In 2012, the Parliament of the canton of Basel recognised the religion of the Alevi community in the canton of Basel-Stadt.

and the need for prayer rooms and burial grounds) needed to be found at cantonal and municipal level. On 8 May 2013, the Federal Council presented its report on “The situation of Muslims in Switzerland” in response to three parliamentary postulates. In the report, the Federal Council observes that the great majority of Muslim communities and Muslims live peacefully alongside Swiss society and take an active part in it. Their religious affiliations do not make them vulnerable to any particular problems in their everyday lives in Switzerland and seldom lead to disputes. The Federal Council has therefore decided to stop introducing specific measures to reduce religious discord between persons of different faiths, as it considers that the existing provision in terms of integration is such as to enable any problems to be dealt with in an appropriate manner.

27. In connection with the citizenship criterion, the authorities argue that this criterion is implemented in a flexible manner because foreign Travellers already have free access to existing transit sites and stopping places. Furthermore, the Advisory Committee is pleased to note that installing larger sites which are better suited to foreign Travellers’ needs (given that they travel in large groups) is a priority in several cantons.<sup>7</sup>

28. The Advisory Committee takes note of this initiative and encourages the authorities to maintain a dialogue-based approach in their relations with persons and groups with a potential future interest in the protection provided by the Framework Convention.

#### *Recommendation*

29. The Advisory Committee invites the authorities to continue implementing their flexible approach and to ensure that all individuals who might benefit from being covered by the Framework Convention are informed of this possibility, and that they actually benefit from the protection provided by the Framework Convention, in accordance with Article 3 thereof.

### **Article 4 of the Framework Convention**

#### **Institutional framework for combating discrimination**

##### *Recommendations from the previous two monitoring cycles*

30. During the previous monitoring cycles, the authorities were invited to extend the anti-discrimination legislation in order to provide effective remedies in all fields, and to develop monitoring measures in these fields. Moreover, the Advisory Committee recommended reinforcing the institutions responsible for combating racial discrimination, notably by setting up an independent human rights agency.

##### *Present situation*

31. The Advisory Committee regrets that the authorities’ position has not changed on the matter of adopting comprehensive anti-discrimination legislation. According to the authorities, such legislation is unnecessary in view of the legal framework currently in force,<sup>8</sup> which already provides for effective action against all forms of discrimination. However, observing that the general public appeared to be fairly unfamiliar with the anti-discrimination legislation, the authorities set up various awareness-raising initiatives. In this context, the

<sup>7</sup> In the canton of Aargau, a transit site specially tailored to the needs of foreign Travellers was opened in 2004, and in the cantons of Fribourg and Bern, consideration is being given to building two major sites, for foreign Travellers only, close to a motorway.

<sup>8</sup> Article 8 of the Federal Constitution and all cantonal Constitutions guarantee equality and non-discrimination, Article 261bis of the Criminal Code punishes racial discrimination, and many other legislative provisions prohibit discrimination in different areas of life.

Advisory Committee took note of the publication in 2009 by the Service for Combating Racism (SLR) of a legal guide to racial discrimination describing the legal remedies available in cases of discrimination. Between 2010 and 2012, the SLR also organised approximately forty training courses based on this guide.

32. The restrictive approach of the government concerning a comprehensive anti-discrimination law is not shared by the Federal Commission against Racism (CFR)<sup>9</sup> or by a number of parliamentarians. The same holds for civil society representatives. During the visit, these interlocutors informed the Advisory Committee that they support the adoption of a comprehensive and coherent law against discrimination. They consider the norms in force in this field incoherent and the legal bases difficult to apprehend by individuals who feel that they have suffered discrimination and who also often fear that the procedural costs will be disproportionate to the chances of success. This is the reason why, in 2010, considering that protection against discrimination among private individuals was under-developed, the CFR published a report proposing measures to reinforce the Swiss legal system in terms of protection against racial discrimination.

33. While recognising that most of its interlocutors, including the representatives of minorities, do not claim or feel that they are victims of discrimination, the Advisory Committee observes that very few cases of discrimination are taken to court and that the authorities explain this situation by the fact that the victims of discrimination are often deterred from taking legal action through fear and uncertainty. In fact, cases are not brought before the courts due to the financial risk of incurring significant loss, as bringing court proceedings is costly if the case is not won. Consequently, the Advisory Committee considers that the existing legislation and legal remedies could be more frequently applied if the public at large and potential victims of discrimination had a better knowledge of them. Therefore, the Advisory Committee considers that there is a clear need for a new, comprehensive anti-discrimination law and for more determined measures from the authorities to ensure better knowledge among Swiss society of the relevant legislation and the available remedies.

The majority of the Parliament and the Federal Council have so far opposed a comprehensive anti-discrimination law, arguing that the existing law allows individuals to defend themselves against discrimination on the part of other individuals. This is the position that was communicated to the Human Rights Council during the 2<sup>nd</sup> Universal Periodic Review of Switzerland (UPR). 14 December 2012, however, saw the adoption of Martin Naef's postulate (12.3543: Report on the right to protection against discrimination), which instructs the Federal Council to present a report indicating the strengths of existing federal law regarding protection against discrimination and a comparative study on the effectiveness of the various legal instruments. This study will be entrusted to the new Swiss Centre of Expertise in Human Rights. One section of the study will look at access to justice in the case of racial discrimination. The study will deal with the legal situation, but will also examine practical aspects, including what, if anything, might prevent the individuals concerned from taking legal action. The study is due to be completed in 2015.

34. The Advisory Committee notes with interest the introduction in 2008 of the "Consultation Network for Victims of Racism",<sup>10</sup> which has become the main body

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<sup>9</sup> The CFR is an independent national structure established by the State which is responsible for advising individuals and the authorities. It also conducts policy analysis and policy-making work. The CFR directs victims of discrimination towards the specialist services and, if State institutions are involved, intervenes directly.

<sup>10</sup> This network comprises ten local centres and the non-parliamentary Federal Commission against Racism (CFR).

responsible for nationwide monitoring of racial discrimination in Switzerland.<sup>11</sup> All cases of discrimination are registered in a common database (DoSyRa), and each year a report analyses the changing face of racist incidents, bringing the conclusions to the attention of the public and the government. According to the latest report (2011), the number of racist incidents, particularly cases of islamophobia, is decreasing, the main victims being individuals from sub-Saharan Africa.<sup>12</sup> However, despite this positive trend and the efforts at information and prevention made by the authorities, the Network suggests that these figures do not reflect the real incidence of racist acts.

The “Consultation Network for Victims of Racism” was set up by the Federal Commission against Racism, the association Humanrights.ch and a number of counselling centres. Participation is on a voluntary basis and existing members of the Network decide whether to admit new applicants. The Network does not have an official remit. The member organisations vary in size and geographical coverage. The annual reports provide a good insight into the quality of the work done by the counselling centres, but do not provide a sufficient basis for drawing quantitative conclusions about the situation in Switzerland. According to the last report, published in 2011, racist remarks are the most commonly recorded form of racism. Discrimination was reported in all spheres of life, the main victims being individuals from sub-Saharan Africa.

35. In connection with the discussions on the possible setting up of an Ombudsman’s Office, the Advisory Committee notes that the Federal Council,<sup>13</sup> after holding extensive consultations, concluded that such an institution was unnecessary, preferring to set up, in 2011, the “Swiss Centre of Expertise in Human Rights” (CSDH).<sup>14</sup> The Advisory Committee notes that several cantons have introduced Ombudsman institutions responsible for raising awareness amongst the population and the administration of respect for human rights.<sup>15</sup>

#### *Recommendations*

36. The Advisory Committee calls on the authorities to reconsider their position concerning the possible adoption of comprehensive anti-discrimination legislation and to continue systematically collecting statistical data in matters of discrimination in order to monitor the situation.

Discussions on the possible adoption of comprehensive anti-discrimination legislation cannot take place until the Swiss Centre of Expertise in Human Rights has submitted its study on the effectiveness of the various legal instruments for combating discrimination. See on this subject the comment made in paragraph 33.

37. The Advisory Committee invites the authorities to continue and intensify their efforts to improve public knowledge of the remedies available against discrimination, notably by devoting special attention to those persons who are most exposed to discriminatory attitudes, so that they can enjoy comprehensive information on their rights and the existing legal remedies.

### **Discrimination of Travellers**

<sup>11</sup> Other sources help collect data for the Network, e.g. the “Chronology of racist acts in Switzerland”, and the reports on anti-Semitism published by the Swiss Federation of Jewish Communities (FSCI) and the Inter-Community Co-ordination against Anti-Semitism and Defamation (CICAD).

<sup>12</sup> 156 cases of discrimination against persons from countries located south of the Sahara were registered in 2011 as compared with 178 in 2010.

<sup>13</sup> The Federal Council is the federal government of Switzerland.

<sup>14</sup> The CSDH is a service centre. Its main task is to promote and facilitate the process of implementing international human rights obligations at all levels.

<sup>15</sup> In 2008, for instance, the canton of Geneva set up a cantonal Human Rights Office.

*Recommendations from the previous two monitoring cycles*

38. During the previous monitoring cycles, the Advisory Committee recommended that the authorities devise practical measures to overcome the problems of discrimination facing Travellers, particularly in connection with the housing conditions linked to their itinerant lifestyle.

