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**COMMITTEE OF EXPERTS ON ISSUES RELATING TO THE PROTECTION
OF NATIONAL MINORITIES
(DH-MIN)**

**COMPILATION OF FIRST AND SECOND CYCLE OPINIONS OF THE
ADVISORY COMMITTEE RELATING TO ARTICLE 4 OF THE
FRAMEWORK CONVENTION FOR THE PROTECTION OF NATIONAL
MINORITIES**

Article 4

1. The Parties undertake to guarantee to persons belonging to national minorities the right of equality before the law and of equal protection of the law. In this respect, any discrimination based on belonging to a national minority shall be prohibited.
2. The Parties undertake to adopt, where necessary, adequate measures in order to promote, in all areas of economic, social, political and cultural life, full and effective equality between persons belonging to a national minority and those belonging to the majority. In this respect, they shall take due account of the specific conditions of the persons belonging to national minorities.
3. The measures adopted in accordance with paragraph 2 shall not be considered to be an act of discrimination.

NOTE:

1. This document was produced for the work of the DH-MIN and does not contain footnotes. For publication purposes, please refer to the original versions of the opinions of the Advisory Committee on the Framework Convention.
2. This document covers Article 4 only. It may be noted that reference is also made under Article 6 para.2 to the need for States Parties to take appropriate measures to protect persons who may be subject to threats or acts of discrimination, hostility or violence as a result of their ethnic, cultural, linguistic or religious identity.

Table of contents:

ALBANIA (First Opinion adopted on 12/09/2002).....	3
ARMENIA (First Opinion adopted on 16/05/2002)	5
AUSTRIA (First Opinion adopted on 16/05/2002).....	7
AZERBAIJAN (First Opinion adopted on 22/05/2003).....	9
BOSNIA AND HERZEGOVINA (First Opinion adopted on 27/05/2005)	10
CROATIA (First Opinion adopted on 06/04/2001)	16
CROATIA (Second Opinion adopted on 01/10/2004).....	19
CYPRUS (First Opinion adopted on 06/04/2001)	24
CZECH REPUBLIC (First Opinion adopted on 06/04/2001)	26
CZECH REPUBLIC (Second Opinion adopted on 04/04/2005).....	28
DENMARK (First Opinion adopted on 22/09/2000).....	31
DENMARK (Second Opinion adopted on 09/12/2004).....	32
ESTONIA (First Opinion adopted on 14/09/2001).....	34
ESTONIA (Second Opinion adopted on 24/02/2005).....	35
FINLAND (First Opinion adopted on 22/09/2000)	39
GERMANY (First Opinion adopted on 01/03/2002).....	39
HUNGARY (First Opinion adopted on 22/09/2000).....	41
HUNGARY (Second Opinion adopted on 09/12/2004).....	42
IRELAND (First Opinion adopted on 22/05/2003)	46
ITALY (First Opinion adopted on 14/09/2001).....	50
ITALY (Second Opinion adopted on 24/02/2005)	51
LICHTENSTEIN (Second Opinion adopted on 01/10/2004).....	54
LITHUANIA (First Opinion adopted on 21/02/2003)	55
MOLDOVA (First Opinion adopted 01/03/2002)	58
MOLDOVA (Second Opinion adopted on 09/12/2004)	60
NORWAY (First Opinion adopted on 12/09/2002).....	62
POLAND (First Opinion adopted on 27/11/2003).....	65
ROMANIA (First Opinion adopted on 06/04/2001).....	67
RUSSIAN FEDERATION (First Opinion adopted on 13/09/2002).....	70
SERBIA AND MONTENEGRO (First Opinion adopted on 17/11/2004).....	72
SLOVAK REPUBLIC (First Opinion adopted on 22/09/2000)	77
SLOVENIA (First Opinion adopted on 12/09/2002)	78
SLOVENIA (Second Opinion adopted on 26/05/2005).....	80
SPAIN (First Opinion adopted on 27/11/2003)	85
SWEDEN (First Opinion adopted on 20/02/2003)	89
SWITZERLAND (First Opinion adopted on 20/02/2003)	91
“THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA” (Opinion adopted on 27/05/2004).....	93
UKRAINE (First Opinion adopted on 01/03/2002).....	96
UNITED KINGDOM (Opinion adopted on 30/11/2001).....	97

ALBANIA (First Opinion adopted on 12/09/2002)

Article 4

25. The Advisory Committee notes that the Albanian Constitution establishes the fundamental principle of equality before the law (Article 18) and guarantees freedom from discrimination on the basis of, inter alia, race, religion, ethnicity, language, social status or ancestry. These provisions coupled with provisions under criminal law, civil law and administrative law, provide important elements for a body of legislation aimed at combating discrimination. The Advisory Committee, however, notes that there remains scope for extending this legislative framework further. For example, as suggested by the European Commission against Racism and Intolerance (ECRI) in its Second report on Albania, the possibility exists of defining racially motivated offences as specific offences and explicitly providing for racial motivation to be taken into account as an aggravating factor by the courts. 28. Notwithstanding that discrimination is not generally seen to be a major problem in Albanian society today, the Advisory Committee is aware of some complaints by persons belonging to national minorities of discrimination in a number of different fields, ranging from employment, to access to basic facilities (water, electricity, etc.), education, housing, social services and access to land distribution schemes. The Advisory Committee also notes that according to the Albanian authorities, shortages and restrictions in the availability of services are problems faced by all Albanians. Without accurate statistical data, however, it is difficult for the Advisory Committee to comment on whether this is a general problem or one where discrimination occurs (see also paragraph 30 below). However, the Advisory Committee, is nonetheless concerned that a contributing factor to the problems faced by persons belonging to national minorities is the widespread use of bribes and the need for family or other contacts to obtain State provisions in many areas of life. The Advisory Committee considers that the Albanian authorities should ensure that all appropriate measures are taken to stamp out such practices as they lead to an increased likelihood of both direct and indirect discrimination taking place as persons belonging to national minorities are often more vulnerable to having to pay bribes and do not have the relevant family or other contacts.

26. The Advisory Committee notes that the possibility exists of bringing together all relevant legislation concerning anti-discrimination into a comprehensive body of legislation aimed at combating discrimination. The Advisory Committee encourages the Albanian authorities to give further thought to this matter, taking into account, once completed, the results of the Non-Discrimination Review under the Stability Pact for South-Eastern Europe, which is currently being conducted by a group of independent Albanian experts.

27. More generally, the Advisory Committee notes with interest that the Albanian government plans to establish an ad hoc working group, consisting of governmental and non-governmental representatives, to review current Albanian legislation concerning national minorities. The Advisory Committee welcomes this step, in particular as there remain certain specific areas in which legislation is currently lacking concerning the protection of persons belonging to national minorities (see also comments under Articles 10 and 11 below). In this respect, the Advisory Committee encourages the Albanian authorities to consider, at an appropriate moment, the merits of preparing a specific law on national minorities which would not only allow the authorities to fill certain gaps in the legislation, but would also give visibility and raise awareness of the Albanian authorities' commitment and policy towards the protection and promotion of the rights of persons belonging to national minorities in Albania.

28. Notwithstanding that discrimination is not generally seen to be a major problem in Albanian society today, the Advisory Committee is aware of some complaints by persons belonging to national minorities of discrimination in a number of different fields, ranging from employment, to access to basic facilities (water, electricity, etc.), education, housing, social services and access to land distribution schemes. The Advisory Committee also notes that according to the Albanian authorities, shortages and restrictions in the availability of services are problems faced by all Albanians. Without accurate statistical data, however, it is difficult for the Advisory Committee to comment on whether this is a general problem or one where discrimination occurs (see also paragraph 30 below). However, the Advisory Committee, is nonetheless concerned that a contributing factor to the problems faced by persons belonging to national minorities is the widespread use of bribes and the need for family or other contacts to obtain State provisions in many areas of life. The Advisory Committee considers that the Albanian authorities should ensure that all appropriate measures are taken to stamp out such practices as they lead to an increased likelihood of both direct and indirect discrimination taking place as persons belonging to national minorities are often more vulnerable to having to pay bribes and do not have the relevant family or other contacts.

29. The Advisory Committee is sensitive to reports of prejudice and discrimination faced by persons belonging to the Roma community and notes in this respect that similar problems are also faced by persons belonging to the Egyptian community. The Advisory Committee considers that there is a need for further monitoring of the situation and that there is a need for greater awareness of the situation by, amongst others, government officials, judges and the police.

30. The Advisory Committee is concerned at the increasing socio-economic gap that is opening up between the Roma and the rest of the population in Albania. This is particularly the case in relation to education, housing, employment, access to social services, access to health care and access to basic facilities (matters dealt with also under Articles 12, 14 and 15 below). In order to assess the full extent of the problem, accurate statistical data is required, not just for the Roma but for all persons belonging to national minorities. The Advisory Committee considers that the lack of reliable statistical data can seriously hamper the ability of the State to target, implement and monitor measures to ensure the full and effective equality of persons belonging to national minorities. Without such data, it is also very difficult for remedial policies and programmes to be implemented and for the international monitoring bodies to ascertain whether Albania meets its obligations flowing from the Framework Convention. The Advisory Committee therefore considers that the Government should try to identify the most appropriate ways and means of obtaining reliable statistical data, broken down by age, gender and location (see also related comments under the General Remarks above).

31. The Advisory Committee nonetheless recognises that the Albanian authorities are taking a number of measures to deal with the particular situation of the Roma and reminds the Albanian authorities of the need to take into account the Committee of Ministers' Recommendation (2001) 17 on improving the economic and employment situation of Roma/Gypsies and Travellers in Europe. The Advisory Committee welcomes the steps being taken to establish a national strategy for the improvement of the living conditions of the Roma by the National Minority Office of the Ministry of Foreign Affairs. The Advisory Committee encourages the Albanian authorities to step up its efforts in this respect and ensure that a maximum amount of consultation and participation takes place in devising and implementing this strategy, not only amongst governmental departments, but also amongst representatives of civil society and representatives of the Roma community. In this context the Advisory Committee hopes that the participation of Roma women in this exercise will be ensured and that appropriate funding will be allocated to this strategy.

32. The Advisory Committee notes the important role that can be played by non-governmental organisations and also institutions such as the People's Advocate. In this respect the Advisory Committee notes the work being undertaken by the recently established office of the People's Advocate and its potentially useful role in identifying and combating discrimination. The Advisory Committee notes with interest that this office has examined a number of cases concerning national minorities, although none of the complaints examined so far have been upheld. The Advisory Committee also notes that the People's Advocate may appoint a representative of his office to the south of Albania, in an area where there is a sizeable Greek minority. In view of the importance of informing people of the work of the People's Advocate, the Advisory Committee welcomes the plans to disseminate leaflets containing such information in minority languages. The Advisory Committee encourages the People's Advocate to continue to develop his work covering national minorities and to give due attention to the possibility of extending the outreach of the office of the People's Advocate, inter alia, by appointing a representative to the south of the country.

In respect of Article 4

87. The Advisory Committee finds that there exist gaps in the legislative framework concerning national minorities and considers that further steps could be taken to fill these gaps through, for example, anti-discrimination legislation and, when appropriate, more general legislation concerning national minorities.

88. The Advisory Committee finds that complaints of discrimination in different fields, ranging from employment, to access to basic facilities, education, housing, social services and access to land distribution schemes, exist. The Advisory Committee considers that the authorities should take all appropriate measures to tackle such discrimination where it exists, including through stamping out practices which contribute to discrimination, such as bribing and the use of family or other contacts to obtain State provisions.

89. The Advisory Committee finds that there are reports of discrimination and prejudice faced by persons belonging to the Roma community as well as persons belonging to the Egyptian community and considers that there is a need for further monitoring of the situation and greater awareness of the situation by, amongst others, government officials, judges and the police.

90. The Advisory Committee finds that an increasing socio-economic gap is opening up between the Roma and the rest of the population in Albania and considers that the Government should step up its efforts in establishing a national strategy for the improvement of the living conditions of the Roma.

91. The Advisory Committee finds that the People's Advocate has an important role to play in identifying and combating discrimination and considers that the People's Advocate should be encouraged to continue extending its outreach throughout the country.

ARMENIA (First Opinion adopted on 16/05/2002)

Article 4

25. The Advisory Committee notes that the Armenian Constitution provides that all citizens shall be equal before the law and enjoy equal protection by the law, without discrimination, as well as guarantees relating to the defence of their rights. Armenian criminal law contains provisions prohibiting any discrimination by public authorities or private entities, and also lays down sanctions for any violation of equality carried out on racial or ethnic grounds. The Advisory

Committee notes that provision is made for possible remedies for victims of discrimination. As regards protection against discrimination in different societal settings (including employment, provision of services and housing) provided by civil and administrative law, the Advisory Committee invites the Armenian authorities to examine the situation in the context of the current revision of the Armenian legislation with a view to filling any gaps that may remain in this field.

26. As to the non-judicial mechanisms for the protection of human rights, which may contribute significantly to the effective implementation of the principles of the Framework Convention, the Advisory Committee notes that the Ombudsman's office has still not been set up, although this was one of the undertakings made by Armenia when it joined the Council of Europe, and that the relevant law ought to have been adopted within six months of accession. According to the authorities, the Ombudsman should be appointed by parliament and authorised to take cases to the Constitutional Court.

27. The Advisory Committee is aware that the setting up of the Ombudsman's office is an integral part of the process of revision of the Constitution, a process which appears to be both slow and complicated. It also notes that this role has been fulfilled since April 1998 by the Presidential Commission for Human Rights. While recognising the importance and usefulness of this commission, the Committee notes the legal uncertainty about its status and the fact that, according to governmental sources, its term of office should have expired in March 2002. The Advisory Committee encourages the authorities to take all the necessary steps to speed up the setting-up of the Ombudsman's office, while making sure, as far as possible, that the person appointed will be independent and will have the necessary resources to carry out his or her duties.