*Present situation*

39. The Advisory Committee notes that Travellers<sup>16</sup> who have retained an itinerant lifestyle and exercise itinerant trading activities are still encountering obstacles, particularly on the administrative front. According to a number of interlocutors, Travellers are often obliged to accept continuous employment in a single place in order to continue to receive the weekly social aid allowance (directly payable at the office of their municipality of residence), a procedure that is incompatible with their itinerant way of life and that, in their view, causes indirect discrimination. Furthermore, the Federal Commission against Racism pointed out that children who travel with their families in the summer months (usually from April to October) cannot always obtain the same level of school certificates as the children of settled families.

40. The Advisory Committee observes that the failure to adapt the rules governing the payment of weekly social aid allowances to the situation of Travellers places sometimes a disproportionate burden on them compared with other recipients of these allowances. This situation is incompatible with the prohibition of discrimination contained in the Framework Convention. The Advisory Committee recalls that adequate measures in order to promote full and effective equality between persons belonging to a national minority and those belonging to the majority shall not be considered to be an act of discrimination. In this connection, the Advisory Committee notes with interest that, in its judgment of 15 March 2012 the Federal Court held there was indirect discrimination against a disabled woman belonging to the Travellers community. The Court found that the refusal of the social services to take into account the itinerant lifestyle of a disabled Traveller, when assessing whether she should be granted a disability allowance, amounted to indirect discrimination. The Advisory Committee notes with satisfaction that in this case, the Federal Court extended its previous case-law in which it had already recognised the necessity to take into account the legitimate interest of Travellers, to retain their particular identity and traditions, to the field of social benefits.

The Federal Court judgment handed down on 15 March 2012 has been published in the reports of the main judgments, under reference no. ATF 138 I 205. The Federal Court regards the Framework Convention as the foremost international instrument providing special protection for Travellers. This follows the efforts made in recent years by the Swiss Government to raise authorities' awareness of the Framework Convention and its implementation.

*Recommendation*

41. The Advisory Committee urges the authorities to adopt more resolute measures to promote the full and effective equality of all Travellers and their traditional way of life by swiftly, *inter alia*, implementing the recent Federal Court decision.

The Federal Court judgment of 15 March 2012 is a step forward in terms of official recognition of Travellers' way of life. It is expected to have a knock-on effect on other areas of law and/or practice, in particular social aid.

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<sup>16</sup> The majority of Travellers who have maintained an itinerant way of life are Yenish while the Manouches (of French origin) and Sinti (of German origin) are not very numerous and have often become integrated into the Swiss itinerant Yenish community through marriage and family ties.



## Article 5 of the Framework Convention

### Presentation and promotion of Travellers' culture and identity

#### *Recommendations from the previous two monitoring cycles*

42. During the previous monitoring cycles, the authorities were invited to promote the language and culture of the Travellers and to facilitate the education of the Traveller children who practice an itinerant lifestyle. Furthermore, the Advisory Committee recommended increasing public financial aid to the bodies responsible for promoting Travellers' cultural initiatives.

#### *Present situation*

43. The Advisory Committee notes with interest that the Federal Office for Culture has prepared, in close co-operation with representatives of the Travellers a Yenish language dictionary in order to expand knowledge and the command of this language. The launching of this book will be accompanied by a CD with a series of recorded interviews in Yenish.

It is the Travellers umbrella organisation, "Radgenossenschaft der Landstrasse", that is compiling a dictionary, with the support of the Federal Office for Culture. This book will be accompanied by a DVD, not a CD.

44. The Advisory Committee welcomes the entry into force in 2012 of the Federal Law on the Promotion of Culture (LEC) which provides a solid legal basis for guaranteeing the maintenance of public subsidies for the Travellers' Associations and increases their opportunities to have an impact in decision-making on issues of concern to them through new supervision responsibilities given to the Foundation.<sup>17</sup>

Rather than increasing Travellers' capacity to act, Article 17 of the new Federal Law on the Promotion of Culture (LEC) could help to enhance the role of the Foundation "A Future for Swiss Travellers". This role, however, would be a co-ordinating rather than a supervisory one.

45. However, the Advisory Committee regrets that the amounts scheduled up to 2015 have not been adapted to the new responsibilities that might be assigned to the Foundation and considers that the financial and staffing capacities of the Foundation are insufficient in the light of the many difficult tasks facing it in their efforts to preserve the Travellers' identity and traditional way of life.

#### *Recommendation*

46. The Advisory Committee once again invites the authorities to increase substantially its financial aid for Travellers' associations, particularly the Foundation so that they enjoy sufficient resources for conducting their work, notably in view of the new perspectives provided by the Federal Law on the Promotion of Culture (LEC), which is intended, *inter alia*, to enable Travellers to conduct the way of life which corresponds to their culture. Mechanisms for effective consultations at the cantonal and inter-cantonal levels with these persons should be organised and implemented.

### Shortage of stopping places and transit sites for Travellers

#### *Recommendations from the previous two monitoring cycles*

47. During the previous monitoring cycles, the authorities were invited to introduce new legislative guarantees to facilitate the planning and creation of stopping places and transit

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<sup>17</sup> Art. 17 of the law provides that "the Confederation may adopt measures to enable Travellers to conduct the way of life which corresponds to their culture", which will reinforce the competences of the Foundation.

sites. Furthermore, the Advisory Committee recommended that the Confederation reinforce the financial incentives for the cantons to act; the measures in question could include the re-utilisation of military sites. Moreover, cantonal legislation on spatial planning and municipal police regulations were to be reviewed in order to facilitate spontaneous stops on private land and inter-municipal co-ordination was to be reinforced.

The recommendation made in the Advisory Committee's 2<sup>nd</sup> Opinion on Switzerland, inviting the authorities to "*consider introducing new Federal legislative guarantees to ease and accelerate the planning and creation of transit sites and stopping places for Travellers*" was not taken up by the Committee of Ministers in its Resolution of 19 November 2008. In that Resolution, the Committee of Ministers recommended that Switzerland "*ease and accelerate the planning and creation of transit sites and stopping places for Travellers through appropriate measures*".

Also, the Advisory Committee and the Committee of Ministers invited the Swiss authorities to develop stronger "*inter-cantonal*" – not "*inter-municipal*" – co-operation from planning to operation of stopping places and transit sites.

#### *Present situation*

48. The Advisory Committee notes with concern from the Foundation's 2010 Report that the number of stopping sites has not increased significantly and the 14 current sites (as against 11 previously) are only enough to cover the needs of one third of the population in question. As regards transit sites, the situation has further deteriorated as there are now only 42 such sites as compared with 51 previously, some of which are no longer used because of their very poor quality. The Advisory Committee is concerned about this situation, which restricts the opportunity of Travellers to maintain their traditional way of life, despite the fact that growing numbers, including young travellers, are expressing the wish to do so.

It should be noted that, despite the overall reduction in transit sites, the number of pitches for caravans has remained unchanged because the new sites tend to be larger than the ones that have disappeared.

Efforts are continuing in several cantons to create new sites for Travellers or to improve existing sites. For example, a new stopping place, "la Bécassière", was inaugurated by the *canton of Geneva* in September 2012. This state-owned site, which covers an area of over five hectares, has been equipped with a laundry room, car park, toilet block and a meeting room, paid for by the state. 51 pitches have been allocated to fairground people and 46 to Travellers. Mention should also be made of the 15-pitch transit site that was opened on 21 June 2013 in *Winterthur*, in the *canton of Zurich*, after 10 years of discussions. In the *canton of Vaud*, at the end of April 2013, the cantonal parliament gave its unanimous backing to a petition lodged by families from the Vaud's Yenish community, asking for a serviced stopping place. The petitioners invoked their national minority status, as recognised under the Framework Convention. The petition was submitted to the State Council (executive), which is going to consider ways in which it might be followed up. The *canton of Solothurn* is planning to create one or two new small stopping places. The first, for 5 to 10 caravans, is to be created in the municipality of Biberist. Discussions are being held by a working group that includes the "Radgenossenschaft der Landstrasse". In addition, since June 2013, a co-operative in Solothurn canton has made a plot of land available to Travellers on a temporary basis, as a transit site. *Aargau canton*, which is very active in this area, has finished improvements to the Aargau and Windisch transit sites and has started renovation work at the Würenlos and Zofingen sites. In addition, a procedure to incorporate the Merenschwand transit site in the cantonal Master Plan is nearing completion.

It should also be pointed out that the *French-speaking cantons* are anxious to find common solutions to the shortage of transit sites for Travellers, in particular foreign Travellers. The *Conférence latine des chefs des départements de justice et police* (CLDJP) wishes to create at least one transit site per canton as quickly as possible. There are also plans to develop a common statutory framework in order to manage Traveller reception and migration more effectively. An inter-cantonal concordat could perhaps be put in place.

49. Nevertheless, the Advisory Committee notes with interest that improvements have been made under cantonal spatial planning, which now takes account of Travellers' needs. By the end of 2010, for instance, 14 cantons (out of 26) had examined the situation and decided on providing sites for Travellers in their Master Plans (*Plan Directeur*), as compared with only five cantons in 2005. Three further cantons, whose Master Plans are currently in preparation, also have similar projects. Moreover, the global cantonal strategies, which are based on partnership with the municipalities defining the responsibilities of each party, adopted by the cantons of St Gallen and Aargau, are now being used as examples of good practice by the cantons of Bern, Zurich and Schwyz, which are considering creating new sites based on the same model.