28. As regards the implementation of the legislation against discrimination, the Advisory Committee notes that the authorities, the representatives of national minorities, non-governmental organisations and Armenian media have no information of any case of discrimination based on the ethnic origin of a person and no such cases have been recorded by the Armenian courts. Noting in this context that no statistics are available from official sources, and taking account of the information supplied in reports by certain sources (see paragraphs 40 and 41, below) according to which there are nevertheless certain manifestations of discrimination, the Advisory Committee considers that it is impossible to evaluate the effective application of the anti-discrimination mechanisms, and therefore the principles laid down in Article 4 of the Framework Convention. It is therefore imperative that the monitoring of developments in this field be undertaken (see also comments relating to Article 6).

29. With respect to measures taken to promote full and effective equality between persons belonging to a national minority and persons belonging to the majority, the Advisory Committee is of the opinion that the state needs to make further efforts in the fields of education, culture and participation in public life, and it encourages the authorities to step up their action in this respect (for details, see the comments relating to Articles 5, 12 and 15, below).

30. The Advisory Committee is aware that, in the absence of reliable data, it is very difficult for the Armenian authorities to devise and to implement measures which guarantee the full and effective equality of persons belonging to national minorities and for the international monitoring bodies to ensure that Armenia is fulfilling its obligations under the Framework Convention. The Advisory Committee is aware that significant demographic changes have occurred in Armenia during the past ten years and it takes note, in this context, that a new census was held in October 2001, the first population census since the country's independence. According to the estimates provided by various sources, hundreds of thousands of people have left Armenia since the

previous census, held in 1989, among them Armenians but also a high number of Azerbaijanis, Russians, as well as persons belonging to other national minorities.

31. Bearing in mind the importance of the new census, not least in the light of the above-mentioned demographic changes, the Advisory Committee appreciates the fact that persons belonging to national minorities have benefited from the opportunity to express their wishes and expectations in respect of the methods used for the census. The Advisory Committee considers that the data resulting from the census, together with any other data relating to persons belonging to national minorities (such as estimates based on ad hoc studies, specialised or sample surveys, or other scientifically valid methods) should, where appropriate, be broken down according to age, gender and geographical distribution. In this context, it encourages the authorities to ensure, when processing this data, that the principles set out in the Committee of Ministers Recommendation No. (97) 18 concerning the protection of personal data collected and processed for statistical purposes are complied with (see also comments relating to Article 3, in paragraph 19 above).

In respect of Article 4

91. The Advisory Committee finds that there have been delays in establishing the institution of a human rights Ombudsman in Armenia and considers, in the interest of the protection of persons belonging to national minorities, that the authorities should make every necessary effort to speed up the establishment of this institution.

92. While noting that no complaint of cases of discrimination based on a person's ethnic origin has reportedly been registered with the Armenian courts, the Advisory Committee finds that the authorities have only very limited information on the practical application of the legislation on non-discrimination. Bearing in mind that other sources nonetheless point to the existence of certain cases of discrimination, the Advisory Committee considers that there is a need for a monitoring of the situation in this field.

93. The Advisory Committee finds that, in order to secure full and effective equality between persons belonging to a national minority and those belonging to the majority, additional measures are required in the fields of education, culture and participation in public life. The Advisory Committee considers that the Armenian authorities should step up their efforts in this regard.

AUSTRIA (First Opinion adopted on 16/05/2002)

Article 4

21. The Advisory Committee notes that the principles of equality and non-discrimination are guaranteed in particular by Article 7, paragraph 1 of the Federal Constitution and by Article 1, paragraph 1 of the Federal Constitutional Law implementing the International Convention on the Elimination of All Forms of Racial Discrimination. Furthermore, the Austrian criminal Code punishes insult, denigration and incitement to public agitation or acts of hostility against a church or a group distinguished by the fact that it belongs to a church, a religious community, a race, a nation, an ethnic group or a State. There are also specific provisions on racial discrimination in civil law and labour law. In its second report on Austria ECRI however noted that civil and administrative law provisions in Austria did not suffice to effectively combat discrimination in a number of important areas, such as employment and housing. In this context, the Advisory Committee welcomes the fact that in their reply to its questionnaire the Austrian authorities report that transposing Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin is currently one of their

concerns, and notes that the introduction of anti-discrimination legislation is being examined. The Advisory Committee expresses the hope that the work under way will give rise to a major public debate on the elimination of all forms of discrimination – both by public authorities and private entities – will be successfully completed in the near future and that it will lead to the adoption of further measures to combat discrimination.

22. The Advisory Committee notes that the State Report reveals discrepancies – sometimes large ones – between the official (1991 census) statistics on the number of persons belonging to national minorities in Austria and the estimations of the national minorities themselves. The Advisory Committee is concerned that such large discrepancies can seriously hamper the ability of the state to target, implement and monitor measures to ensure the full and effective equality of persons belonging to national minorities. At the time of the adoption of the current opinion, the results of the 2001 national census had not been published. The Advisory Committee shares the view expressed by the Austrian authorities in the State Report that the answers to the census question on the language spoken in everyday life are only one of several indicators of the number of persons belonging to a national minority. It would therefore not be appropriate to rely exclusively on the results of the 2001 census, particularly concerning the threshold required for topographical indications in minority languages (see related comments under Article 11). The Advisory Committee is therefore of the opinion that, on condition that the principles identified in Committee of Ministers Recommendation (97) 18 concerning the protection of personal data collected and processed for statistical purposes are respected, the Government should try to identify further ways and means of obtaining reliable statistical data on national minorities broken down by age, gender, or geographical differentials. Without such data it is very difficult for the Austrian authorities to operate effectively and for the international monitoring bodies to ascertain whether Austria meets its obligations under the Framework Convention.

23. In spite of the measures adopted to promote equality, the Advisory Committee notes the existence of considerable socio-economic differences between many Roma and the rest of the population. The Roma seem particularly socially underprivileged in the fields of employment and housing. The Advisory Committee is of the opinion that the adoption of further measures in these particular fields should be coupled with improvements in education (see related comments under Article 6, paragraphs 31-32, Article 12 and Article 14). It notes that the Austrian authorities apply the provisions of the Law on Ethnic Groups in an inclusive manner, with the result that Roma not belonging to the autochthonous Austrian Roma minority can also enjoy the benefits of support measures financed by the Government, and in particular additional educational measures. Finally, the Advisory Committee stresses that when special measures are implemented, particular attention should be given to Roma women.

In respect of Article 4

79. The Advisory Committee finds that the answers to the 2001 census question on the language spoken in everyday life are only one of several indicators of the number of persons belonging to a national minority. It therefore considers it would not be appropriate to rely exclusively on the results of the 2001 census, particularly concerning the threshold required for topographical indications in minority languages.

80. The Advisory Committee finds that the lack of statistical data makes it difficult for the Austrian authorities to ensure that the full and effective equality of national minorities is promoted effectively. It considers that the authorities should seek means of obtaining more reliable statistical data on persons belonging to national minorities broken down by age, gender and location and in particular seek better to evaluate the socio-economic situation of the Roma and, as appropriate, undertake measures in their favour to promote full and effective equality in the socio-economic field.

AZERBAIJAN (First Opinion adopted on 22/05/2003)

Article 4

24. The Advisory Committee notes that there are general provisions reflecting the principle of anti-discrimination in the Constitution, the Criminal Code as well as in various acts in the field of civil and administrative law. While welcoming these norms, the Advisory Committee notes that there are no detailed and comprehensive civil and/or administrative law provisions pertaining to ethnic discrimination in certain key fields as was pointed out by the European Commission against Racism and Intolerance (ECRI) in its second report on Azerbaijan. The Advisory Committee is of the opinion that it would be desirable to develop such legislation in order to protect, in a comprehensive manner, individuals from discrimination by both public authorities and private entities. 26. There appears also to be a need to take further measures to ensure that individuals are informed of their rights in this sphere and that they have confidence in the relevant authorities to seek remedy when they consider that these rights have been violated. The Advisory Committee considers that the Office of the Ombudsperson, established in 2002, could play an important role in this respect, provided it develops an independent and active approach to these issues. The Advisory Committee welcomes the plans to appoint permanent regional representatives of the Ombudsman as this would increase accessibility of the office in areas where persons belonging to national minorities reside compactly.

25. With regard to practice concerning implementation of anti-discrimination legislation, it is mentioned in the State Report that at “no time in the history of Azerbaijan have there been recorded cases of intolerance or discrimination on ethnic, religious, language and cultural grounds”. The Advisory Committee notes that this statement stands in contrast with credible reports from various other sources indicating that there are incidents of such hostility and discrimination, including towards Armenians. The Advisory Committee is not in a position to conclude whether the problem of ethnic discrimination is wide-spread or only limited to isolated cases, but it considers it imperative that the monitoring of developments in this field is intensified and the awareness of the relevant authorities of the issues at hand is improved.

26. There appears also to be a need to take further measures to ensure that individuals are informed of their rights in this sphere and that they have confidence in the relevant authorities to seek remedy when they consider that these rights have been violated. The Advisory Committee considers that the Office of the Ombudsperson, established in 2002, could play an important role in this respect, provided it develops an independent and active approach to these issues. The Advisory Committee welcomes the plans to appoint permanent regional representatives of the Ombudsman as this would increase accessibility of the office in areas where persons belonging to national minorities reside compactly.

27. The Advisory Committee notes that there is a need to collect additional data to improve the ability of the state to target, implement and monitor measures to ensure the full and effective equality of persons belonging to national minorities. The Advisory Committee therefore suggests that, on condition that the principles identified in the Committee of Ministers' Recommendation (97) 18 to Member States concerning the protection of personal data collected and processed for statistical purposes are respected, the Government try to identify further ways and means of obtaining reliable statistical data. Without such data it is very difficult for remedial policies and programmes to be implemented and for the international monitoring bodies to ascertain whether Azerbaijan meets its obligations flowing from the Framework Convention.

28. The Advisory Committee notes that the non-discrimination principle has at times been referred to as an argument against the introduction of special measures for the benefit of persons belonging to national minorities aimed at promoting full and effective equality. The Advisory Committee stresses that, pursuant to Article 4, paragraph 3, of the Framework Convention, such measures must not be considered to be an act of discrimination and that additional steps are needed to inform the officials concerned and the public at large of the applicable principles. It is also important that the possibility of introducing such measures is clearly stipulated in the envisaged law on the protection of national minorities.

29. The Advisory Committee understands that while there are socio-economic difficulties in Azerbaijan that affect the society at large, these difficulties affect in particular refugees and internally displaced persons - a category which includes Kurds and other persons belonging to national minorities - as well as Meskhetians, who have arrived in Azerbaijan relatively recently after facing persecution elsewhere. The Advisory Committee recognises the efforts that are being made in this sphere and urges the authorities to pursue them further with a view to ensuring full and effective equality of the persons concerned.

In respect of Article 4

95. The Advisory Committee finds that there are no detailed and comprehensive civil and/or administrative law provisions pertaining to discrimination in certain pertinent fields and considers that Azerbaijan should develop such legislation in order to protect, in a comprehensive manner, individuals from discrimination by both public authorities and private entities.

96. The Advisory Committee finds that there are credible reports about incidents of inter-ethnic hostility and discrimination. The Advisory Committee considers it imperative that the monitoring of developments in this field is intensified and the awareness of the relevant authorities and public at large of the issues at hand is improved.

97. The Advisory Committee finds that socio-economic difficulties affect in particular refugees and internally displaced persons as well as Meskhetians but, in the absence of clear data, it is difficult to estimate whether persons belonging to national minorities are in general disproportionately affected by such difficulties. The Advisory Committee considers that there is a need to collect additional data to improve the ability of the state to target, implement and monitor measures to ensure the full and effective equality of persons belonging to national minorities.

BOSNIA AND HERZEGOVINA (First Opinion adopted on 27/05/2005)

Article 4

33. The Advisory Committee notes with satisfaction that there exist general guarantees against discrimination, including in the Constitution of Bosnia and Herzegovina, in the Constitutions of the Entities and in the 2003 Law on the Protection of Rights of Persons Belonging to National Minorities. The Advisory Committee notes however that such provisions would merit being developed further and expects that consideration will be given to the development of comprehensive anti-discrimination legislation that protects individuals from discrimination by both public authorities and private entities.

34. A Commission on Human Rights was established in accordance with Annex 6 of the GFAP and consisted of two parts, namely the Office of the Ombudsman and the Human Rights Chamber. These institutions were tasked to examine alleged or apparent violations of human rights, as well as alleged or apparent discrimination by public authorities. The Human Rights

Chamber could be seized either by the Ombudsman on behalf of an applicant, or by an authority, or from a person, a group of persons or by an NGO claiming to be a victim of a human rights violation. Three Ombudsman institutions now exist in Bosnia and Herzegovina, one at the State level and one in each Entity. Each of these institutions is composed of 3 Ombudspersons (one Bosniac, one Croat and one Serb). The oldest Ombudsman institution (in the Federation), which has been in existence for more than 10 years, has in particular proved instrumental in the fight against discrimination, including for persons belonging to national minorities as well as those belonging to constituent peoples in a minority situation.

35. The Advisory Committee notes that both the institutional framework as well as judicial and non-judicial remedies to fight against discrimination have been in a flux for some time. The responsibilities of the Human Rights Chamber have been transferred to the Constitutional Court as from 1 January 2004 and it is foreseen that a Human Rights Commission within the Constitutional Court will work from 1 January to 31 December 2004 to deal with the Human Rights Chamber backlog of approximately 9,500 cases. Moreover, it is envisaged to merge the three Ombudsman institutions in order to create a unified Ombudsman Office at the State level.