It should be noted that the cantons are continuing their efforts to include stopping places and transit sites for Travellers in their Master Plans. Such has been the case in the *canton of Neuchâtel* whose revised Master Plan was approved in June 2013 by the Federal Council. On the basis of this new plan, Neuchâtel canton has recommenced work to create a permanent transit site. A temporary transit site was made available to Travellers in the spring 2013, for emergencies. Meanwhile, *Zurich canton* is planning to include a new chapter in its revised Master Plan, under the heading "stopping places and transit sites for Travellers". It is also working on a blueprint entitled "Travellers in Zurich canton" and on the creation of a department to handle these matters. Zurich cantonal parliament is due to vote on the schemes in question in March 2014.

50. The Advisory Committee has learnt that despite the Confederation's determination to provide financial aid to the cantons by selling them some of its housing stock, in particular former military sites, the possibility of re-utilising such sites for this housing purposes is limited because most of the latter consist of constructions (bunkers, shelters, anti-tank barriers), which are incompatible with current civilian requirements and are not located on land suitable for construction. As a result, out of the 50 sites under consideration, only one has been selected for building a new stopping place.

In spite of the "technical" problems mentioned above, the Confederation managed to offer the cantons 50 sites suitable for conversion into stopping places or transit sites for Travellers. In so doing, the Confederation's aim was not to "*provide financial aid to the cantons*" but rather to support them in their search for sites by selling them some of its housing stock, in particular former military sites. Among the obstacles to converting these sites into stopping places or transit sites, mention should also be made of the criteria set by the cantons. The discussions are nevertheless continuing and *Jura canton*, for example, is working with *Armasuisse* to find a solution to the lack of stopping places in the canton.

51. The Advisory Committee notes that several cantons consider that provisional stopping sites which would be welcomed by the Travellers, would partly solve the problem of the shortage of transit sites. It welcomes the proposal to exploit this potential pragmatically by examining the possibility of creating an Internet platform for Travellers to exchange information on the municipalities which cater for spontaneous stops. While commending the efforts of some municipalities in regularly authorising spontaneous stops, the Advisory

Committee nevertheless regrets that in most cases police regulations regarding public order are interpreted restrictively, which in practice limits this possibility.

Note that these welcome additions to the official transit sites are not “provisional stopping sites”, as stated above, but rather land intended to accommodate “spontaneous stops”.

52. In connection with inter-municipal co-ordination, the Advisory Committee notes that the Swiss Conference of Cantonal Directors of Public Works, Spatial Development and Environment (DTAP) appreciates the existing inter-cantonal exchanges of information and experience which is considered to be highly useful. However, the DTAP objects to the idea of including plans for stopping places for Travellers in urban planning projects and making eligibility for the relevant federal subsidies dependent on the actual installation of stopping places and transit sites.

The co-ordination referred to here is *inter-cantonal* and not “*inter-municipal*” as stated above (cf. 3<sup>rd</sup> report, paragraph 53, and 2<sup>nd</sup> Opinion, paragraph 82).

Several cantons support the DTAP’s view that plans for Traveller sites should not be included in urban planning projects. They believe that what few financial resources are available for urban planning policy should be reserved for the primary purposes served by that policy, first and foremost transport, and that these should not be combined with cumulative criteria connected with other public policies.

53. The Advisory Committee regrets this position, which conflicts with the Foundation’s recommendations on involving the specialised agencies more closely. It regrets that some stakeholders have so far failed to express greater interest in the Travellers issue and considers that more support is needed from the Confederation for this process in order to raise the awareness of all those involved. The Advisory Committee has taken careful note of the authorities’ comments to the effect that Switzerland is a federal state, which guarantees that the cantonal institutions are close to the citizens and better placed to meet their needs. Nevertheless, it feels that this approach must be pursued in a context of co-operation and collaboration among the public authorities with a view to optimal use of the available competences and financial resources, which means that the Confederation should take on a more prominent leadership role in this field.

54. The Advisory Committee notes with concern that the traditional way of life of Travellers in Switzerland still raises serious challenges and that overall, the problem of the shortage of stopping places and transit sites has not improved in ten years. It invites the Confederation to use its authority to address effectively the on-going challenges in this field.

#### *Recommendations*

55. The Advisory Committee reiterates its call on the authorities to intensify their efforts to remedy the severe shortage of stopping places and transit sites for Travellers as soon as possible. Determined measures must be adopted in order to strongly encourage all the federal, cantonal and municipal stakeholders of the importance and need of addressing Travellers’ problems under national spatial development plans. Furthermore, sites in a state of disrepair must be renovated and awareness campaigns conducted among municipalities, the general public and private landowners in order to facilitate spontaneous stops.

The Swiss authorities are aware of the difficulties encountered by Travellers and are endeavouring to find solutions to them. The shortage of stopping places and transit sites is indeed *severe*, as stated above. It can hardly be described as “*criant*”, however, which is the term used in the French version. The French translation of this term needs to be rectified therefore.

Note that it is in the *cantonal* structure plans that consideration must be given to the needs of Travellers. Since spatial development is a matter for the cantons (Art. 75, paragraph 1, of the Constitution), there are no “national” spatial development plans. The government does, however, have an important role to play when cantonal land-use plans are being approved, by sensitising cantons to Travellers’ needs.

The Swiss Foundation “A Future for Swiss Travellers”, which was consulted when framing these comments, takes the view that only the Confederation can play a decisive role in changing the attitude of the cantons which have so far proved reluctant to create sites for Travellers. Assigning this task to the Foundation would require a substantial increase in the organisation’s funding, or even the release of land owned by the Confederation. The Federal Council and the Federal Department of Home Affairs, moreover, should play a co-ordinating role in direct collaboration with the cantons to create new sites and upgrade existing ones. This view is shared by several cantons.

In this respect, as stated in the Swiss Government’s 3<sup>rd</sup> report, the Confederation’s efforts to provide financial incentives for the creation of sites for Travellers involve selling the cantons some of its housing stock, in particular former military sites.

56. The Advisory Committee invites the authorities to study all the possible means of implementing the conclusions of the 2010 report by the Foundation.

## Article 6 of the Framework Convention

### Promoting tolerance and intercultural dialogue

#### *Recommendations from the previous two monitoring cycles*

57. During the previous monitoring cycles, the authorities were invited to endeavour to raise public awareness of Traveller culture in order to combat stereotypes and intensify work for tolerance and mutual understanding.

58. The authorities were also encouraged to react more vigorously against intolerance and xenophobia in political discourse.

59. The authorities were also invited, where applications for naturalisation were concerned, to ask the relevant cantons to provide reasons for their decisions in order to prevent discriminatory decisions.

#### *Present situation*

60. The Advisory Committee once again welcomes the general climate of tolerance and mutual understanding in Swiss society, particularly among the linguistic minorities, and the attention paid by the authorities to cultural and ethnic diversity.

61. At the same time, the Advisory Committee notes with concern the persistence of prejudices against Travellers, resulting from deep-seated ignorance of their origin, culture and lifestyle despite the increased efforts made by the federal and cantonal authorities and the Foundation to improve understanding of the culture and traditions of Travellers.

The efforts at federal level to raise awareness of the culture and needs of Travellers are continuing. In December 2012, for example, the Federal Commission against Racism (CFR) held a meeting in Bern with cantonal and municipal representatives for integration and experts on Travellers. The same month, the CFR also published its TANGRAM newsletter on the theme “Yenish, Manouches/Sinti and Roma in Switzerland”. In so doing, the CFR hoped to bring a measure of calm to the debate, as well as information that would help to avoid sweeping generalisations and stigmatising labels.

It should likewise be noted that the presentation in August 2012 of the 3<sup>rd</sup> Report on the implementation of the Framework Convention to the National Council's Commission on Science, Education and Culture, at the latter's request, gave the Federal Department of Home Affairs and the Federal Department of Foreign Affairs an opportunity to tell members of the federal parliament about Swiss Travellers who have retained an itinerant lifestyle. In the report, both departments emphasised the need to grant additional funding and powers to the Foundation "A Future for Swiss Travellers".

With regard to the awareness-raising activities of the Foundation "*A Future for Swiss Travellers*", it is worth noting that its virtual exhibition on "Swiss Travellers in the past and present" went on line on 13 September 2012 (for further information on this subject, cf. 3<sup>rd</sup> report, paragraph 59). Several cantons helped to fund the site. *The canton of Graubünden* also gave a presentation on the site in Chur, for the media.

62. The Advisory Committee regrets the persistence of stereotypes and other clichés, which hamper discussions in some municipalities on installing stopping sites. According to several of the Advisory Committee's interlocutors, such attitudes often lead to a refusal to install such sites because the local population apparently could be against them. The numerous refusals to authorise spontaneous stops often have the same basic reasons. The Advisory Committee observed that the majority population often has a negative image of Travellers. Such attitudes have an impact on the difficulties encountered by the authorities in resolving the problem of the shortage of stopping places. The Advisory Committee considers that the need to take positive action against these prejudices should be prioritised. Consequently, it is vital that the authorities take on an active role in raising the awareness of the majority population and convincing them of the legitimacy of the needs of Travellers who have retained an itinerant lifestyle.