36. The Advisory Committee considers that during the whole process of implementing these important institutional changes, the authorities should take particular care to ensure that effective remedies remain at the disposal of individuals claiming to be victims of discrimination. In this context, it is particularly important that the Human Rights Commission within the Constitutional Court be provided with the necessary resources to deal with the remaining cases inherited from the Human Rights Chamber. It is also important that the merger of the three Ombudsman institutions, which should reduce the number of Ombudspersons from 9 to 1 and which appears necessary to reinforce multi-ethnic State institutions as well as to rationalise the use of public funds, takes place gradually so that popular confidence in the newly-established State Ombudsman institution can be strengthened⁶. It is however regrettable that the Ombudsperson and the two Deputies, who will compose this future unified institution, will be elected on an ethnic basis, a matter that will merit further consideration in the future. The Advisory Committee also considers that the authorities should pay increased attention to the lack of proper implementation of decisions or recommendations issued by these Human Rights institutions, a problem which, if it continues, is likely to undermine popular confidence in the effective functioning of these remedies, which are important, *inter alia*, for persons belonging to national minorities.

37. While appreciating the above-mentioned general guarantees against discrimination, the Advisory Committee notes at the same time that the rules governing the composition of some authorities at the State level is such as to legally exclude persons belonging to national minorities from accessing these political posts. This is for instance the case with regard to the tripartite Presidency of Bosnia and Herzegovina, which according to Article V of the Constitution shall consist of one Bosniac, one Croat and one Serb. Another example is the House of Peoples of the Parliament of Bosnia and Herzegovina, which according to Article IV of the Constitution shall comprise 15 delegates, two-thirds from the Federation (including five Croats and five Bosniacs) and one-third from the Republika Srpska (five Serbs). Moreover, Article IV of the Constitution makes it possible only for Serbs, Bosniacs and Croats to serve as Chair and Deputy Chairs of both Chambers of the Parliament, namely the House of Peoples and the House of Representatives.

38. In addition to obstacles faced by persons belonging to national minorities in the access to certain posts, the Advisory Committee notes that a number of persons belonging to each of the constituent peoples are also legally barred from accessing such posts. It is for instance impossible for a Serb residing on the territory of the Federation or for a Croat or a Bosniac residing on the

territory of the Republika Srpska to be elected in the tripartite Presidency of Bosnia and Herzegovina given the wording of Article V of the Constitution. Similarly, a Serb from the Federation or a Croat or a Bosniac from the Republika Srpska will not be eligible to the House of Peoples of Bosnia and Herzegovina given the wording of Article IV of the Constitution.

39. The Advisory Committee considers that such arrangements raise issues of discrimination. While it may be said that they pursue a legitimate aim, namely to ensure equal representation of the three constituent peoples, their proportionality is questionable in terms of totally excluding in particular persons belonging to national minorities from accessing key-positions in public life. This therefore raises issues of compatibility with Article 4 of the Framework Convention. Notwithstanding that the institutional framework deriving from the Constitution and therefore from the GFAP has been instrumental in securing stability in Bosnia and Herzegovina and that amending the Constitution can only be envisaged once a broad consensus among political forces and constituent peoples has emerged at the national level, the Advisory Committee is of the opinion that consideration should be given to finding ways and means of remedying the total exclusion of persons belonging to national minorities from the above-mentioned posts, even if this cannot be achieved in the short term.

40. The Advisory Committee welcomes that following the Constitutional Court's partial decision of 30 June and 1 July 2000 on the status of constituent peoples, the constitutions of both the Federation and the Republika Srpska have been amended so as to make it possible for the three constituent peoples to be represented in the Parliaments of the Entities. More limited progress has been made to ensure representation of national minorities through the category of "Others". The Advisory Committee also notes that certain changes in the composition of legislative and executive authorities have been introduced both at municipal and - as far as the Federation is concerned - Cantonal level to comply with the aforementioned decision of the Constitutional Court.

41. The Advisory Committee regrets however that this process has not been fully completed. It appears for example that the House of Peoples of the Federation is still lacking 7 Serb Delegates and other problems remain at the Entity level, as recognised in the State Report. The President and the two Vice-Presidents of both the Federation and the Republika Srpska can for instance only be elected from among the constituent peoples. The same applies to the election of the President and the Vice-President of the Parliament Chambers of the Federation. Similarly, the three Ombudspersons of the Federation must be appointed from among each of the constituent peoples, thereby excluding persons belonging to national minorities. The Advisory Committee is of the opinion that such arrangements should also be reviewed as they raise issues of compatibility with Article 4 of the Framework Convention⁷. They also appear at variance with the general principle, set out in Article 19 of the Law on the Protection of Rights of Persons Belonging to National Minorities, that persons belonging to national minorities shall have the right to be proportionally represented in the bodies of public authorities and other civil services at all levels. Consideration should therefore be given to finding ways and means of enabling persons belonging to national minorities to access the posts at issue, a matter which may ultimately require constitutional amendments at the Entity level.

42. While stressing the importance of having adequate legislation in place to protect persons belonging to national minorities from discrimination, the Advisory Committee is particularly concerned about problems related to the implementation of such legislation in practice. In this context, a range of information from both non-governmental and international sources, as well as from the Ombudsman institutions, mention the persistence of deeply-rooted discrimination in a number of areas. Discrimination is essentially targeted at persons who do not belong to the

constituent group which is in a numerical majority at the Entity level or, for the Federation, at Cantonal level. The Roma are particularly more vulnerable in this respect.

43. Access to employment gives rise to discrimination in the Entities and especially in the Republika Srpska, where it remain excessively difficult for persons who are not Serbs to be recruited in the judiciary, in the police as well as in a range of public enterprises (see related comments under Article 15 below, paragraph 111). Discrimination also occurs in the return process of refugees and displaced persons particularly at local level, both in the Federation and in the Republika Srpska. The Advisory Committee therefore urges the authorities, especially at the Entity level, to tackle the widespread discrimination faced by those not belonging to the dominant constituent people more vigorously and to strengthen their action aimed at encouraging reconciliation (see related comments under Article 6 below).

44. As a particularly vulnerable group, the Roma are in the most difficult situation and exposed to widespread discrimination. This includes Roma who have been displaced, who have been repatriated from abroad or who came as refugees from Kosovo. According to the authorities, the Roma are the largest national minority and at least 20,000 of them live in the country. Other estimates suggest that Roma might be more numerous, ranging from 30,000 to 50,000 or even more. 46. The authorities have so far not been able to secure full and effective equality between the Roma and the rest of the population. The Advisory Committee is particularly concerned about reports of the alarming situation in informal Roma settlements, where thousands of Roma, who face particularly serious difficulties, live in substandard housing conditions without basic sanitary facilities, electricity or reliable source of heating and with a lack of waste disposal services as well as insufficient access to fresh water. In many settlements, these conditions are such as to affect the overall health situation of their residents. The Advisory Committee is deeply concerned by these sub-standard living conditions and considers that these problems merit urgent attention and targeted measures by both domestic authorities as well as support by international donor agencies.

45. The Advisory Committee notes that before the war, Roma used to live mainly in the territory of what is today the Republika Srpska. A very high number of them were expelled during the war, in particular from Prijedor, Vlasenica, Rogatica, Srebrenica, Zvornik and Bijeljina and reportedly few of them have returned there (see related comments under Article 6 below). Consequently most of the Roma today live in the territory of the Federation, with the largest concentration in the Tuzla Canton where the Cantonal authorities estimate their number to be 15,000. According to converging information from various sources including Roma representatives, Roma are marginalised, widely unemployed, often excluded from health care and social welfare and they do not enjoy basic necessary conditions of living in many of their settlements. Moreover, Roma children rarely attend school even at the primary level (see related comments under Article 12 below) and they experience various types of discrimination in access to services and public places, one recent example being in a public swimming pool in Živinice.

46. The authorities have so far not been able to secure full and effective equality between the Roma and the rest of the population. The Advisory Committee is particularly concerned about reports of the alarming situation in informal Roma settlements, where thousands of Roma, who face particularly serious difficulties, live in substandard housing conditions without basic sanitary facilities, electricity or reliable source of heating and with a lack of waste disposal services as well as insufficient access to fresh water. In many settlements, these conditions are such as to affect the overall health situation of their residents. The Advisory Committee is deeply concerned by these sub-standard living conditions and considers that these problems merit urgent attention and targeted measures by both domestic authorities as well as support by international donor agencies.

47. A particularly acute problem facing many Roma is the lack of personal documents, including birth certificates, personal identity documents, documents related to State-provided health insurance and social welfare as well as documents attesting to citizenship (see comments under Article 3 above, paragraph 24). One reason for this is the informal nature of many Roma settlements, whose residents are not legally registered at the local level and therefore blocked in practice from obtaining identity cards or refused access to social services such as health insurance or social benefits. The case of birth certificates has in particular been raised with the Advisory Committee: seemingly a number of Roma women leave hospitals after having given birth before being formally discharged as they cannot afford to pay the medical fee. As a result, these women do not acquire the necessary medical records for the purpose of registering the newborn, for whom it is then impossible to obtain a birth certificate. The Advisory Committee considers that the lack of personal documents creates a range of undue obstacles in the realisation of their basic human rights by many Roma and therefore urges the local authorities to step up their efforts to systematically register all their residents, irrespective of the legal status of the Roma settlements.

48. The Advisory Committee emphasises that Roma residing in settlements that have not been legalised are vulnerable to forced evictions without being provided alternative accommodation (see related comments under Article 6 below). It is therefore essential that the authorities address the legal status of these settlements as a matter of priority, and that no evictions involving human rights violations are carried out.

49. As a matter of principle, the Advisory Committee is deeply concerned that in Bosnia and Herzegovina, no authority seems to have perceived the scale of the problems faced by the Roma and the ensuing need to design and develop a comprehensive strategy at all levels to efficiently tackle these problems. The State Report for instance mentions only one case of discrimination in Kiseljak but fails to analyse the overall situation of exclusion faced by the Roma and the reasons behind it. The Advisory Committee was particularly struck that during discussions with both the Ministry of Health of the Federation and the Ministry of Labour and Social Welfare of the Canton of Tuzla, its interlocutors refused to admit the need for a systematic and coordinated action on behalf of Roma on the alleged ground that social action should have no link whatsoever with ethnicity.

50. Another complicating factor in this sphere is the extremely complex and heavy institutional structure of the State and especially the Federation. In this Entity, social welfare is a Cantonal power, but without all Cantons having adopted legislation thereon. The Cantons also have large competences to adopt implementing legislation on health care. The Advisory Committee has been given to understand that the current system results in significant differences between the Cantons and between the Entities and that no authority feels responsible for filling existing gaps in the social net. This situation has a negative impact on those having to deal with authorities of different levels in their daily life, in particular displaced persons such as the Roma who fled the Republika Srpska.

51. The Advisory Committee considers that the alarming situation of the Roma in Bosnia and Herzegovina necessitates, in consultation with Roma associations and other NGOs already active in this field, the development of a range of measures aimed at improving their overall socio-economic situation, notably in the field of employment, housing and health care. In this context, the Advisory Committee wishes to refer to the recently adopted Action Plan on the educational needs of Roma as a possible source of inspiration for the development of such measures, which have to be taken in close coordination with all the ministries involved (see related comments under Article 12 below). The Advisory Committee however takes the view that as long as the

competent authorities do not accept the need to take special measures for disadvantaged groups such as the Roma, no real progress can be achieved, especially as concerns health care and social welfare.

52. Bearing in mind that no general census of the population has been carried out since 1991 and that the war has provoked large movements of the population in Bosnia and Herzegovina, the Advisory Committee notes that there are wide discrepancies between the latest official statistics of the Government and the unofficial estimates of the actual number and geographical location of persons belonging to national minorities. The Advisory Committee is concerned that such discrepancies in figures, which are particularly important as concerns Roma, can hamper the ability of the State to target, implement and monitor measures to ensure the full and effective equality of persons belonging to national minorities.

53. The Advisory Committee therefore welcomes the efforts made by the Ministry of Human Rights and Refugees in 2003 to collect statistical updated information based, inter alia, on the records of social work centres and enrolment to schools through the sending of specific questionnaires to some 70 municipalities where Roma residents were registered in 1991. The Advisory Committee urges the authorities to pursue further similar data collection and expand these measures to all national minorities pending the organisation of a new census (see related comments under paragraphs 14 and 15 of the General remarks and Article 3 above), bearing in mind the principles identified in the Committee of Ministers' Recommendation No. (97) 18 concerning the protection of personal data collected and processed for statistical purposes.

In respect of Article 4

125. The Advisory Committee finds that both the institutional framework as well as judicial and non-judicial remedies to fight against discrimination have been in a flux for some time and that reforms in this sphere should extend until 2005 at least. The Advisory Committee considers that during the whole process of implementing these important institutional changes, the authorities should take particular care to ensure that effective remedies remain at the disposal of individuals claiming to be victims of discrimination.

126. The Advisory Committee finds that the rules governing the composition of some authorities at the State level is such as to legally exclude persons belonging to national minorities as well as certain persons belonging to constituent peoples from accessing these political posts. The Advisory Committee considers that such arrangements raise issues of compatibility with Article 4 of the Framework Convention. The Advisory Committee also considers that thought should be given to finding ways and means of remedying the total exclusion of persons belonging to national minorities from the above-mentioned posts, even if this cannot be achieved in the short term.

127. The Advisory Committee finds that the constitutions of both the Federation and the Republika Srpska have been amended so as to make it possible for the three constituent peoples to be represented in the Parliaments of the Entities, but that more limited progress has been made to ensure representation of national minorities through the category of "Others". The Advisory Committee however considers that this process has not been fully completed and that the remaining effects of exclusion should be reviewed, a matter which may ultimately require constitutional amendments at the Entity level.

128. The Advisory Committee finds that access to employment gives rise to discrimination in the Entities and especially in the Republika Srpska. It finds that discrimination also occurs in the return process of refugees and displaced persons particularly at the local level, both in the

Federation and in the Republika Srpska. The Advisory Committee considers that the authorities, especially at the Entity level, should tackle the widespread discrimination faced by those not belonging to the dominant constituent people more vigorously and to strengthen their action aimed at encouraging reconciliation.

129. The Advisory Committee finds that there are alarming reports on the situation of Roma living in informal Roma settlements in substandard housing conditions without basic facilities, which in some cases may affect their overall health situation. The Advisory Committee considers that these problems merit urgent attention and targeted measures by both domestic authorities as well as support by international donor agencies.

130. The Advisory Committee finds that a particularly acute problem facing many Roma is the lack of personal documents, including birth certificates, personal identity documents, documents related to State-provided health insurance and social welfare as well as documents attesting to citizenship. The Advisory Committee considers that the lack of personal documents creates a range of undue obstacles in the realisation of basic human rights by many Roma. It also considers that the local authorities should step up their efforts to systematically register all their residents, irrespective of the legal status of the Roma settlements.

131. The Advisory Committee finds that certain competent authorities fail to accept the need to take special measures for disadvantaged groups such as the Roma, especially as concerns health care and social welfare. It considers that given the scale of the problems faced by the Roma, there is a need to design and develop a comprehensive strategy at all levels to efficiently tackle their problems.

132. The Advisory Committee finds that efforts have been made by the Ministry of Human Rights and Refugees in 2003 to collect statistical updated information based inter alia on the records of social work centres and enrolment to schools through the sending of specific questionnaires to some 70 municipalities where Roma residents were registered in 1991. The Advisory Committee considers that the authorities should pursue similar data collection further and expand these measures to all national minorities pending the organisation of a new census.

CROATIA (First Opinion adopted on 06/04/2001)

Article 4

21. The Advisory Committee recognises the recent efforts to eliminate those provisions in the legislation of Croatia that have resulted in discrimination against national minorities and supports the continuation of these efforts. The Advisory Committee also emphasises that the elimination of problematic provisions in laws adopted by Parliament should be coupled with similar efforts as regards norms of lower status. For example, the Advisory Committee considers it important that, following the laudable amendments to the Law on Reconstruction adopted in June 2000, Croatia ensures that the amended provisions are fully implemented and that rules concerning the implementation of the said law do not have a discriminatory content or impact.

22. The Advisory Committee also supports the efforts to address the persisting problems that are rooted in laws that were applicable during and immediately after the conflict. In this connection, the Advisory Committee considers that the impact that the loss of occupancy rights has had on persons belonging to a national minority merits particular attention.

23. The Advisory Committee notes with satisfaction that there exist general guarantees against discrimination in the Constitutional law on human rights and the rights of national and ethnic communities or minorities, as well as in the Criminal Code of Croatia, and the Committee encourages their full implementation. However, aside from the area of employment, there appears to be no specific anti-discrimination legislation pertaining to a number of important societal settings, such as education and housing. The Advisory Committee therefore associates itself with the conclusion drawn by the European Commission against Racism (ECRI) in its first Report on Croatia, made public on 9 November 1999, that it would be desirable to develop anti-discrimination legislation to cover such fields. The Advisory Committee emphasises that such legislation should protect individuals from discrimination by both public authorities and private entities.

24. While supporting efforts to develop legislation pertaining to discrimination, the Advisory Committee is particularly concerned about problems related to the implementation of such legislation in practice and credible reports concerning de facto discrimination in particular against persons belonging to the Serb minority. Such problems appear particularly prevalent in the context of return, including in decisions related to the repossession of property, and they have a negative impact on the sustainability of return. The Advisory Committee considers that the current situation is not compatible with Article 4 of the Framework Convention. The Advisory Committee therefore supports the Government's efforts to address these issues, including its attempts to address serious problems encountered in the operations and role of the Housing Commissions, and considers that the on-going work of such bodies as the Office of Ombudsman and relevant non-governmental organisations is also instrumental in tackling discrimination in practice and therefore merits increasing support. In this connection, the Advisory Committee should like to emphasise that in addition to the Serb minority, the housing problems rooted in the conflict also cause difficulties in terms of ensuring full and effective equality for persons belonging to other minorities, including Hungarians, Ruthenians and Ukrainians.

25. The Advisory Committee believes that, although a number of central authorities have made laudable statements on the need to encourage return and to fight discrimination, the attitudes and action of some authorities, in particular but not exclusively at the local level, still reflect an approach that is not compatible with Article 4 of the Framework Convention.

26. In addition to increasing focus on housing-related issues, the Advisory Committee considers that one key to reaching full and effective equality for persons belonging to national minorities is the launching of additional positive measures in the field of employment and it supports efforts to seek financing for such measures. In this regard, the situation of persons belonging to the Serb minority merits particular attention, taking into account the past discriminatory measures, stirred by the 1991-1995 conflict, aimed at curtailing their number in various fields of employment, ranging from law-enforcement to education (see also related comments under Article 15).

27. As regards the question of citizenship, the Advisory Committee notes that, despite certain improvements in the applicable rules and practice, persons belonging to national minorities still encounter difficulties, in an inequitable manner, in their attempts to invoke the relevant norms, including when seeking a confirmation of their Croatian citizenship. In particular, the Advisory Committee believes that additional efforts should be made to ensure equal treatment of all in this sphere, including by addressing the problems of Roma and persons belonging to other national minorities resulting from the past disappearance or destruction of their identity documents.

28. The Advisory Committee finds that Croatia has not been able to secure full and effective equality between the majority population and Roma and that the situation of Roma remains difficult in such fields as employment, housing and education. It appears, however, that Roma issues have recently received increasing attention from the central authorities. The Advisory Committee finds it important that this commitment increases the vigour with which sectoral projects for Roma, such as the ones in the field of education (see also comments under Article 12), are pursued and leads to the development, in consultations with Roma, of more comprehensive programmes and strategies to address the concerns of this national minority.

29. The Advisory Committee notes that, largely as a result of massive population movements, there are wide discrepancies between the official statistics of the Government and the actual number of persons belonging to national minorities in Croatia. The Advisory Committee is concerned that such wide discrepancies in figures can seriously hamper the ability of the state to target, implement and monitor measures to ensure the full and effective equality of persons belonging to national minorities. Croatia should seek to identify ways and means of obtaining reliable data. While the results of the census of April 2001 may be of assistance in this respect, they do not necessarily satisfy the continuous need for up-to-date data, especially since the demographic picture of Croatia may be subject to considerable changes in the coming years in particular as a result of return of forced migrants and permanent settlement of refugees from other parts of ex-Yugoslavia.

In respect of Article 4

The Committee of Ministers *concludes* that recent efforts to eliminate those provisions in the legislation of Croatia that have resulted in discrimination against national minorities have not consistently led to corresponding changes in other norms and in practice and *recommends* that Croatia increase its efforts to ensure that improvements in legislation are also reflected in the norms of lower status and in practice.

The Committee of Ministers *concludes* that there is no specific anti-discrimination legislation pertaining to a number of important societal settings and *recommends* that Croatia develop its anti-discrimination legislation to cover such fields.

The Committee of Ministers *concludes* that the socio-economic differences between the majority population and Roma remain extremely high and *recommends* that Croatia design and implement further initiatives with regard to Roma, aimed at promoting full and effective equality.

The Committee of Ministers *concludes* that the wide discrepancies between existing official statistics of the Government and the actual number of persons belonging to national minorities in Croatia seriously hamper the ability of the state to target, implement and monitor measures to ensure the full and effective equality of persons belonging to national minorities. While recognising that the census of April 2001 may be of assistance in this respect, the Committee of Ministers *recommends* that Croatia also consider additional ways and means of obtaining reliable up-to-date statistical data.

The Committee of Ministers *concludes* that there are still reports about *de facto* discrimination including in the context of return and that the current situation is in this respect not compatible with Article 4 of the Framework Convention. The Committee of Ministers *recommends* that Croatia pursue its efforts to address this problem, including with regard to the repossession of property.

The Committee of Ministers *concludes* that the on-going work of such bodies as the Office of Ombudsman of Croatia and relevant non-governmental organisations is also instrumental in tackling discrimination in practice and *recommends* that increasing support be given for such work.

The Committee of Ministers *concludes* that persons belonging to national minorities still encounter difficulties in their attempts to invoke the norms related to citizenship and *recommends* that Croatia take additional efforts in this sphere.

CROATIA (Second Opinion adopted on 01/10/2004)

Article 4

Legislative developments in the field of discrimination

Findings of the first cycle

40. In its first Opinion on Croatia, the Advisory Committee called on the authorities to ensure that rules concerning implementation of legislation contain no discriminatory provisions and that efforts should be taken to develop anti-discrimination legislation to cover all relevant societal setting.

Present situation

a) Positive developments

41. Croatia has adopted improved guarantees against discrimination and intolerance through amendments to the Criminal Code, adopted in 2003 and 2004, as well through amendments to the Labour Code, adopted in 2003, prohibiting direct and indirect discrimination and it has addressed problems related to certain normative acts containing discriminatory provisions.

b) Outstanding issues

42. A lack of detailed legislation against discrimination persists in certain key fields, such as education and housing.

43. Another problem is that the authorities do not possess adequate data on the implementation of the laws pertaining to discrimination, including on the number of civil and criminal cases brought before the judiciary and information on the resulting decisions. The overall impression is however that the relevant legislation is rarely invoked in comparison to the minorities' estimates of the actual number of cases involving discrimination, notably as regards Roma and Serbs.

Recommendations

44. The authorities should develop further non discrimination legislation in key fields such as education and housing. Croatia should also introduce enhanced and inclusive methods of monitoring developments in this field.

Repossession of property

Findings of the first cycle

45. In its first Opinion, the Advisory Committee encourages the authorities to address discrimination that was particularly prevalent in the context of return of persons belonging to national minorities, including in decisions related to the repossession of property.

Present situation

a) Positive developments

46. Croatia has made significant progress in solving cases of repossession of property by the returnees belonging to national minorities and in addressing discriminatory elements that have hampered this process.

b) Outstanding issues

47. There remain substantial problems in the return process including damage and looting caused by the temporary users of the property and claims by temporary occupants for compensation for alleged improvements they have made to the property during their occupancy. Furthermore, delays in the processing of repossession cases, including by the judiciary, and in the execution of certain eviction orders, have caused significant problems in some instances.

Recommendations

48. The authorities should complete the work on the pending repossession cases in accordance with the deadlines set and ensure that the cases of looting and claims for damages are handled in a non-discriminatory manner.

Former tenancy rights holders

Findings of the first cycle

49. In its first Opinion on Croatia, the Advisory Committee urged the authorities to pay particular attention to the problems related to the former tenancy rights holders belonging to national minorities.

Present situation

a) Positive developments

50. Croatia has introduced two programmes to provide housing assistance to the former tenancy/occupancy rights holders, most of whom are Serbs. These programmes were welcomed as important elements in building conditions for sustainable return especially in urban areas.

b) Outstanding issues

51. The authorities showed limited commitment to the implementation of the above-mentioned programmes up until the launching of an information campaign in co-operation with the international community in September 2004, less than four months before the dead-line for applying for such assistance outside the areas of special state concern.

52. In addition to the issue of housing needs per se of the former occupancy/tenancy rights holders, some persons belonging to national minorities have challenged the legality of the past termination of their occupancy/tenancy rights. In one such case, the European Court of Human Rights recently concluded that there had been no violation of Article 8 of the Convention (right to respect for one's home) or of Article 1 of Protocol No. 1 (protection of property) to the Convention, but other cases involving different circumstances are still pending before domestic instances.

Recommendations

53. The authorities should give a high priority to the provision of adequate housing for former occupancy/tenancy right holders, and make sure that the application of deadlines are not unreasonable in the light of the recent launching of the information campaign on this matter.

54. As regards cases concerning the legality of the termination of occupancy/tenancy rights, particular care should be taken to ensure that each case is examined carefully and in a non-discriminatory manner by the relevant domestic instances.

Office of the Ombudsman

Findings of the first cycle

55. In its first Opinion, the Advisory Committee concluded that the work of the Office of the Ombudsman in tackling discrimination merits increasing support.

Present situation

a) Positive developments

56. Issues pertaining to national minorities continue to be an important element of the work of the Office of the Ombudsman, and the office reports that its relations with relevant governmental instances have somewhat improved.

b) Outstanding issues

57. Limited resources continue to be a problem for the Office of the Ombudsman. With funds from international sources, the Office has been able to conduct visits to certain regions where minorities reside compactly, including in the areas of special state concern, but it has no permanent presence outside Zagreb.

Recommendations

58. Bearing in mind that many key human rights problems facing national minorities often pertain to regions outside Zagreb, Croatia should enable the Office of the Ombudsman to consolidate its regional presence, for example, through regional offices.

Special measures

Findings of the first cycle

59. In its first Opinion, the Advisory Committee urged the authorities to launch additional positive measures in the field of employment with a view to ensuring full and effective equality for persons belonging to national minorities. The issue of employment was also raised in the Committee of Ministers' first Resolution on the implementation of the Framework Convention in Croatia.

Present situation

a) Outstanding issues

60. Persons belonging to national minorities continue to face serious problems in the field of employment, which is partially due to the fact that certain areas of their compact residence face particularly serious economic difficulties. The Advisory Committee has not been informed of any positive, targeted Government programmes launched to counter the impact of the past discriminatory measures that Serbs in particular experienced in various fields of employment (see also related comments under Article 15 below).

61. In a number of villages and hamlets inhabited by returning Serbs, the situation has been aggravated by the fact that the authorities have not ensured the provision of electricity and other essential infrastructure. This has made it very difficult to launch economic activities and hurt sustainable return in these areas. Therefore, the authorities' announcement, in September 2004, that a new electrification project will be launched to address this problem is to be welcomed.

Recommendations

62. Croatia should introduce special measures aimed at guaranteeing persons belonging to national minorities full and effective equality in the field of employment, and it should seek financing for such initiatives. It should also ensure that basic infrastructure is provided to communities throughout Croatia in a non-discriminatory manner.

Citizenship

Findings of the first cycle

63. In its first Opinion, the Advisory Committee urged the authorities to address the problems that persons belonging to national minorities face in their attempts to invoke citizenship legislation.