63. Moreover, the Advisory Committee notes with concern that in 2009, 57.5% of the Swiss population approved the popular initiative<sup>18</sup> to introduce into the Federal Constitution an article prohibiting the construction of new minarets.<sup>19</sup> It seems that the frequency of intolerant speech by some political parties considerably increased following the results of this popular initiative. During their talks with the Advisory Committee, the representatives of Muslim associations stressed that since the referendum, anti-Islamic verbal violence had been frequent in Switzerland, particularly on the Internet. It is encouraging to note that the media has since adopted a series of self-regulating measures, such as prohibiting anonymity on the Internet and automatic closure of the accounts of individuals making racist statements. For instance, the Advisory Committee was appalled to learn that in June 2012, a member of the Swiss People's Party (SVP) posted on Twitter a declaration referring to a "Kristallnacht" for Muslims. The Advisory Committee notes with satisfaction that this individual was immediately removed from political office by his party and is currently facing criminal investigations under Article 261bis of the Criminal Code which punishes racial discrimination and hate speech.

64. According to the authorities, these events simultaneously prompted a new awareness among a section of the Swiss population, making them less inclined than previously to trivialise racist incidents. Furthermore, during public debates following the vote on the popular initiative, many people voiced a need for a better understanding of Islam. In this

<sup>18</sup> A popular initiative is a fundamental right of all Swiss citizens, guaranteed by the Federal Constitution (art.139), according to which, after the collection of the signature of 100 000 citizens with the right to vote, within a time limit of 18 months after the official publication of the initiative, a partial amendment to the Federal Constitution must be proposed and put to the vote of the people and the cantons.

<sup>19</sup> Following the result of this popular initiative, a new Article 72, which prohibits the construction of minarets was introduced in the Federal Constitution.

context, dialogue was initiated in September 2009 between the federal administration and the Muslims of Switzerland in order to address the fears and prejudices against Islam among the majority population. These discussions also examined the governmental position which, before the vote, urged people to reject the initiative.

65. Even though Switzerland is characterized by a system of direct democracy which the government considers as essential for open public debates on issues of public concern, the Advisory Committee considers that the popular initiative practice might in certain circumstances be problematic with regard to its compatibility with human rights. The Advisory Committee welcomes the fact that the authorities demonstrated a clear determination to tackle these challenges of balancing the freedom of expression and effective citizen participation in public affairs with the protection of fundamental rights of everyone in the territory of Switzerland. The Advisory Committee acknowledges the importance of open political debate on questions of public interest, but recalls the responsibility incumbent on the authorities, at all levels, to react promptly to any manifestation of intolerance and to condemn it publicly without delay.

It is important to note here that Article 139, paragraph 3, of the Federal Constitution expressly states that popular initiatives which fail to observe the mandatory rules of international law shall be declared null and void.

66. Concerning naturalisation, the Advisory Committee is pleased to learn that the situation has improved since its previous Opinion. It takes note of the amendments to the Federal Law on the Acquisition and Loss of Swiss Nationality (LN) with regard to the cantonal procedure and the appeal system before a cantonal court, which entered into force in January 2009. From now on, all rejections of applications for naturalisation must be motivated. These new requirements have forced the cantons to adapt cantonal legislation to ensure that any negative decision on an application is duly supported by adequate reasons for refusal. The Advisory Committee notes with interest that the new provisions have generally been correctly applied.

#### *Recommendations*

67. The Advisory Committee recommends that the authorities intensify their efforts to raise the population's awareness of the traditional way of life of the Travellers and to promote intercultural dialogue in order to increase mutual understanding, trust and acceptance of the different traditions, culture and way of life of this community.

With regard to the ongoing efforts at federal level to raise awareness of Travellers' culture and needs, see the comments made above in paragraph 61.

68. Furthermore, the Advisory Committee calls on the authorities to adopt adequate measures to combat all manifestations of racism and islamophobia, condemn publicly and without delay all forms of intolerance and prejudices and to intensify efforts to promote diversity and tolerance within Swiss society.

The Federal Council undertakes, within the limits of its powers, to ensure that persons of different faiths and cultures live alongside one another in harmony and to prevent all forms of discrimination and intolerance. It also attaches a high level of importance to dialogue with and between the religious communities.

The revision of the provisions of the Federal Law on Foreigners (LEtr) is designed to provide a tighter definition of integration policy. From 2014, the Confederation will aim, together with the cantons, to pay the latter federal contributions to promote integration, on the basis of cantonal integration programmes (PICs). The emphasis is on information and advice, training

and employment, communication and social integration. Protection against discrimination plays a key role in the first strand “information and advice”. One of the key goals is to ensure that ordinary structures and other relevant settings receive information and advice on everything to do with protection against discrimination. At the same time, persons who have suffered discrimination because of their origin, ethnicity or race can receive professional advice. One notable example is the *canton of Jura* which is planning to set up a counselling centre for victims and witnesses of discrimination. *Geneva canton* likewise provided funding for a centre for victims of racism in May 2013. *Solothurn canton*, meanwhile, is planning to continue its work with the “Stopp Rassismus” group under its cantonal integration programme.

It should be noted here that, during the visit by an ECRI delegation to Switzerland in the week beginning 21 October 2013, the issues of racism in political discourse, the integration of foreigners and increased assistance for victims of discrimination were discussed. These issues are likely to be raised in ECRI’s 5<sup>th</sup> report on Switzerland, which is due out in the summer 2014.

69. The Advisory Committee also invites the authorities to ensure that the 26 cantons adapt their legislation on naturalisation in full compliance with the new provisions of the Federal Law on Nationality.

### **Protection against anti-Semitism**

#### *Recommendations from the previous two monitoring cycles*

70. During the previous monitoring cycles, the authorities were invited to continue their efforts to combat racial discrimination and to consider new supervisory methods in connection with anti-Semitic acts.

#### *Present situation*

71. The Advisory Committee notes from the reports by the organisations monitoring cases of racism, including anti-Semitic incidents, that Switzerland still registers a low level of anti-Semitic acts. Such incidents have further decreased in frequency since 2010, although anti-semitism still occurs on the Internet. At the present time, according to the Inter-Community Co-ordination against Anti-Semitism and Defamation (CICAD) and the Swiss Federation of Jewish Communities (FSCI), anti-Semitic incidents in Switzerland are related to tensions in the Middle East and the consequent escalations of violence between Palestinians and Israelis.

When consulted with a view to preparing the 3rd government report on the implementation of the Framework Convention, the Inter-Community Co-ordination against Anti-Semitism and Defamation (CICAD) and the Swiss Federation of Jewish Communities (FSCI) said that anti-Semitic incidents in Switzerland were *partly* related to tensions in the Middle East, especially during escalations of violence.

72. The Advisory Committee also notes the continuation of several awareness-raising campaigns against anti-Semitism and Holocaust denial, conducted with the support of the Service for Combating Racism (SLR), in the educational field.

It should be noted that since 1 January 2013, the new national centre of expertise in education for sustainable development has been helping schools and teacher training institutions across Switzerland to carry out their projects in the field of education for sustainable development, including notably human rights and the prevention of racism.

#### *Recommendation*



73. The Advisory Committee invites the authorities to continue to ensure that persons belonging to the Jewish community are not subjected to racial discrimination or acts of intolerance.

## **Article 9 of the Framework Convention**

### **Radio/television programmes and the press**

#### *Recommendations from the previous two monitoring cycles*

74. The authorities were invited to analyse the needs of Romansh speaking minority in terms of airtime and to continue their efforts to support the press, particularly newspapers in Romansh and Italian in the canton of Graubünden. Moreover, the Travellers' needs in the media field were also to be taken into account.

#### *Present situation*

75. The Advisory Committee notes with satisfaction that public radio and television stations broadcast a wide range of daily programmes in the official languages, namely German, French and Italian, as well as Romansh.

76. It also notes with interest that Romansh speaking minority now have a radio station in their language, broadcast 24 hours per day, with airtime increasing from 5 467 to 8 760 hours per year.

77. Furthermore, the Advisory Committee has been informed that in 2008 a new franchise was granted to a regional television channel in Graubünden. This new channel provides a local service for the Graubünden population and supplies regional information in Italian and Romansh.

78. As far as print media is concerned, the Advisory Committee notes that following the entry into force in January 2010 of the Law on Languages (LLC), additional financial aid was granted to the canton of Graubünden in order to support the press and protect and promote Romansh in the media.

This financial aid has actually been around for many years, as part of the support that the Confederation gives the canton of Graubünden to promote and safeguard the Romansh language (financial support for Agentura da Novitads Rumantscha ANR, the Romansh-language press agency). What has changed is that this support now has a legal underpinning in the LLC and the OLang.

79. Lastly, the authorities informed the Advisory Committee that the Travellers had not submitted any requests for support measures in the media field. However, several Traveller interlocutors complained about the lack of access to the public media and mentioned that they were often negatively portrayed by some media.

#### *Recommendations*

80. The Advisory Committee invites the authorities to continue to support actively the media for the national minorities, paying particular attention to the needs of the Italian-speaking community and Romansh speaking minority.

81. The Advisory Committee encourages the authorities to facilitate Travellers' access to the media and to support the promotion of tolerance and cultural diversity in the media.

Except where national linguistic minorities are concerned, current Swiss law does not mention any obligation on the part of broadcasters operating under a franchise as regards the presence

and representation of cultural minorities in programmes. Nor can there be any real guarantee of access to air time, no matter who requests it.