Present situation

a) Positive developments

64. There is reported progress in administrative procedures pertaining to citizenship. Also, the National Programme for the Roma makes reference to some of the problems concerning the citizenship status of Roma and envisages important measures to address them, including improved awareness-raising efforts on the applicable rules and procedures and employment of persons with Roma language skills in the relevant administrative structures.

b) Outstanding issues

65. Despite progress, the requirements under the Law on Citizenship and the application in practice continue to pose problems for persons belonging to national minorities. Many Roma in particular encounter difficulties in providing necessary documents to prove they meet the residency requirement and, due to the problem of illiteracy, especially amongst Roma women, in meeting the “proficiency in the Croatian language and Latin script” requirement under the said law. The application of the said Law’s residency and other criteria also pose problems for persons belonging to other national minorities, including Bosniacs. In this connection the Advisory Committee recalls that the Law on Citizenship contains a simplified citizenship procedure reserved for ethnic Croats only, which has been criticised, inter alia, by the UN Committee on the Elimination of Racial Discrimination.

66. Lack of confirmed citizenship makes persons concerned particularly vulnerable to discrimination and could constitute an obstacle in the realisation of their rights, including economic, social and cultural ones.

67. The implementation of the relevant parts of the National Programme for the Roma has only begun and more targeted efforts are needed to tackle some pertinent problems such as the obstacles linked to the Croatian language and Latin script proficiency requirement.

Recommendations

68. Croatia should take further measures – including training, improvements in administrative procedure as well as legislative amendments, as necessary – to ensure that a lack of confirmed citizenship does not constitute an obstacle in the enjoyment of basic rights and that the citizenship process is fully accessible to persons belonging to national minorities.

National Programme for the Roma

Findings of the first cycle

69. In its first Opinion, the Advisory Committee concluded that Croatia has not been able to secure full and effective equality between the majority population and Roma and it urged the authorities to develop more comprehensive programmes and strategies to address concerns of this national minority.

Present situation

a) Positive developments

70. Following extensive consultation with Roma and other relevant partners, the Croatian Government adopted a National Programme for the Roma in October 2003. The programme contains a range of commendable initiatives aimed at preventing ethnically motivated hostility and discrimination towards Roma, including by improving the performance of the law-enforcement bodies, and at improving the protection of Roma in education, employment, health and other key sectors where Roma face considerable problems.

71. There is a clear commitment to the implementation of the Programme in certain parts of the administration, including in the Government Office for National Minorities, and some important activities envisaged in the programme have been launched, such as training initiatives for young Roma.

b) Outstanding issues

72. The overall implementation of the programme has to date been disappointing. The programme was not given the necessary priority in the 2004 budget and in many sectors the envisaged projects have not started in line with the agreed schedule. The Commission, established in April 2004, to monitor the implementation of the programme will hopefully help to accelerate the process.

73. For many Roma, the increased commitment of the central government to Roma has not yet brought about local improvements, including in terms of their access to key public services, many of which are the responsibility of local authorities. For example, in the informal Roma settlement of Struge in the city of Zagreb, Roma families have lived since 1960s in sub-standard housing conditions, without basic sanitary facilities, heating, running water and electricity.

Recommendations

74. Stronger support, financial and other, both at the central and local level is required for the overall implementation of the National Programme for the Roma in order to achieve tangible improvements in the protection of Roma, including in terms of addressing the status of informal settlements and providing them with basic infrastructure on a non-discriminatory basis. This should be facilitated through evaluation and monitoring of the implementation of the Programme, in accordance with set targets.

CYPRUS (First Opinion adopted on 06/04/2001)

Article 4

23. The Advisory Committee notes that in Cyprus there is legislation in force prohibiting discrimination by public authorities, as well as providing for remedies in cases where individuals are discriminated against. However, the Advisory Committee notes that a comprehensive set of legal provisions outlawing such acts by private entities in societal settings, such as education and housing, still needs to be developed along with effective remedies, particularly those allowing the individual to obtain compensation for damages. It is further noted that no body exists which has the authority to address the full range of individual complaints which may arise concerning discrimination. Consideration could therefore be given to the extension of the powers of the Ombudsman, whose duties include investigating complaints lodged by individuals claiming that the authorities have violated their individual rights. A similar extension could be envisaged as concerns the National Institution for the Protection of Human Rights, whose general mandate is to keep under surveillance the respect of human rights in Cyprus.

24. The Advisory Committee is not persuaded by the governmental submission made during its visit that, as there appear to be no such cases of discrimination, a comprehensive set of legal provisions in this field would be superfluous. Although the Advisory Committee certainly shares the hope that there are no such cases, it considers that this can only be really ascertained once such legislation has been enacted and considers therefore that the Cyprus Government should review its anti-discrimination legislation in order to ensure that all acts of discrimination are

outlawed and that effective remedies are available to all persons who suffer from discrimination, both by public authorities and private entities. The Advisory Committee further considers that, as legal provisions on non-discrimination may not themselves constitute a source of unjustified distinctions, such legislation and enforcement structures and procedures should protect all persons from discrimination on such grounds as language, culture, ethnicity or religion.

25. Concerning issues of discrimination, the Advisory Committee draws attention to two issues which it considers to merit particular attention, notwithstanding their complex constitutional origin, namely the impossibility for a Greek Cypriot and a Turkish Cypriot at present to conclude a civil marriage together in Cyprus and the impossibility for Turkish Cypriots resident in Government controlled areas to cast a vote in parliamentary and presidential elections.

26. Constitutional provisions lie at the origin of both issues. As indicated above the Advisory Committee considers that there are particular reasons that may make it difficult to envisage a constitutional review at this point. However, it does take the view that these two problems could be remedied, at least in part and in a provisional or transitional way. Such measures could be considered justified because they are necessary to mitigate the result of the current legal situation which is not compatible with Article 4 paragraph 1 of the Framework Convention. In this context, the Advisory Committee has been informed that the Government is currently taking steps to remedy the situation on civil marriages through appropriate legislation.

27. As the Government recognises, there is a possibility that census data do not accurately reflect the number of persons belonging to national minorities. In fact, discrepancies in figures can hamper the ability of the state to target, implement and monitor measures to ensure the full and effective equality of persons belonging to minorities. The Advisory Committee therefore considers that the Government should seek to identify ways and means of obtaining reliable statistical data to assess the size of the national minorities. Without such data being available, it is very difficult for the Cyprus authorities to operate effectively and for the international monitoring bodies to ascertain whether Cyprus meets its obligations flowing from the Framework Convention.

28. Concerning measures taken in order to achieve full and effective equality between persons belonging to national minorities and those belonging to the majority, the Advisory Committee notes with approval the measures available in the field of education, as well as the introduction of different levels of language skill requirements for entry into the civil service for persons belonging to religious groups (see also comments under Article 15).

In respect of Article 4

The Committee of Ministers *concludes* that the existing legislation prohibiting discrimination, as well as providing for remedies, is not comprehensive. Notably, legal provisions outlawing acts of discrimination by private entities in societal settings still need to be developed, as well as effective remedies, particularly those allowing individuals to obtain compensation for damages. The Committee of Ministers *recommends* that the Cyprus Government should review its anti-discrimination legislation in order to ensure that all acts of discrimination are outlawed and that effective remedies are available to all persons who suffer from discrimination, both by public authorities and private entities in societal settings.

The Committee of Ministers *concludes* that the impossibility for a Greek Cypriot and a Turkish Cypriot to conclude a civil marriage together in Cyprus, and for Turkish Cypriots resident in Government controlled areas to cast a vote in parliamentary and presidential elections, is not compatible with Article 4 paragraph 1 of the Framework Convention. The Committee of

Ministers *recommends* that the Government remedy these two problems, at least in part and in a provisional or transitional way.

The Committee of Ministers *concludes* that, as the Government recognises, there is a possibility that census data do not accurately reflect the number of persons belonging to national minorities. The Committee of Ministers *recommends* that the Government consider ways and means of obtaining reliable statistical data to assess the size of the national minorities.

CZECH REPUBLIC (First Opinion adopted on 06/04/2001)

Article 4

24. The Advisory Committee notes that the Czech Constitution and the Charter of Fundamental Rights and Basic Freedoms prohibit any discrimination based on membership of a national minority and provide for the equality of all before the law.

25. At the same time, the Advisory Committee notes with concern, as recognized by the Government in the State Report, that there is widespread discrimination in the Czech Republic, notably against Roma and ethnic groups referred to in paragraphs 22 and 23 above. The Advisory Committee notes the existence of certain legislative provisions prohibiting discriminatory acts, for example the recently amended Employment Act. Nonetheless, it notes equally that, as mentioned in the State Report, the legislation in force does not provide for appropriate sanctions for acts of racial and ethnic discrimination committed in the education, health or prison systems and in a number of other areas and that, where such sanctions do exist, they are insufficient. For this reason, the Advisory Committee is of the opinion that the Czech Republic could consider adopting a full range of legal measures, prohibiting public authorities and private entities from committing such acts. Equally, the Advisory Committee considers that the Czech authorities should guarantee the existence of effective remedies and appropriate sanctions for such cases.

26. The Advisory Committee further considers that, as legal provisions on non-discrimination may not themselves constitute a source of unjustified distinctions, such legislation and enforcement structures and procedures should protect all persons from discrimination on the grounds of language, culture, ethnicity and religion.

27. In this context, the Advisory Committee welcomes the adoption in 1999 of the law establishing the office of Ombudsman for Human Rights, which started functioning in 2001, and hopes that this new institution will be able to make an important contribution to the effective implementation of the principles set out in the Framework Convention.

28. The Advisory Committee notes that, as recognized by the Government, there are discrepancies between the official statistics resulting from the 1991 census and the estimations on the number of persons belonging to the Roma minority. It also notes that the Czech authorities expect that the 2001 census data will not exactly reflect the number of persons belonging to national minorities. The Advisory Committee is concerned that discrepancies in figures can seriously hamper the ability of the state to target, implement and monitor measures to ensure the full and effective equality of persons belonging to national minorities. The Advisory Committee therefore suggests that, on condition that the principles identified in the Committee of Ministers' Recommendation (97) 18 to Member States concerning the protection of personal data collected and processed for statistical purposes are respected, the Government try to identify further ways and means of obtaining reliable statistical data. Without such data it is very difficult for the Czech

authorities to operate effectively and for the international monitoring bodies to ascertain whether the Czech Republic meets its obligations flowing from the Framework Convention.

29. The Advisory Committee notes with deep concern that many Roma in the Czech Republic face considerable socio-economic difficulties in comparison to both the majority and other minorities, in particular in the fields of education, employment and housing. This is recognized by the Czech Government. The situation calls for the preparation and implementation of specific measures to realise full and effective equality between Roma and persons belonging to the majority as well as to other minorities.

30. The Advisory Committee therefore welcomes the decision of the Czech authorities to adopt the “Concept of the Government policy towards the members of the Roma community, supporting their integration into society” (Resolution of the Government of the Czech Republic No. 599 of 14 June 2000). It also welcomes the fact that the Government has already launched a strategic action plan for the period 2001-2020, in order to implement the above-mentioned policy. The Advisory Committee is of the opinion that greater participation of Roma women should be ensured in that process.

31. The Advisory Committee also welcomes the recent amendments to the legislation on citizenship, which contributed to the elimination of difficulties, resulting from the previous legislation, faced by many Roma in their efforts to obtain Czech citizenship. The Advisory Committee encourages the Government to take all necessary measures to ensure the effective implementation of this amended legislation.

In respect of Article 4

The Committee of Ministers concludes that the socio-economic inequalities between the majority and Roma remain considerable in the fields of education, employment, housing, and recommends that the Czech Republic give this matter sufficient attention and grant the resources needed for the implementation of the most recent initiatives to promote full and effective equality, such as the governmental policy on members of the Roma community, which is designed to ensure better integration in society of members of this national minority, as set out in Government Resolution No. 599 of 14 June 2000. The Committee of Ministers also recommends that particular attention be paid to Roma women's participation in this process.

The Committee of Ministers concludes that, despite the existence of constitutional guarantees against discriminatory acts, widespread discrimination continues to exist in the Czech Republic, particularly with regard to Roma. The Committee of Ministers recommends that a full range of legal measures be adopted, prohibiting public authorities and private entities from committing such acts. Equally, it recommends that the Czech authorities guarantee the existence of effective remedies and appropriate sanctions for such incidents.

The Committee of Ministers concludes that uncertainty exists as to the reliability of the census results with regard to the number of persons belonging to national minorities. Given that this can seriously hamper the ability of the State to target, implement and monitor measures to ensure the full and effective equality of persons belonging to national minorities, the Committee of Ministers recommends that the Government try to identify further ways and means of obtaining reliable statistical data, while respecting the principles identified in the Committee of Ministers' Recommendation (97) 18 to Member States concerning the protection of personal data collected and processed for statistical purposes.

CZECH REPUBLIC (Second Opinion adopted on 0/04/2005)

Article 4

Legal and institutional protection against discrimination

Findings of the first cycle

38. In its first Opinion on the Czech Republic, the Advisory Committee found that there were certain shortcomings in legal and institutional protection against discrimination, and called for firm action to correct them.

a) Positive developments

39. The Advisory Committee welcomes the fact that amendments have been adopted to several legislative acts in order to improve protection against discrimination in relevant sectors, such as civil procedure, administrative procedure and labour law. Moreover, although after a considerable delay, legal protection against discrimination is now being strengthened by an important normative text, since the bill on equal treatment and protection against discrimination was approved by the Government at the end of 2004. This text aims to transpose the EU Directive No. 2000/43/EC on implementing the principle of equal treatment between persons irrespective of racial or ethnic origin into domestic law. It will combine and consolidate, within a single document, the legal means of protection against all forms of discrimination in many areas of life. It also improves institutional protection by providing for the setting-up of an Equal Treatment Centre - a specialised body dealing with questions of equal treatment and discrimination.

40. The Advisory Committee also wishes to pay tribute to the work of the Ombudsman, which particularly benefits persons belonging to national minorities (see, in this connection, the comments contained in paragraph 60 below). It notes that the Ombudsman's Office, reportedly one of the most respected of the Czech institutions, will continue, as far as its remit allows, dealing with equal treatment issues.