Under Swiss media law, however, promoting tolerance and cultural diversity are among the tasks which must be performed by broadcasters and which are covered by the remit assigned to them in the franchise agreements. Appropriate instruments already exist in this area therefore.

## **Article 10 of the Framework Convention**

### **Promotion of linguistic minorities and the use of their languages in dealings with the federal authorities**

#### *Recommendations from the previous two monitoring cycles*

82. During the previous monitoring cycles, the authorities were invited to implement the new federal legislation on languages and to promote multilingualism and exchanges among the linguistic communities more vigorously. Furthermore, they were to continue their efforts to encourage wider use of Italian in the federal administration.

#### *Present situation*

83. The Advisory Committee particularly welcomes the entry into force, in 2010 of the Law on Languages (LLC), which reinforces the legal framework for promoting multilingualism and developing the use of the three official languages and the Romansh language, which is considered as an official language with regard to relations between the Confederation and persons of Romansh language, as well as within the canton of Graubünden.

84. The Advisory Committee notes with interest that the Law on Languages (LLC) covers two separate fields of action. At the federal administration level, multilingualism is encouraged and staff are given linguistic and intercultural training to improve their language skills. The Law sets target percentages in order to ensure that the linguistic communities are equitably represented in the federal administration, and the right of staff to work in the language of their choice is guaranteed. Moreover, the Law introduces a Multilingualism Delegate responsible for ensuring compliance with the new legislative provisions.

85. The second aspect of the Law is more general, involving the promotion of linguistic diversity and multilingualism in society as a whole. Thanks to additional financial support from the Confederation, linguistic exchanges geared to improving mutual understanding in the country will be intensified, particularly in schools, where some 30 000 young people should take part in these exchanges each year. Furthermore, in order to alert federal civil servants and the general public to this new aspect of Swiss linguistic policy, a guide to promoting multilingualism has been circulated and a centre of scientific expertise for promoting multilingualism has been set up under the auspices of the University of Fribourg.

It should be pointed out that the centre of scientific expertise for promoting multilingualism is run by the Institute of Multilingualism of Fribourg University and Fribourg teacher training college.

86. Despite these positive developments several interlocutors of the Advisory Committee stressed that there are still some gaps in the application of the law, particularly in connection with the use within the federal administration of Italian, which is underused in both its oral and written forms and which has not yet become, in practice, a working language on the same

basis as German and French at federal level.<sup>20</sup> Moreover, there is still a chronic lack of translation of German administrative texts into French, and even more so into Italian. The authorities are aware of this problem, pointing out that action has been taken to increase the number of posts for Italian translators and to ensure that every department has a French and Italian linguistic service.

A survey conducted in 2011 among federal civil servants found that 73% of federal staff were able to work in the language of their choice and that therefore Article 9 of the Law on Languages (right to work in German, French or Italian, according to individual preference) was not yet being satisfactorily applied. The authorities recognise *inter alia* that further efforts must be made to gradually increase the translation into French and Italian of German administrative texts, in particular texts that are posted on the various departments' websites. **The new ordinance on linguistic services, which entered into force on 1 January 2013, is helping to clarify this process and to set priorities.**

It should be noted that, while there is *at times* a lack of translation in this area, the term used in the French version of the 3rd Opinion, "*cruellement*" is an exaggeration. The French translation of the phrase "*chronic lack of translation*" is erroneous, therefore, and needs rectifying.

#### *Recommendations*

87. The Advisory Committee strongly encourages the authorities to increase their efforts to implement all the commitments relating to the linguistic rights of persons belonging to minorities, as laid down in the Law on Languages (LLC). Measures have to be taken to ensure, in practice, full equality among the official languages of the Confederation and to enable persons belonging to linguistic minorities to use their own language in the federal administration and to be effectively and proportionately represented in administrative structures. In this connection, special attention should be paid to Italian. Furthermore, the authorities should steadfastly continue their efforts to develop staff language skills.

Given the Swiss institutional framework, it would be more appropriate to talk about "effective" rather than "full" equality, which is the term used above. For one thing, Romansh is a semi-official language of the Confederation and Romansh-speakers in the Federal administration cannot claim the right to use it as a working language. And for another, the Federal Ordinance on Languages (OLang) sets *percentages* to be achieved in order to ensure fair representation of the linguistic communities.

It should be noted that according to the OLang revision work currently being carried out, following a 12.3009 motion on "promoting multilingualism" adopted by Parliament, it is mainly for managerial posts that special efforts will be made to ensure fair representation of the linguistic communities.

88. The Advisory Committee also encourages the authorities to develop an exchange of good practices in matters of protecting and promoting linguistic pluralism in Swiss society.

### **Use of languages in the bilingual cantons**

#### *Recommendations from the previous two monitoring cycles*

89. During the previous monitoring cycles, the authorities were invited to take account of the linguistic needs of persons living in the municipalities along the linguistic borders of bilingual cantons.

<sup>20</sup> See also the Third Thematic Commentary on the Language Rights of Persons belonging to National Minorities, [http://www.coe.int/t/dghl/monitoring/minorities/3\\_FCNMdocs/PDF\\_CommentaryLanguage\\_en.pdf](http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_CommentaryLanguage_en.pdf).

*Present situation*

90. The Advisory Committee notes that the cantonal constitutions of the three bilingual cantons (Bern, Fribourg, and Valais) provide for equal status of the two official languages for communications with and within the administration. It also notes that under the Law on Languages (LLC), the Confederation can provide financial support for bilingual municipalities along the linguistic borders, which are also eligible for cantonal funds. Furthermore, the federal state grants financial aid to the bilingual cantons in order for them to promote bilingualism of the two official language of the canton amongst the population.

In principle, under the Law on Languages (LLC), the Confederation grants financial support to the multilingual cantons themselves, and not directly to bilingual municipalities.

*Recommendation*

91. The Advisory Committee encourages the authorities of the bilingual cantons to continue their efforts relating to the use of the two official languages for communications with and within the cantonal administration and in municipalities located along the linguistic borders.

### **Use of languages in the canton of Graubünden**

*Recommendations from the previous two monitoring cycles*

92. During the previous monitoring cycles, the authorities were invited to encourage greater use of Italian and Romansh in the multilingual municipalities.

*Present situation*

93. The Advisory Committee notes that the cantonal language law which entered into force in January 2008 includes provisions on the use of the three official languages of the canton of Graubünden. It also guarantees that measures will be taken in order to preserve and promote the minority languages of the canton (Italian and Romansh). There is an ordinance of implementation which also came into force in January 2008 and which consolidates the provisions of the above-mentioned cantonal law on languages. Increased financial aid has also been granted to the multilingual cantons so that the public, judicial and administrative authorities can work in a multilingual environment.

There is an error in the last sentence: it is the multilingual *municipalities*, not the multilingual “cantons” that have been granted increased financial aid.

Under the planned mergers of German- and Romansh-speaking municipalities, in particular the Ilanz project, the government of the canton of Graubünden has made recommendations for protecting the minority language. Residents of the new municipality created as a result of the merger will, for example, be able to apply to, and receive service from, the authorities and the administration in their own language. Likewise, the new municipality must see to it that Romansh does not disappear from day-to-day official life. Measures to this effect must be included in the merger agreement and in a municipal law on languages. Generally speaking, the new municipality must make ongoing efforts to promote the Romansh language, financially and otherwise.

94. The Advisory Committee also takes note of the declarations from the authorities of the canton of Graubünden indicating that improvements have been made in connection with the use of Italian and Romansh in the administration thanks to the many Italian and Romansh courses provided by the municipalities for their staff. An effort has also been made to provide the general public with information in Italian on municipal websites.

95. The Advisory Committee notes that according to representatives of the Italian-speaking community and Romansh speaking minority, these measures are insufficient. For instance, the websites of several institutions with cantonal public mandates, such as the Graubünden Cantonal Bank, provide no information in Italian or Romansh.

*Recommendation*

96. The Advisory Committee invites the authorities to continue and intensify their efforts to promote the use of Italian and Romansh in the canton of Graubünden.

**Article 12 of the Framework Convention**

**Harmonisation of language teaching**

*Recommendations from the previous two monitoring cycles*

97. During the previous monitoring cycles, the cantonal authorities were invited to continue their efforts to ensure inter-cantonal harmonisation of language teaching and to intensify awareness campaigns in order to promote multilingualism among teachers and students.

*Present situation*

98. The Advisory Committee welcomes the entry into force in 2009 of the inter-cantonal agreement on harmonisation of compulsory schooling, *HarmoS*, which among other things regulates the teaching of languages, including a second national language. It notes that under the new Law on Languages (LLC) and the *HarmoS* agreement, many cantons have, over the past few years, devised positive measures to promote multilingualism among teachers and students. The Advisory Committee takes note with interest of the various linguistic projects developed by the cantons in order to promote multilingualism in three official languages (German, French and Italian) from nursery school onwards.

*Recommendation*

99. The Advisory Committee invites the authorities to continue their efforts to harmonise language teaching and to promote multilingualism.

**Education of Travellers**

*Present situation*

100. The Advisory Committee was informed that some difficulties subsist for Traveller children, who practise an itinerant lifestyle, to receive education. For instance, access to education during the summer months (generally from April to October) is difficult for such children because schools need a permanent address to which to send educational materials, which is hard to combine with this lifestyle. Alternatively, the parents have to pick up lessons and homework in person from the teachers, which is not always possible owing to the long journeys involved and the parents' workload at this time of the year. Furthermore, teachers claim that the integration of Traveller children in classes would be greatly facilitated if the children were present right from the beginning of the school year (end of August), and attended classes right up to the end of May.

101. The Advisory Committee is concerned about the fact that schooling for Traveller children who have retained an itinerant lifestyle is apparently not properly guaranteed when they travel with their parents. According to the Advisory Committee's interlocutors, insufficient resources are provided for such children to continue attending classes during this

period, even though distance education should be available through to modern technology.<sup>21</sup> The Advisory Committee considers that Travellers ought to be able to preserve their traditional way of life, which is an integral part of their cultural identity, in a manner which does not harm their children's education.

It should be noted that some cantons have taken steps to help Traveller children participate in distance learning during the summer, via new technologies. The *canton of Bern*, for example, is currently developing a project entitled "Apprendre en voyage" ("Lernen auf Reisen") ["Learning on the road"]. The *canton of Aargau* also offers educational support over the Internet for any parents who so wish; positive results have been achieved thanks to a shared commitment on the part of schools and parents. Several cantons have noted, however, that providing educational support for Traveller children during the summer months remains difficult despite the flexibility and the efforts of the school authorities. A clearly worded agreement and constructive dialogue between the school and the parents, as well as commitment and compromise on both sides are needed if children are to study successfully whilst travelling. Children who return to school after months on the road often require intensive one-to-one coaching, however.

Some cantons take the view that solutions should be sought under the auspices of the Confederation and through a dialogue with Travellers' representatives in order to enable young Travellers to receive vocational training while retaining their itinerant lifestyle. The *canton of Bern*, for example, believes that personalised bridging arrangements could be made with companies.

It is worth noting here that in 2014, within the framework of the thematic group on Travellers in which Switzerland participates through the Council of Europe's CAHROM ("Ad hoc Committee of Experts on Roma Issues"), a comparative analysis is to be carried out on the validation of professional experience and recognition of achievement. This should provide an opportunity for Switzerland to draw on the good practice of other countries facing the same issues and to generate debate within Switzerland in order to make it easier for young Travellers to obtain vocational training.

### *Recommendations*

102. The Advisory Committee invites the authorities to continue and intensify the measures taken to remedy within the framework of a permanent dialogue with the representatives of these minorities the difficulties encountered by Traveller children who retain an itinerant lifestyle.

103. Moreover, the Advisory Committee strongly urges the authorities to find solutions tailored to the specific way of life of these children in order to guarantee their equal access to quality education in tandem with the preservation of their culture, by devising appropriate educational programmes, including distance education.

## **Article 14 of the Framework Convention**

### **Teaching of and in minority languages**

#### *Recommendations from the previous two monitoring cycles*

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<sup>21</sup> On the Foundation's website, teachers can find an example of initiative to develop the possibility to "learn on the road", as free teaching materials adapted to the need of children of Travellers. This project has been organised in the district of Bern Bümpliz where there is a stopping site. This material can be ordered free of charge from Oberbottingen School.

104. During the previous monitoring cycles, the competent authorities were invited to continue their efforts to promote multilingualism under the process of harmonising the criteria for language teaching in the context of compulsory schooling. Moreover, the authorities were invited to complement the languages then on offer with optional Italian courses outside the areas in which this language is traditionally spoken. In this connection, additional measures were requested in order to gather more statistics on language course provision and the actual use of such courses.

The idea is actually to harmonise language teaching per se, not to harmonise the “*criteria for language teaching*”.

#### *Present situation*

105. The Advisory Committee notes with satisfaction that all children belonging to linguistic minorities can learn their language at primary and secondary schools, whatever their canton of residence and can also learn another official language of the Confederation, as a second or third language. Furthermore, promotion of multilingualism is now an integral part of the harmonised school programmes (see comments on Article 12 above).

There are no “*harmonised school programmes*” in Switzerland. The programmes in question are organised *according to linguistic regions*.

106. According to the authorities, the situation as regards the teaching of Italian outside its traditional areas of use should evolve following the entry into force in 2009 of the *HarmoS* agreement in the cantons planning to teach a third national language, possibly Italian, during the period of compulsory schooling. Furthermore, some cantons (Fribourg, Schaffhausen, Glaris, Geneva and Zurich) have increased the number of Italian courses available to secondary school students. On the other hand, the Advisory Committee regrets the lack of statistical data on Italian teaching outside the Cantons of Ticino and Graubünden, and observes that this omission is preventing the authorities from reliably evaluating this community’s needs outside the areas in which this language is traditionally spoken.

It should be pointed out that under the *HarmoS* agreement, *appropriate* provision must be made, with pupils being given the *option* of studying a third national language during the period of compulsory schooling, at lower secondary level.

With regard to the data on Italian teaching outside the Cantons of Ticino and Graubünden, it should be noted that the Swiss Conference of Cantonal Directors of Education (CDIP) collects information from the cantons about their provision in terms of optional classes for studying a third national language (source: <http://www.edk.ch/dyn/15532.php>).

107. According to representatives of the Italian-speaking community, the provision of Italian courses does not always correspond to demand, because the *HarmoS* agreement only covers optional courses. Consequently, this community is currently considering whether the Law on Languages (LLC) provides an adequate legal basis to request that the State provide bilingual teaching for Italian-speakers.

#### *Recommendation*

108. The Advisory Committee invites the authorities to identify, by any appropriate means, the language course needs of persons belonging to the Italian linguistic minority in order to meet their needs more efficiently particularly outside the traditional areas of the use of Italian.

At a symposium held by the Federal Office for Culture of the Federal Department of Home Affairs and the Directorate of Public International Law of the Federal Department of Foreign Affairs on 9 December 2013 on minority languages in Switzerland, a debate took place under

the heading “Italian teaching in Switzerland: the poor cousin?”. The various actors involved in this area were invited to discuss the issue.

### **Languages of primary education in the bilingual cantons**

#### *Recommendations from the previous two monitoring cycles*

109. During the previous monitoring cycles, the authorities were invited to continue to show flexibility in individual decisions to provide children with teaching in the other official language available in a neighbouring municipality and to encourage multilingualism in the educational field.

#### *Present situation*

110. The Advisory Committee welcomes the introduction of bilingual classes in several cantons. It realised during its visit to Bienne/Biel (canton of Berne) the importance of providing bilingual teaching from nursery school onwards in order to facilitate mutual understanding between persons belonging to different national minorities. It also notes that under the Law on Languages (LLC), the Confederation grants additional financial aid to the cantons of Bern, Fribourg and Valais in order to promote bilingualism in the field of teacher training.

The concept of bilingual classes introduced by the city of Bienne begins not in “nursery school” but rather in compulsory kindergarten.

111. Moreover, the Advisory Committee was informed by the authorities that the territoriality principle was applied in a flexible manner and that no restriction preventing children from enjoying teaching in another official language provided by a neighbouring municipality had been reported since the previous monitoring cycle.

#### *Recommendation*

112. The Advisory Committee invites the authorities to continue their efforts to promote bilingualism in the educational field.

### **Languages of primary education in the canton of Graubünden**

#### *Recommendations from the previous two monitoring cycles*

113. During the previous monitoring cycles, the authorities were invited to continue their efforts to reinforce the position of Italian and Romansh as languages of instruction in the relevant municipalities.<sup>22</sup>

#### *Present situation*

114. The Advisory Committee takes note of the conclusions of the Committee of Experts on the European Charter of Regional or Minority Languages to the effect that teaching in Romansh is still satisfactorily guaranteed and that the situation of Italian in the canton of Graubünden is still generally sound.

115. It also notes from the State Report that additional resources have been provided in consultation with the Romansh speaking minority, in order to consolidate the teaching of this language at school. Furthermore, bilingual (Romansh/German) schools have been opened in several municipalities. Two German-speaking municipalities have decided to offer Italian as a second language.

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<sup>22</sup> See: Report of the Committee of Experts on the European Charter for Regional or Minority Languages, 4th monitoring cycle, December 2010, ECRML (2010)8.



116. However, the information provided to the Advisory Committee by the representatives of the Romansh speaking minority would suggest that the government and the Parliament of the canton of Graubünden are planning to introduce “*rumantsch grischun*”<sup>23</sup> as a language of instruction, with a view to producing up-to-date, modern teaching materials for all subjects and reinforcing the status of Romansh as a written language. The Advisory Committee notes that a large number of Romansh municipalities oppose the introduction of “*rumantsch grischun*”, fearing that it might damage the diversity of local idioms.

There have been a number of notable developments since the end of 2011. On 5 December 2011, the government of the canton of Graubünden decided that, for children who had hitherto been taught to read and write in “*rumantsch grischun*”, the use of a local idiom as a language of instruction could resume only after the period of compulsory schooling. A number of parents challenged this decision in the Swiss Federal Court. The latter ruled against them and upheld the cantonal decision on 12 July 2013 (judgments 2C-806/2012, 2C-807/2012).

At a symposium held by the Federal Office for Culture of the Federal Department of Home Affairs and the Directorate of Public International Law of the Federal Department of Foreign Affairs on 9 December 2013 on minority languages in Switzerland, a debate took place under the heading “*Rumantsch Grischun* in schools, a success or an outdated model?”. Stakeholders from both sides of the debate were invited to discuss the issue.