41. The Advisory Committee notes with satisfaction that, generally speaking, minority representatives consider that they enjoy equal treatment in all areas of life, and report that there is no particular problem of discrimination.

b) Outstanding issues

42. The Advisory Committee wishes to draw attention to significant discrepancies between official census figures and non-governmental estimates, which suggest that the real numerical size of national minorities is considerably under-estimated. The Advisory Committee finds the lack of reliable figures particularly disturbing in view of the fact that numerical thresholds, based on minorities' share in the population, are one of the criteria which determine application of certain important measures in such fields as education, use of minority languages for certain official purposes, and participation in public affairs.

43. It is also difficult to assess the extent to which full and effective equality exists between persons belonging to national minorities and the majority in the absence of figures - broken down by age, sex and geographical distribution - on the real situation of these persons in various areas, for example, education, employment and housing. This is particularly important for the Roma, when measures to improve their living conditions and integration into the society, are being

planned, implemented and monitored (see the comments on Articles 3, 5, 10, 11, 12, 14 and 15 below).

44. The Advisory Committee also notes that, apart from the difficulties faced by the Roma in various fields, limited information is available on instances of ethnic discrimination, investigative action and the number of cases where victims have been properly compensated (see also comments on Article 6 below).

Recommendations

45. The authorities are encouraged to make every effort to accelerate the adoption and entry into force of the new anti-discrimination legislation, and use all available means, including information and awareness-raising campaigns, to ensure its effective implementation. In particular, they should ensure that the Equal Treatment Centre is established without delay, and give it all the resources needed to fulfil its mission properly.

46. Similarly, more support should be provided for the Ombudsman, and the institutions to which its recommendations apply should be more responsive to them.

47. The authorities are also expected to take further action to collect data on the situation of minorities in the various sectors, including the frequency of cases of discrimination, investigative measures and action taken on the latter.

Application of the principles of equal treatment and non-discrimination with respect to the Roma

Findings of the first cycle

48. In its first Opinion on the Czech Republic, the Advisory Committee found that there were considerable socio-economic inequalities between Roma and the rest of the population, and called for more resolute action to remove them. It noted that discrimination was still frequent against Roma, and recommended that the authorities pay special attention to solving this problem, including by providing a suitable legislative basis and effective remedies.

Present situation

a) Positive developments

49. The Advisory Committee welcomes the fact that Czech society, including state authorities, is increasingly becoming aware of problems faced by Roma when it comes to equal treatment and non discrimination. For instance, Czech courts have, in recent years, given a certain number of decisions recognising that Roma have suffered discrimination in specific sectors, such as housing, employment and access to public places.

b) Outstanding issues

50. The Advisory Committee takes note with concern of the serious problems which Roma still face in most areas of life, and of the social exclusion and marginalisation which they continue to face. Although many measures have been taken under the Government's Roma integration policy, their situation, in terms of equality and discrimination, remains a major

challenge. In most sectors there are considerable disparities between Roma and the majority population, as well as other national minorities.

51. While being aware of the fact that available data may be fragmentary, the Advisory Committee underlines that unemployment figures for Roma are particularly high, with estimates ranging from over 50% to 70%, and even 90% in certain cases. The Advisory Committee finds it disturbing that, although the Czech legislation provides protection against discrimination in this sector, many Roma still encounter discriminatory practices in the labour market and the Government's employment policies have had no real impact on their situation.

52. Roma report that they have serious problems in the housing field. Their situation in this area has not only failed to improve, but actually shows a dangerous tendency to become even worse. The authorities are aware of the gravity of this situation. They admit that, until the new anti-discrimination legislation is passed, and in the absence of any other text offering specific protection in this area, Roma are particularly vulnerable in the housing sector. A shortage of subsidised housing, restrictive conditions on access to such housing, and their own social and economic insecurity, leave Roma open to discriminatory attitudes and treatment. The most serious issue in this respect is the persistence of such discriminatory practices on the part of certain local authorities. Instead of seeking lasting solutions to the housing problems of Roma, these authorities often take measures (including numerous cases of eviction) which simply perpetuate their segregation, marginalisation and distress.

53. Roma have equally serious problems in other areas, such as access to public services, health or protection of their rights by the courts. There are many reports of continuing discrimination in these areas, and of intolerance and hostility towards Roma (see also the comments under Article 6 below).

54. The Advisory Committee notes with concern that such practices and attitudes are still being reported in education, another sector where the Roma have special problems, in spite of the authorities' efforts in the last few years to improve their situation. One of the main problems noted is related to undue placement of Roma children in "special" schools (for details, see comments under Article 12 below).

55. The situation of Roma in the health field is no less disturbing. Here again, it appears that they do not always receive equal treatment from the medical or administrative staff concerned, and that their general health situation is still markedly worse than that of the rest of the population. The recent initiative of employing Roma assistants within the health system to facilitate communication and an approach more suited to their specific situation, is to be welcomed (see also the comments in paragraph 60 below).

Recommendations

56. The authorities are strongly encouraged to pay particular attention to the initiative - recently launched and apparently well received by civil society - for the setting-up of a special agency to combat social exclusion.

57. The authorities should also pursue and expand the sectoral measures aiming to improve the situation of Roma, while ensuring that these measures respond to the real needs of Roma and are adequately funded. As a matter of urgency, more resolute action should be taken in the housing field. At the same time, care should be taken to ensure that this action does not help to perpetuate segregation of Roma. In employment, special attention should be paid to Roma youth as well as to Roma women, who often suffer discrimination on both counts.

58. Roma themselves should also be consulted and involved more systematically in projects and programmes designed for them, and there should also be more effective partnership with NGOs in this area.

59. The authorities should look into the causes of inadequate implementation of the Government policy for the Roma integration at local level. With due respect to the principles of local self-government, they should verify whether legislative or other measures are needed to define more exactly the role and responsibilities of local authorities in areas affecting national minorities, and to make their action in this field more effective.

Allegations concerning the sterilisation of Roma women without their prior free and informed consent

60. The Advisory Committee is deeply concerned at recent allegations, from non-governmental sources, of cases of sterilisation of Roma women without prior free and informed consent. It notes that, in response to the criticisms voiced in this context both nationally and internationally, the Ombudsman decided, in the second half of 2004, to investigate those allegations, and brought the matter to the attention of the relevant state authorities. It is important that the authorities have decided, although after delays, to set up a special commission of enquiry within the Ministry of Health. The Advisory Committee also notes that, encouraged by public discussion on these claims, and with the support of various human rights organisations, 61 persons have decided, according to recent non governmental information, to lodge a formal complaint with the Ombudsman.

Recommendations

61. The Advisory Committee urges the authorities to ensure that investigation of these allegations is conducted in optimum conditions of transparency, independence and impartiality by the special commission of enquiry established by the Ministry of Health. It is essential that undue delays in publication of the findings be avoided, and that any cases where persons or authorities appear to have committed the acts complained of, be pursued vigorously by law enforcement authorities.

62. The authorities should also ensure that the existing legal regulations are fully respected, and that more comprehensive regulations are adopted, in compliance with relevant international standards, in order to define prior free and informed consent with sufficient clarity. Competent bodies are encouraged to ensure that concerned doctors respect the relevant principles of professional ethics.

DENMARK (First Opinion adopted on 22/09/2000)

Article 4

25. The Advisory Committee considers that, as provisions on non-discrimination may not themselves constitute a source of unjustified distinctions, such legislation and enforcement structures and procedures should protect all persons from discrimination on the grounds of language, culture, ethnicity and religion. Whereas many legal provisions prohibiting such acts are in force, it seems that effective remedies are not always available. Despite the existence of useful institutions such as the Ombudsman and the Board for Ethnic Equality, it is noted that these bodies do not have the competence to address the full range of individual complaints which may

arise about discrimination. The Advisory Committee considers that the Danish Government should examine its legislation in order to ensure that effective remedies are available to all persons who suffer from discrimination, both by public authorities and private entities.

In respect of Article 4

The Committee of Ministers concludes that, despite the existence of useful institutions such as the Ombudsman and the Board for Ethnic Equality, these bodies do not have the competence to address the full range of individual complaints which may arise about discrimination. The Committee of Ministers recommends that Denmark examine its legislation in order to ensure that effective remedies are available to all persons who suffer from discrimination, both by public authorities and private entities.

DENMARK (Second Opinion adopted on 09/12/2004)

Article 4

Anti-discrimination legislation

Findings of the first cycle

63. The Advisory Committee in the first monitoring cycle considered that the Danish Government should examine its legislation in order to ensure that effective remedies are available to all persons who suffer from discrimination, both by public authorities and private entities.

Present situation

Positive developments

64. The Advisory Committee welcomes that as part of the transposition into Danish law of Council Directive (2000/43/EC) on implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, that new legislation has been introduced to provide additional safeguards against discrimination on the grounds of race or ethnic origin.

65. The Act on Ethnic Equal Treatment (Act No. 374 of 28 May 2003) forbids discrimination on the grounds of race or ethnic origin in a number of societal settings. The act also forbids reprisals as a result of complaints against discrimination.

66. The act applies to all public and private enterprises and, inter alia, activities concerning social protection, including social insurance and healthcare, social benefits, education and access to and supply of goods and services, including homes. The act also applies to membership of and participation in certain organisations. It contains provisions concerning the sharing of the burden of proof in cases concerning discrimination and the right to compensation for non-financial losses. The act also strengthens the role of the Institute for Human Rights in terms of its powers to process specific complaints and express opinions on the complaints concerning discriminatory treatment under the Act (see also below, The Danish Institute for Human Rights).

Recommendations

67. The Advisory Committee recognises that it is too early to analyse the operation and functioning of this new legislation. It does, however, encourage the authorities to keep a dialogue open with the persons and groups most concerned by the legislation as part of a process of

onward going evaluation of the effectiveness of the anti-discrimination legislation and its contribution towards encouraging a spirit of tolerance and intercultural dialogue in Denmark (see also under Article 6 below).

The Danish Institute for Human Rights

Present situation

a) Positive developments

68. The Advisory Committee welcomes the passing of the Act on the Establishment of the Danish Centre for International Studies and Human Rights (Act No. 411 of 6 June 2002) which establishes within this Centre, the Danish Institute for Human Rights. The Danish Institute for Human Rights has an important role to play in terms of promoting equal treatment of all people regardless of race or ethnic origin. It provides assistance in handling complaints of victims of discrimination, launches independent inquiries into discrimination and publishes reports and submits recommendations in matters regarding discrimination.

69. As has been noted (see above, Anti-discrimination legislation), the Act on Ethnic Equal Treatment has given the Danish Institute for Human Rights additional responsibilities in terms of processing complaints concerning discriminatory treatment and providing opinions on whether there have been contraventions of the prohibition against discrimination and the prohibition against reprisals.

b) Outstanding issues

70. The Danish Institute for Human Rights has a wide range of duties, which will undoubtedly increase in importance, in particular with regard to the individual complaints procedure. The Institute will need additional resources to cope with the growing demands placed on it in this respect. It will also need to ensure that there is no duplication and overlap with the Danish Ombudsman in the individual cases examined by the Ombudsman's Office.

71. The Advisory Committee notes that the Complaints Committee lacks the power to enforce disclosure of material information on a case, and that the Complaints Committee can not address direct discrimination on the grounds of religion unless it can be perceived as indirect discrimination on the grounds of race or ethnic origin. The Advisory Committee is aware that there have been calls to remedy these two perceived weaknesses in the functioning of the Complaints Committee.

72. The Advisory Committee considers that within the Danish Institute for Human Rights, the National Department can play an important role in helping to implement the spirit of the Framework Convention in Denmark, in particular for persons belonging to ethnic or religious groups that would like the protection offered by the Convention.

Recommendations

73. The Advisory Committee considers that the Government should keep under review the financial needs of the Danish Institute in view of its important and developing tasks and examine the calls for the Complaints Committee to have the power to enforce disclosure and the competence to look at issues of discrimination on the grounds of religion.

ESTONIA (First Opinion adopted on 14/09/2001)

Article 4

21. The Advisory Committee notes with satisfaction that there exists a general prohibition of discrimination in the Constitution as well as in the Criminal Code of Estonia and encourages the full implementation of these norms. However, aside from the field of employment, there appears to be no specific anti-discrimination legislation pertaining to a number of important societal settings, such as education and housing. The Advisory Committee considers it desirable to develop and implement anti-discrimination legislation to cover such fields. The Advisory Committee emphasises that such legislation should protect individuals from discrimination by both public authorities and private entities.

22. The Advisory Committee notes that only a limited number of cases concerning alleged discrimination of persons belonging to national minorities have been brought to the attention of law-enforcement bodies. At the same time, the work of other bodies - including non-governmental organisations as well as the Legal Chancellor (Õiguskantsler) - to combat discrimination also has an important role to play and merits increasing support. In this respect, the Advisory Committee notes with satisfaction that the Legal Chancellor opened an office in Ida-Virumaa, - a county with a large number of residents belonging to national minorities.

23. While recognising that the above-mentioned limited number of alleged cases of discrimination is a positive sign, the Advisory Committee notes that many of the concerns raised in the context of other articles in the present opinion, including language issues under Articles 11 and 15, also relate to the implementation of Article 4 of the Framework Convention.

24. With respect to the promotion of full and effective equality, the Advisory Committee notes that persons belonging to national minorities appear to have been particularly affected by unemployment (see also comments under Article 15).

25. With regard to the immigration quota established by Estonia, the Advisory Committee notes that immigration policy may have an impact on the implementation of Article 4 with respect to persons belonging to national minorities in Estonia. In this respect, the Advisory Committee finds it essential that the said quota is implemented without undue restrictions to family reunification and that the decision adopted by the Supreme Court on 18 May 2000, which emphasises this issue, is fully reflected in the on-going process of legislative reform.