117. The Advisory Committee was also informed during its visit that the merger of German-speaking municipalities with small neighbouring Romansh municipalities was liable to jeopardise the Romansh language. The cantonal authorities informed the Advisory Committee that they were aware of this risk and that they were working in co-operation with representatives of the Romansh speaking minority’s organisations in order to analyse the linguistic implications of these decisions.

It should be noted here that, as part of the planned mergers between German- and Romansh-speaking municipalities, in particular the Ilanz project, the government of the canton of Graubünden has made recommendations for protecting the minority language. Accordingly, schools in monolingual Romansh municipalities are to continue teaching in Romansh and children from the areas concerned must attend the Romansh school.

#### *Recommendation*

118. The Advisory Committee invites the authorities to ensure that decision on the standardization of the Romansh language is taken and implemented in close consultation with representatives of the different views within the Romansh speaking minority. Moreover, the authorities should ensure that mergers of municipalities do not restrict facilities for teaching in this language.

### **Article 15 of the Framework Convention**

#### **Representation of minorities in the federal administration**

##### *Recommendations from the previous two monitoring cycles*

119. The authorities were requested to adopt additional measures to collect qualitative data on the representation of linguistic minorities in the federal administration, and the efforts to improve the representation of linguistic minorities, including in executive posts, were to be intensified.

<sup>23</sup> The “*rumantsch grischun*” is a standardization process providing a common written version of the language.

*Present situation*

120. The Advisory Committee notes that the Law on Languages (LLC) establishes the representation of the linguistic communities in the federal administration at 70% of German-speakers, 22% of French-speakers, 7% of Italian-speakers and 1% of Romansh speaking minority. Furthermore, a Multilingualism Delegate was appointed in 2010 under this Law with responsibility for promoting knowledge of the official languages in the federal administration and ensuring respect for the representation of linguistic minorities.

It is worth noting that the percentages indicated in Art. 7 of the Ordinance on Languages (OLang) are target figures.

121. Despite the positive developments introduced by the Law on Languages (LLC), the Advisory Committee shares the concerns voiced by some of its interlocutors regarding the quantitative data by linguistic affiliation collected by the Federal Office of Personnel which failed to take account of the level of responsibility in posts occupied by linguistic minorities, so that it was impossible to establish reliably whether linguistic representation was qualitatively balanced. Estimates suggest that persons speaking Italian and Romansh languages are still under-represented in managerial posts. Moreover, the same interlocutors cast doubt on the independence of the post of the Multilingualism Delegate, who is currently working under the authority of the Federal Office of Personnel. They consider that the efficiency of this post would be increased if it were moved to a different department. They also highlight shortcomings in the consultation process, including the fact that they were not consulted on the preparation of the Federal Law on the Promotion of Culture (LEC). The Advisory Committee shares these concerns.

Since the Advisory Committee's visit to Switzerland from 5 to 7 November 2012, there have been a number of developments with regard to the representation of linguistic minorities in the federal administration. Work is under way, and is close to completion:

- Firstly, the implementation of the 12.3009 motion "promoting multilingualism" tabled by the State Council's Political Institutions Committee will lead to a revision of the Ordinance on Languages (OLang), the Ordinance on Confederation Staff and the Federal Council instructions of 2003 concerning multilingualism. The aim will be to ensure fairer representation of the linguistic communities in each department, *especially in managerial posts*. An inter-departmental working group is working on these legislative amendments, which are expected to come into force in early 2014.

- A new representative for multilingualism took up office on 1 August 2013. This post is now directly subordinate to the General Secretariat of the Federal Department of Finance and not the Federal Office of Personnel, as was previously the case. The purpose of this move is to give greater strategic prominence to the post and to avoid possible conflicts of interest with human resources managers.

- On 30 November 2012, the Federal Council approved the Federal Office of Personnel (OFPER) report on the promotion of multilingualism in the federal administration from 2008 to 2011. The report states that, in quantitative terms, linguistic representation has been broadly achieved in the federal administration. Of particular note is the increase in the representation of French-speakers, which has almost reached the target (having risen by 0.8% between 2008 and 2011 to 21.2%, against a target of 22%).

- In February 2013, the Federal Council updated the targets for representation of the linguistic communities in the federal administration. The administration should accordingly be made up as follows:

German-speaking staff: 68.5-70.5 %

French-speaking staff: 21.5-23.5 %

Italian-speaking staff: 6.5-8.5 %

Romansh-speaking staff: 0.5-1.0 %

Lastly, it should be noted that the statement “They also highlight shortcomings in the consultation process, including the fact that they were not consulted on the preparation of the Federal Law on the Promotion of Culture (LEC)” has been questioned by the federal offices concerned. The consultation process in law-making is governed by strict rules, which were notably observed in the case of the LEC.

#### *Recommendation*

122. The Advisory Committee reiterates its recommendation on collecting qualitative data on the representation of linguistic minorities in the federal administration. It invites the authorities to take more determined action to ensure that the Federal Law on the National Languages and Understanding between the Linguistic Communities is regularly reviewed and that amendments are proposed in order to remedy any omissions or difficulties noted in the representation of linguistic minorities, including in managerial posts.

In view of the developments that have occurred in these areas since November 2012, this recommendation is partially obsolete and should be modified.

### **Participation and consultation mechanisms for Travellers**

#### *Recommendations from the previous two monitoring cycles*

123. The authorities were invited to review the Foundation terms of reference in order to reinforce its powers and pinpoint additional forms of financial support. Moreover, more systematic modes of consultation of the Travellers were to be introduced at the cantonal and inter-cantonal levels.

#### *Present situation*

124. The Advisory Committee welcomes the authorities’ recognition of the Travellers’ umbrella organisation *Radgenossenschaft der Landstrasse* and the Foundation as mechanism for consulting the Travellers and the effective co-operation among the various stakeholders. It also notes with satisfaction that since its previous Opinion several cantons have set up joint working groups of civil servants and Travellers mandated to discuss the problems of stopping places and education for their children. Furthermore, it welcomes the facilities provided under the Federal Law on the Promotion of Culture (LEC) for reinforcing the Foundation’s powers, and hopes that the authorities will quickly take the necessary decisions for putting these new powers into practice, so that sustainable responses can finally be found to meeting the Traveller’s needs, notably in terms of stopping places, (cf. also the comments on Article 5 above).

Among the efforts made by the cantons to involve Travellers in the process of creating new stopping places and transit sites, mention should be made of the *canton of Solothurn*, which included the “*Radgenossenschaft der Landstrasse*” in a working group, and *Zurich canton* which is working to set up a department to deal with Traveller-related issues. *The canton of Graubünden* holds regular discussions with representatives of the various local stopping places and transit sites in order to review the situation and assess existing needs.

125. However, the Advisory Committee regrets that ten years after the publication of the Foundation’s first report on the situation of Travellers, no consultation mechanism exists at the inter-cantonal level and only few of them have been put in place at cantonal level. It notes

with concern that this persistent lack of political will at the inter-cantonal level prevents any appropriate consideration of the specific needs of this community, and has undoubtedly delayed the search for solutions to the serious problem of insufficient numbers of transit or stopping sites.

With regard to the above-mentioned problem of insufficient numbers of transit or stopping sites, described in the French version as “*criant*”, see above under “*Issues for immediate action*” the explanations and request to rectify the erroneous French translation of the English term “*serious*”.

A consultation mechanism is available at inter-cantonal level in the form of the board of the Foundation “A Future for Swiss Travellers”. Travellers, who are represented on the board, can use this platform to bring their specific needs, notably as regards stopping places and transit sites, to the attention of the cantons, which are also represented on it.

### *Recommendation*

126. The Advisory Committee invites the authorities to consider all the possibilities offered by the Federal Law on the Promotion of Culture (LEC) in order to broaden the competences and consolidate the financial structure of the Foundation. Moreover, more specific measures are needed to establish consultation mechanisms for Travellers at the inter-cantonal level and in all cantons.

## **Articles 17 and 18 of the Framework Convention**

### **Effect of the current bilateral agreements on Travellers**

#### *Recommendations from the previous two monitoring cycles*

127. The Swiss authorities were invited to consider the different means of improving the situation of Swiss Travellers wishing to practise their itinerant way of life in bordering European Union countries.

#### *Present situation*

128. The Advisory Committee notes with satisfaction that since 2008, in the light of the bilateral agreements concluded between Switzerland and the European Union, Swiss Travellers now have the same residence and employment rights, particularly in the field of itinerant trade, as those enjoyed in Switzerland by the nationals of EU countries.

### III. CONCLUSIONS

129. The Advisory Committee considers that the present concluding remarks could serve as the basis for the conclusions and recommendations to be adopted by the Committee of Ministers with respect to Switzerland.

#### **Positive developments following two cycles of monitoring**

130. Switzerland has maintained its constructive attitude towards the Framework Convention and its monitoring system, and has followed an overall inclusive approach with regards to the personal scope of application.

131. The Swiss Government has initiated several legislative as well as institutional reform initiatives aiming at strengthening the protection of national minorities. Two laws of particular importance to persons belonging to national minorities were enacted since the last cycle of monitoring.

132. Switzerland has set up, in 2011, the “Swiss Centre of Expertise in Human Rights” (CSDH). Its main task is to promote and facilitate the process of implementing international human rights obligation at all levels.