26. The Advisory Committee considers that lack of citizenship often has a detrimental impact on the enjoyment of full and effective equality and can give rise to discriminatory practices. The Advisory Committee therefore notes with regret the relatively slow rate of naturalisation continued in early 2001 and the fact that the number of stateless persons remains high (the results of the 2000 census suggest that 178 000 registered residents of Estonia are stateless). Despite certain improvements in the norms stipulating naturalisation requirements, the language requirements reportedly still constitute a real obstacle for a large number of non-citizens. It is to be hoped that the newly created integrated system of language testing will be implemented in a manner that makes naturalisation more accessible. In this context, it is also essential that the Government continues to pay increasing attention to the availability and affordability of language training.

In respect of Article 4

The Committee of Ministers concludes that there is no specific anti-discrimination legislation pertaining to a number of important societal settings and recommends that Estonia develop its anti-discrimination legislation to cover such fields.

The Committee of Ministers concludes that the on-going work of such bodies as the relevant non-governmental organisations and the Office of the Legal Chancellor is instrumental in tackling discrimination in practice and recommends that increasing support be given for such work.

The Committee of Ministers concludes that the immigration quota established by Estonia may have an impact on the implementation of Article 4 of the Framework Convention and recommends that Estonia ensure that neither legislation nor practice related to the said quota entail any undue restrictions to family reunification.

The Committee of Ministers concludes that the number of stateless persons remains high and that the language requirements reportedly constitute an obstacle for a large number persons belonging to national minorities in the naturalisation process. The Committee of Ministers recommends that Estonia pursues efforts to make naturalisation more accessible.

ESTONIA (Second Opinion adopted on 24/02/2005)

Article 4

Legislative developments in the field of discrimination

Findings of the first cycle

32. In its first Opinion on Estonia, the Advisory Committee called on the authorities to develop and implement anti-discrimination legislation to cover various societal settings.

Present situation

a) Positive developments

33. Estonia has improved guarantees against discrimination, including through amendments to Article 10 of the Employment Contracts Act, which entered into force in 2004. Estonia has declared its intention to develop further its normative framework pertaining to discrimination, and a draft law on Equality and Equal Treatment has been proposed. (For more information on challenges that persons belonging to national minorities, notably young women, face in the labour market, see comments under Article 15 below.).

34. According to amendments to the Legal Chancellor Act, which entered into force in January 2004, everyone has the right of recourse to the Chancellor of Justice to conduct a conciliation procedure if he or she finds that a natural person or a legal person in private law has discriminated against him or her, inter alia, on the basis of language or ethnic origin. While the effectiveness of the new procedure is partly linked to the pending adoption of the new legislation on Equality and Equal Treatment, this procedure could provide an important recourse for persons belonging to national minorities and complement the Legal Chancellor's important on-going work in this domain.

35. The adoption of the State Legal Aid Act, which enters into force on 1 March 2005, was another important step of particular importance to persons belonging to national minorities, who often, notably for language reasons, encounter specific challenges in their access to legal documentation and procedures.

b) Outstanding issues

36. The adoption of the law on Equality and Equal Treatment has been delayed. As a result, the existing legal guarantees against discrimination still contain shortcomings and the full potential of the above-mentioned new conciliatory procedure is not being put to use.

37. The drafts of the above-mentioned equality legislation do not explicitly include citizenship as a prohibited ground of discrimination. The same is true as regards the right of recourse to the Legal Chancellor to conduct a conciliation procedure on the cases of alleged discrimination. The Advisory Committee recalls that in the Estonian context, where many residents are without the Estonian citizenship, legal safeguards against discrimination on the basis of citizenship – which do not exclude differential treatment with objective and reasonable justifications – would be of direct relevance to a large segment of society.

38. It is also to be noted that the above-mentioned Article 10 of the Employment Contracts Act stipulates in its paragraph 2 that it is not contrary to the said article to “require language skills necessary for the work and pay compensation for proficiency in languages”. It is important that this provision, which in itself pursues a legitimate aim, is not interpreted too broadly and/or in a manner that leads to undue obstacles for persons belonging to national minorities in their access to employment.

Recommendations

39. The authorities and the legislature should expedite the passage of new non discrimination legislation, ensuring also that adequate legal safeguards and procedures are in place in respect of discrimination on the basis of citizenship.

40. The authorities should carefully monitor the implementation of Article 10, paragraph 2 of the Employment Contracts Act so as to ensure that it does not lead to undue obstacles for persons belonging to national minorities in their access to employment.

Aliens Act

Findings of the first cycle

41. In its first Opinion, the Advisory Committee urged the authorities to ensure that the immigration quota is implemented without undue restriction on family reunifications.

Present situation

a) Positive developments

42. The Advisory Committee welcomes the amendments introduced to the Aliens Act in June 2002, which addressed the concerns expressed by the Advisory Committee regarding family reunification by exempting from the immigration quota inter alia the spouses of Estonian citizens or of aliens who reside in Estonia on the basis of residence permits.

b) Outstanding issues

43. The legal and political debates have continued over the issue of residence permits of former military officers and their spouses and minor children, including in the light of the amendments to the Aliens Act, which entered into force in January 2004, excluding explicitly the issuance of permanent residence permits to them.

Recommendations

44. The authorities should continue their efforts to ensure that in the decision-making pertaining to temporary and permanent residency permits due attention is paid to the rights of the persons concerned, including their right to respect for private life and home.

Naturalisation process

Findings of the first cycle

45. In its first Opinion, the Advisory Committee regretted the relatively slow rate of naturalisation and called for additional measures to make naturalisation more accessible. In this connection, it also encouraged the authorities to pay increasing attention to availability and affordability of language training. Similarly, the Committee of Ministers underlined in its Resolution the need to promote the process of naturalisation.

Present situation

a) Positive developments

46. Estonia has introduced certain positive measures facilitating the naturalisation process. It has, inter alia, streamlined the administrative process between the registration of a citizenship application and the resulting decision and taken some steps to make the process of acquisition of citizenship more accessible to school children and to raise awareness of the importance of citizenship. In addition, prompted by a decision of the Supreme Court, further exemptions were introduced in 2004 for disabled persons from tests under the Citizenship Act.

47. These and other efforts to encourage naturalisation, coupled with the accession of Estonia to the European Union in May 2004, seem to have yielded certain results, and a clear increase in the rate of naturalisation was reported in 2004.

b) Outstanding issues

48. In spite of the recent increase, the number of persons without citizenship residing in Estonia remains disconcertingly high (on 31 December 2004, there were 150 536 persons without citizenship registered in Estonia). It is recognised that some of these persons lack motivation to seek citizenship. At the same time, studies suggest that many persons have opted not to seek citizenship because they consider the related tests too difficult and/or challenging their self-esteem. Despite the above-mentioned improvements affecting certain categories of potential applicants, the basic rules governing language tests under the Citizenship Act remain unchanged, and they constitute a real obstacle to the naturalisation of many persons, notably for the elderly, of whom those born before 1930 have been exempted from the written but not from the oral language exams. It is therefore encouraging that the authorities are currently considering

proposals to exempt the elderly altogether from the language examination under the Citizenship Act. The Council of Europe's Commissioner for Human Rights has also made valuable recommendations to make the naturalisation process more accessible.

49. As regards affordability of language training, an amendment to the Citizenship Act, which entered into force in January 2004, introduced the possibility for full compensation for language training expenses. While this is in itself a positive development, the law envisages compensation only for those who subsequently pass their examinations on language and on the knowledge of the Constitution under the Citizenship Act. Proposals to expand the compensation scheme further were rejected in Parliament in October 2004. Aside from individual projects, often funded from foreign sources, there appears not to be enough systematic free-of-charge language training available for adults belonging to national minorities, despite the fact that improved Estonian language proficiency amongst national minorities is a central factor not only in terms of their access to citizenship but also for their employment opportunities and for the Government's integration efforts in general.

Recommendations

50. Estonia should continue to take steps to make naturalisation more accessible, including by pursuing the proposals to exempt the elderly applicants from language requirements under the Citizenship Act.

51. Estonia should introduce more free-of-charge Estonian language training opportunities for those persons with limited financial means who intend to take the citizenship exam or seek to improve their proficiency in the state language for other purposes that contribute to integration.

Social marginalisation and its effects

Current situation

52. Persons belonging to national minorities are affected by a number of problems linked to social marginalisation. In addition to being disproportionately affected by unemployment (see also comments on this issue under Article 15 below), persons belonging to socially vulnerable groups amongst national minorities face such problems as homelessness and drug abuse.

53. Of particular concern is the alarmingly high rate of HIV/AIDS amongst persons belonging to national minorities. It is to be welcomed that the authorities have increased their efforts in terms of prevention and treatment of HIV/AIDS, and there seems to be a consensus on the urgency of the matter.

54. The proportion of persons belonging to national minorities in prisons is disconcertingly high in Estonia, although the Government does not have reliable data on this issue.

Recommendations

55. It is essential that the authorities design and implement special programmes to tackle social marginalisation and its effects that are felt particularly amongst national minorities. The Government should maintain the prevention and treatment of HIV/AIDS as a high priority and ensure that related services and documentation are fully accessible to persons belonging to national minorities, including in the Russian language.

56. There is a need to obtain more data and to analyse further reasons for the high incarceration rate of persons belonging to national minorities and to examine in this connection how Article 4 and other principles of the Framework Convention are reflected in various stages of law-enforcement (see also related comments on data protection under Article 3 and on the language proficiency requirements of prison staff under Article 15).

FINLAND (First Opinion adopted on 22/09/2000)

Article 4

19. While recognising the existence of adequate legislative guarantees against discrimination by both public authorities and private entities, the Advisory Committee is concerned about problems related to their implementation in practice and the continuing reports concerning de facto discrimination (see also the comments under Article 6).

20. Despite special measures to promote equality, the Advisory Committee notes that, as is recognised in the Report, the socio-economic differences between the majority population and the Roma remain considerable (see also comments under Article 15). Surveys conducted in this field suggest, inter alia, that the unemployment rate amongst the Roma is considerably higher than the average rate in the country, and their housing situation remains far from satisfactory. In addition to supporting additional special measures in these specific fields, the Advisory Committee is convinced that improvements in the sphere of education - addressed elsewhere in this opinion - may yield positive results also in the field of employment and housing. Finally, the Advisory Committee underlines that, when implementing special measures, particular attention should be paid to the situation of Roma women.

GERMANY (First Opinion adopted on 01/03/2002)

Article 4

22. The Advisory Committee notes that the principles of equality and non-discrimination are guaranteed in all the Länder through Article 3 of the Basic Law, which stipulates in particular that nobody should be discriminated against or privileged because of their gender, descent, race, language, national or social origin or religious or political beliefs. In certain Länder, additional constitutional provisions have been included to strengthen the prohibition of discrimination. Furthermore, the German Criminal Code contains numerous provisions penalising incitement to racial hatred or xenophobia, insults to religious convictions or the dissemination of propaganda by unconstitutional organisations. The principle of non-discrimination is also contained in different laws and regulations dealing with specific aspects of civil and administrative law; however, as ECRI points out in its second report on Germany, there is a lack of legislative provisions at the Federal level against racial discrimination in key areas of public life, such as housing, education, health, employment and the provision of goods and services.⁶ In this respect the Advisory Committee welcomes the fact that the German authorities stated in their reply to its questionnaire that transposing the European Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin was one of their preoccupations and that comprehensive national anti-discrimination legislation, covering the civil and labour law fields in particular, was already on the drawing board. The Advisory Committee hopes that this work will be successfully completed in the near future. It also hopes that it will open up a wide public debate on combating all forms of discrimination, by public authorities or private entities and lead to the adoption of further measures to fight discrimination (see related comments under Article 6).

23. The Advisory Committee notes that in Germany official statistical data on the ethnic and linguistic breakdown of the population have not been collected since the second world war. It notes that there is a broad consensus in the country against the keeping of ethnic data. This is the result of the misuse of ethnic data during the Nazi period that facilitated the Holocaust. When it comes to estimating the number of members of a national minority the German authorities can base their estimations on various factors, such as the number of persons who are members of organisations representing minorities, or the number of pupils attending schools for minorities. In the absence of reliable statistics on national minorities and in spite of the fact that the figures used by the Government are not particularly challenged by the national minorities themselves, it can sometimes be difficult for the German authorities to monitor and take effective measures and for international monitoring bodies to ensure that Germany is honouring its commitments under the Framework Convention. The Advisory Committee therefore considers that the Government should seek means of obtaining more reliable statistics on national minorities⁷. If, in view of the historical context and the particularly sensitive nature of this information for persons belonging to national minorities, exhaustive statistical data pertaining to national minorities cannot be collected, other methods should be used, with the co-operation of the national minorities, such as estimates based on ad hoc studies, special surveys, polls or any other scientifically sound method (see also comments under Article 15). This data should be broken down by age, gender and location.

24. The lack of good statistical data makes it difficult for the German authorities to ensure that the full and effective equality of national minorities is promoted effectively. One example is where the German authorities state that they have no statistical data enabling them to evaluate the unemployment rate for each national minority or more elaborately broken down by age, gender, or geographical differentials. The authorities assume that, in principle, membership of a national minority has no impact on a person's economic, social or cultural status. The Advisory Committee notes, however, that evidence presented to it indicates that members of the Roma/Sinti minority, in particular, find it significantly more difficult than the rest of the population to find work. In view of the preceding paragraph, the Advisory Committee considers that the German authorities should seek better to evaluate the socio-economic situation of persons belonging to this minority and, as appropriate, undertake measures in their favour to promote full and effective equality in the socio-economic field.

In respect of Article 4

75. The Advisory Committee finds that the lack of good statistical data makes it difficult for the German authorities to ensure that the full and effective equality of national minorities is promoted effectively, including as concerns the situation of the Roma/Sinti on the labour market. It considers that the authorities should seek means of obtaining more reliable statistical data on persons belonging to national minorities broken down by age, gender and location and in particular seek better to evaluate the socio-economic situation of the Roma/Sinti and, as appropriate, undertake measures in their favour to promote full and effective equality in the socio-economic field.