133. The Federal Law on the Promotion of Culture (LEC) provides a solid legal basis for guaranteeing the maintenance of public subsidies for the Travellers’ Associations and increases their opportunities to have an impact in decision-making on issues of concern through new supervision responsibilities given to the Foundation “A Future for Swiss Travellers”.

See in this regard the comments made above in paragraph 44. Rather than increasing Travellers’ capacity to act, Article 17 of the new Federal Law on the Promotion of Culture (LEC) could help to enhance the role of the Foundation “A Future for Swiss Travellers”. This role, however, would be a co-ordinating rather than a supervisory one.

134. The Federal Law on the National Languages and Understanding between the Linguistic Communities reinforces the legal framework for promoting multilingualism and developing the use of the four official languages of the Swiss Confederation. This law provides for equal status of German, French and Italian and also a very high level of protection for Romansh. Promotion of multilingualism is now an integral part of the harmonised school programmes.

135. Switzerland continues to invest considerable efforts in the teaching of and in minority languages and has recently developed linguistic exchanges geared to improving mutual understanding in the country, particularly in schools. The provision of education in Italian and Romansh remains adequate. Furthermore, many cantons have devised positive measures to promote multilingualism in three national languages (German, French and Italian) among teachers and students.

Switzerland has had linguistic exchanges for years now. With the new law on languages, it has chosen to focus on these exchanges and to make them a central plank in its policy of promoting multilingualism.

#### **Issues of concern following two cycles of monitoring**

136. The overall situation of Travellers still raises serious concerns as the problem of the shortage of stopping places and transit sites has not significantly improved in ten years. The

number of stopping sites has not increased significantly and as regards transit sites, the situation has further deteriorated.

See in this regard the comments made above in paragraph 48. With regard to *transit sites*, it should be noted that, while their number has declined significantly, the number of pitches for caravans has remained unchanged because the new sites tend to be larger than the ones that have disappeared.

137. There are reports of generally discriminatory attitudes, including instances of intolerance, against some groups and the frequency of public manifestations of intolerance by some political parties and on the Internet increased following the results of the 2009 popular initiative on the prohibition of the construction of minarets.

138. The implementation of the Federal Law on National Languages and Understanding between the Linguistic Communities seems problematic for Italian and Romansh civil servants and they are still under-represented in managerial posts.

See in this regard the comment made above in the Executive Summary, on page 1. In the French version, the English term “still” has been translated as “toujours”. This is ambiguous and should be replaced by the term “encore”, so that the sentence reads: “La mise en œuvre de la loi sur les langues (LLC) et la compréhension entre les communautés linguistiques fait *encore* problème [...]”.

139. Only very few cases of discrimination are reported which reflects a lack of knowledge among Swiss society of the relevant legislation and the available remedies. There is also a need for the adoption of a comprehensive anti-discrimination law.

With regard to developments and possible ways forward in this area, see the comments made above in paragraphs 33 and 36.

140. The financial and staffing capacities of the Foundation “A Future for Swiss Travellers” is not yet sufficient to provide adequate solutions to solve the problem of stopping places and transit sites.

141. There is no effective consultative mechanism at inter-cantonal level and only limited consultation exists at cantonal level to ensure that the concerns of the Travellers are brought to the attention of the various local administrations that deal with issues of concern to them. There is also scope for improvement in public acceptance of the Traveller way of life. Furthermore, schooling for children of Travellers who have retained an itinerant way of life is apparently not effectively guaranteed when they travel with their parents.

On the subject of an inter-cantonal mechanism for consulting Travellers, see the comment made in paragraph 125.

## **Recommendations**

142. In addition to the measures to be taken to implement the detailed recommendations contained in Sections I and II of the Advisory Committee's Opinion, the authorities are invited to take the following measures to improve further the implementation of the Framework Convention:

### **Issues for immediate action<sup>24</sup>**

➤ **The Advisory Committee reiterates its call on the authorities to intensify their**

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<sup>24</sup> The recommendations below are listed in the order of the corresponding articles of the Framework Convention.

**efforts to remedy the severe shortage of stopping places and transit sites for Travellers as soon as possible. Determined measures must be adopted in order to strongly encourage all the federal, cantonal and municipal stakeholders of the importance and need of addressing Travellers' problems under national spatial development plans. Furthermore, sites in a state of disrepair must be renovated and awareness campaigns conducted among municipalities, the general public and private landowners in order to facilitate spontaneous stops;**

The Swiss authorities are aware of the difficulties encountered by Travellers and are committed to finding solutions. The shortage of stopping places and transit sites is indeed severe. It could hardly, however, be described as “criant”, which is the term used in the French version. The French translation of this term is erroneous, therefore, and needs rectifying.

Note that it is in the *cantonal* structure plans that the needs of Travellers must be taken into account. Since spatial development is a matter for the cantons (Art. 75, paragraph 1, of the Constitution), there are no “national” spatial development plans. The government does, however, have an important role to play when cantonal land-use plans are being approved, by sensitising cantons to Travellers' needs.

➤ **The Advisory Committee calls on the authorities to adopt adequate measures to combat manifestations of racism, to condemn publicly and without delay all forms of intolerance, including in political discourse and on the Internet and to intensify efforts to promote diversity and tolerance within Swiss society;**

As explained in paragraph 68, the Swiss authorities are endeavouring to improve the integration of foreigners. They are also committed to achieving harmonious co-existence between persons of different cultures and faiths and to preventing all forms of discrimination and intolerance.

➤ **The Advisory Committee strongly encourages the authorities to increase their efforts to implement all the commitments relating to the linguistic rights of persons belonging to national minorities, laid down in the Federal Law on the National Languages and Understanding between the Linguistic Communities, so as to ensure, in practice, full equality among the official languages of the Confederation and to enable persons belonging to linguistic minorities to use their own language in the federal administration and to be effectively and proportionately represented in administrative structures.**

As explained in paragraphs 87 and 121, this recommendation is partially obsolete as regards the representation of linguistic minorities in the federal administration because it disregards the recent developments that have occurred in these areas since November 2012. It should therefore be modified accordingly.

Given the Swiss institutional framework, furthermore, it would be more appropriate to talk about “effective” rather than “full” equality, which is the term used above. For one thing, Romansh is a semi-official language of the Confederation and Romansh-speakers in the federal administration cannot claim the right to use it as a working language. And for another, the Federal Ordinance on Languages (OLang) sets *percentages* to be achieved in order to ensure fair representation of the linguistic communities.

Further recommendations<sup>25</sup>

➤ The Advisory Committee invites the authorities to continue and to intensify their efforts to improve public knowledge of the legal remedies available against discrimination, notably by devoting special attention to those persons who are most exposed to discriminatory attitudes, so that they can obtain comprehensive information on their rights and the existing remedies;

➤ The Advisory Committee calls on the authorities to reconsider their position concerning the possible adoption of comprehensive anti-discrimination legislation and to continue systematically collecting statistical data in matters of discrimination in order to monitor the situation;

A study is being conducted on the effectiveness of the various legal instruments for combating discrimination. Discussions on the possible adoption of comprehensive anti-discrimination legislation cannot take place until this study has been submitted. With regard to developments and possible ways forward in this area, see the comments made in paragraphs 33 and 36.

➤ The Advisory Committee once again invites the authorities to increase substantially its financial aid for Travellers' associations, particularly the Foundation "A Future for Swiss Travellers" so that they enjoy sufficient resources for conducting their work, notably in view of the new perspectives provided by the Federal Law on the Promotion of Culture (LEC), which is intended, *inter alia*, to enable Travellers to lead the way of life which corresponds to their culture. Mechanisms for effective consultations at inter-cantonal level and in all cantons should be created and implemented;

➤ The Advisory Committee recommends that the authorities intensify their efforts to raise the population's awareness of the traditional way of life of the Travellers and to promote intercultural dialogue in order to increase mutual understanding, trust and acceptance of the different traditions, culture and way of life of this community;

➤ The Advisory Committee invites the authorities to continue to support actively the media for the national minorities, paying particular attention to the needs of the Italian-speaking community and Romansh speaking minority. It also encourages the authorities to undertake adequate measures to facilitate access to the media for Travellers and to support the promotion of tolerance and cultural diversity in the media;

See in this respect the comments made above in paragraph 81.

In the light of these comments, there is a need firstly to amend the following passage "It also encourages the authorities to *undertake adequate measures* to facilitate access to the media for Travellers [...]". Under current Swiss law, broadcasters cannot be required to take further measures of this kind. The passage in question should be amended slightly to read: "It also encourages the authorities to *consider improving Travellers' access* to the media [...]".

Secondly, the following passage likewise needs toning down: "It also encourages the authorities to undertake *adequate measures* to [...] support the promotion of tolerance and cultural diversity in the media". Appropriate instruments for promoting tolerance and cultural diversity already exist and there is no need for further measures to this effect. A more

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<sup>25</sup> The recommendations below are listed in the order of the corresponding articles of the Framework Convention.



appropriate phrasing would be: “It also encourages the authorities to *continue their efforts* to support the promotion of tolerance and cultural diversity in the media”.

The Advisory Committee invites the authorities to continue and intensify the measures taken to remedy the difficulties encountered by Traveller children who retain an itinerant lifestyle in accessing education within the framework of a permanent dialogue with the representatives of these minorities.