HUNGARY (First Opinion adopted on 22/09/2000)

Article 4

15. In respect of the implementation of Article 4 paragraph 1 of the Framework Convention, the Advisory Committee notes that the discrimination based on belonging to a national minority is prohibited by the Constitution (Article 70 A – which is interpreted in a broad sense by the Constitutional Court as covering any distinction which effectively denies the right to human dignity) and in the Law on the Rights of National and Ethnic Minorities (Article 3). Article 57(1) of the Constitution guarantees equality before the law for everyone. In addition to these norms there are other statutory provisions and Government decrees pertinent to the subject of non-discrimination. Nonetheless, the legal standards for ensuring equality before the law and the equal protection of the law (protection against discrimination) are not fully in place. Notably effective remedies against acts of discrimination by public authorities and private entities in a number of societal settings, such as education, job-advertisements and housing still need to be developed. Furthermore, the effect of existing provisions and their application by state agencies pose difficulties in practice. Attention to these shortcomings has been drawn at the domestic level, notably by the Parliamentary Commissioner for National and Ethnic Minorities and at the international level by the European Commission against Racism and Intolerance (ECRI).

16. The Advisory Committee therefore considers that the Hungarian authorities should carry out a full review of both the legal situation and of the effectiveness of enforcement procedures and, on that basis, adopt the necessary legislation and introduce, strengthen and/or re-define enforcement institutions and procedures. The Advisory Committee considers that, as provisions on the elimination of discrimination may not themselves constitute a source of unjustified distinctions, such legislation and enforcement institutions and procedures should protect all persons from discrimination on the grounds of language, culture, ethnicity and religion.

17. Before turning to some more specific issues in respect of paragraphs 2 and 3, the Advisory Committee wishes to draw attention to a matter of general importance on the policy of Hungary concerning the protection of national minorities. The Report makes clear that wide discrepancies exist between the statistics of the Government and the estimates of national minorities about the numbers of persons belonging to national minorities in Hungary. In some cases these differences are as high as factor one to ten. The Advisory Committee is concerned that such wide discrepancies in figures can seriously hamper the ability of the state to target, implement and monitor measures to ensure the full and effective equality of persons belonging to national minorities. The Advisory Committee notes that there is a broad consensus in Hungary against the registration of data on ethnicity and nationality linked to individual persons. Nonetheless, it does consider that the Government should seek to identify ways and means of obtaining reliable statistical data. Without such data being available it is very difficult for the Hungarian authorities to operate effectively and for the international monitoring bodies to ascertain whether Hungary meets its obligations flowing from the Framework Convention.

18. As a further general observation concerning the realisation of full and effective equality between persons belonging to a national minority and those belonging to the majority, the Advisory Committee notes with concern, that, as the Government openly recognises, the Roma/Gypsies in Hungary face a broad range of serious problems to a disproportionate degree, be it in comparison to the majority or in comparison to other minorities. This state of affairs certainly justifies that specific measures be designed and implemented to tackle these problems.

19. The Advisory Committee therefore welcomes the decision of the Hungarian authorities to develop medium and long-term plans of action towards improving the living conditions of the Roma/Gypsy minority. The Advisory Committee welcomes the determination of the Government to resolve the problems of the Roma/Gypsy minority and considers that this gives rise to high expectations. The Advisory Committee stresses that the commitment to long term approaches should not lead to a delay in achieving improvements that can be secured in a short or medium term. Furthermore, a long-term approach requires that a consistent and sustained policy is designed, implemented and evaluated throughout this period and that appropriate resources are made available and maintained, even where there may be setbacks and disappointments. In the view of the Advisory Committee the Hungarian Government is to be commended and to be taken seriously for its initiative and its intentions. It is only consistent with this view that the future results of Hungary are to be evaluated in the light of the standards it has committed itself to. Finally, the Advisory Committee underlines that, when implementing special measures, particular attention should be paid to the situation of Romany women.

20. Below the Advisory Committee will, where appropriate, return to the particular problems of the Roma/Gypsy minority issue in more detail.

In respect of Article 4

The Committee of Ministers concludes that the legal standards for ensuring equality before the law and the equal protection of the law (protection from discrimination) is not fully in place. Notably, effective remedies against acts of discrimination by public authorities and private entities in a number of societal settings, such as education, job-advertisements and housing, still need to be developed. Furthermore, the operation of existing provisions and their enforcement by state agencies pose difficulties in practice. The Committee of Ministers recommends that the Hungarian authorities carry out a full review of both the legal situation and of enforcement procedures and, on that basis, adopt the necessary legislation and introduce, strengthen or re-design enforcement institutions and procedures.

The Committee of Ministers concludes that wide discrepancies in figures can seriously hamper the ability of the state to target, implement and monitor measures to ensure the full and effective equality of persons belonging to national minorities. It recommends that the Government consider ways and means of obtaining reliable statistical data.

The Committee of Ministers concludes that, as the Government openly recognises, the Roma/Gypsies in Hungary face a broad range of serious problems to a disproportionate degree, be it in comparison to the majority or in comparison to other minorities. It recommends that Hungary vigorously pursue the policies upon which they have embarked, bearing in mind that a commitment to long-term approaches should not lead to a delay in achieving improvements that can be secured in the short or medium-term.

HUNGARY (Second Opinion adopted on 09/12/2004)

Article 4

Institutional and legal changes relating to discrimination

Findings of the first cycle

36. In its first Opinion on Hungary, the Advisory Committee noted that the legal framework concerning equality and prohibition of discrimination contained shortcomings in place and that

effective remedies needed to be developed in a number of settings, such as education, job advertisements and housing. The Advisory Committee therefore urged the Hungarian authorities to adopt new legislation and to strengthen enforcement procedures.

Present situation

a) Positive developments

37. The Advisory Committee welcomes the numerous measures taken by the Hungarian authorities since the first monitoring cycle to improve the legal and institutional framework and enforcement procedures in the area of equality and the prohibition of discrimination. Law CXXV on Equal Treatment and the Promotion of Equal Opportunities, adopted in December 2003, thus contains a general ban of all forms of direct and indirect discrimination based in particular on national belonging or affiliation to a particular minority or based on native language. This law has a broad scope of application, covering numerous fields such as employment, social security and medical care, housing, teaching, education, training and also the provision of goods and services.

38. The Law CXXV on Equal Treatment contains three major innovations: firstly, it creates a system (*actio popularis*) whereby associations are able to bring appeals against the perpetrators of discriminatory acts whose victims are not identifiable; secondly, it reverses the burden of proof in cases of discrimination (apart from cases that are subject to criminal or minor offence proceedings); thirdly, it sets up a new administrative body at national level to oversee the application of the law.

39. However, at the time of adopting the present Opinion, the Advisory Committee is not yet able to assess how the Law CXXV on Equal Treatment, which entered into force in January 2004, is working in practice, since no cases based on this law have yet run their full course. Nevertheless, the new administrative authority will need to be given very broad powers, since it will be able to deal with any discriminatory act in any field covered by the law. It will also be able to pronounce sanctions against any person or body which violates the ban on discrimination.

40. Article 5 of Law XXII of 1992 on the Labour Code was amended in 2001 in order to ban clearly any form of discrimination against employees and, in disputes, to require the employer to prove that he or she has not violated the ban on discrimination.

41. In 2001, the Ministry of Justice, in co-operation with the Government Office for National and Ethnic Minorities and the Roma national minority self-government, supported the creation of a network of lawyers, present in every Hungarian county, available to help Roma people who are discriminated against. This service is free for the Roma because the lawyers' and court fees are paid by the State. Since it was set up, this network has been involved in more than 1,700 cases in a vast range of fields and its activities, which suggest that many Roma are unaware of even their most fundamental rights, are considered to be necessary and useful by many of those concerned.

42. Finally, numerous institutional changes have been made in Hungary since 2002, mainly aimed at promoting the social integration of the Roma. The post of State Secretary for the Roma was created, for example, and the Ministry of Education has developed a structure to promote the integration of disadvantaged persons, particularly Roma, run by a Ministerial Commissioner. In February 2004, the post of Ministerial Commissioner for Roma Affairs was also created within the Ministry of National Cultural Heritage. The Council for Roma Affairs, a coordinating body without decision-making powers, was set up in 2002. A Government Office for Equal Opportunities was created in January 2004 and, since October 2004, it has been attached – along

with the Government Office for National and Ethnic Minorities – to the new Ministry for Youth, Family and Equal Opportunities.

b) Outstanding issues

43. The Advisory Committee notes that, in order to avoid duplication of work, greater effort is required to co-ordinate the large number of authorities involved in and resources allocated to the fight against discrimination and the promotion of social integration of disadvantaged persons, particularly Roma. Improvements are also required in the area of monitoring so that results can be measured more effectively. Following the entry into force of Law CXXV on Equal Treatment and the new remedies it offers to victims of discrimination, numerous awareness-raising and information measures are needed. The new administrative authority was meant to be operational by January 2005, but fears have been expressed that this is likely to be delayed. Several people have criticised the fact that it will not be sufficiently independent, since it will be working under the supervision of the Government, even though it is stipulated that it should not receive instructions as to how to exercise its powers.

Recommendations

44. Hungary should try to improve co-operation and co-ordination between the different bodies involved in the fight against discrimination, particularly the Parliamentary Commissioner for National and Ethnic Minorities, whose contribution remains crucial. Hungary should endeavour to set up as quickly as possible the administrative body provided for in Law CXXV on Equal Treatment and to ensure it undertakes its duties with the necessary independence.

Situation of the Roma

Findings of the first cycle

45. In its first Opinion on Hungary, the Advisory Committee welcomed the authorities' decision to develop medium- and long-term plans of action in favour of the Roma minority, which it said gave rise to high expectations. In its corresponding Resolution, the Committee of Ministers pointed out that, despite the efforts made, real problems remain, affecting the Roma, notably regarding acts of discrimination.

Present situation

a) Positive developments

46. The package of medium-term measures adopted by the Government in 1999 form a comprehensive strategy to improve the living conditions and social position of the Roma. They focus particularly on education, culture, health care, housing and the fight against discrimination. The Advisory Committee is pleased to note that this package of measures is regularly reviewed and supplemented wherever necessary, as was the case in 2001, for example. In January 2002, the Hungarian authorities also devoted an international conference to the evaluation of the package of medium-term measures. There are plans to launch a governmental programme designed to promote equal opportunities for the Roma minority which will run until 2006 as an extension of the package of measures, with special emphasis on education, quality of life, equality before the law, employment and communication.

47. As part of co-operation between Hungary and the European Union aimed at defining a common action against social exclusion, the Ministry of Health and Family and Social Affairs has drawn up a Joint Inclusion Memorandum, which was signed by the Government and the European Commission in December 2003. This document analyses the needs of persons facing exclusion – particularly the Roma – in areas such as housing, employment and health care. A national action programme on social inclusion, which aims to meet the needs identified, should be finalised by the end of 2004.

b) Outstanding issues

48. Although improvements have been made through the numerous measures taken by the authorities over several years, the most fundamental rights and freedoms of the Roma continue to be violated in Hungary in many different settings.

49. Many Roma, for example, are still denied access to decent housing. As pointed out in the Joint Inclusion Memorandum, which is based on several different studies, segregation in the housing sector seems to have increased in recent years. More and more Roma are living in sub-standard housing and/or estates with inadequate facilities. These different forms of segregation are mostly found at the local level, where Roma have been prevented several times from moving into certain districts by the resistance of the local population and/or local authority action. At the same time, there are credible reports of a recent rise in the number of forced evictions – mostly of Roma – reportedly carried out without respecting the fundamental rights of the persons concerned. This phenomenon may partly be explained by the amendment adopted in 2000 concerning the 1993 Law on Housing, which considerably reduced tenants' rights.

50. With regard to access to health care and the state of health of the Roma population, the lack of data and government-commissioned research makes it difficult to give any kind of assessment, although some studies and surveys suggest that the life expectancy of Roma is considerably shorter than that of the rest of the population and that many Roma refuse to go to hospital because of alleged prejudice against them by hospital staff. Furthermore, some NGOs say they have identified cases of Roma women being sterilised without their prior informed consent. One such case is even pending before the United Nations Committee on the Elimination of All Forms of Discrimination against Women.

51. According to the Joint Inclusion Memorandum, the unemployment rate for Roma is three to five times higher than that of the rest of the population. The authorities have taken commendable initiatives to counter this phenomenon, particularly by promoting the training and recruitment of Roma. However, one of the main obstacles is the fact that anti-Roma feelings and negative stereotyping of this minority remain fairly widespread, causing many employers to discriminate against Roma in their recruitment procedures (see comments on Article 6, below).

Recommendations

52. Hungary should step up its efforts to enable all Roma to enjoy decent living conditions, particularly by firmly opposing segregation practices that have recently occurred at the local level and by limiting the number of forced evictions.

53. Hungary should endeavour to gather more data on the Roma population's state of health and access to health care, particularly by conducting research, opinion polls or using other scientific methods. Serious investigations should be carried out into the alleged sterilisation of Roma women without their prior informed consent.

54. Hungary should continue its efforts to combat the chronic underemployment of the Roma people. To this end, the authorities should ensure that the provisions banning discrimination in access to employment are properly enforced and pay close attention to measures aimed at countering anti-Roma prejudice.

IRELAND (First Opinion adopted on 22/05/2003)

Article 4

26. Ireland has until recently had a largely homogenous population. The Advisory Committee is conscious that in recent years inward migration has contributed to greater diversity in society. This has brought with it new and further challenges to tackle discrimination and promote effective equality, impacting not only on the Traveller community, which has traditionally suffered the brunt of discrimination, but also on the new immigrant communities, including asylum seekers and refugees.

27. The Advisory Committee recognises that a number of positive steps have been taken by the Irish Government over the recent years to combat discrimination and promote equality. It welcomes, in particular, the Employment Equality Act (1998), which outlaws discrimination in the context of employment on nine grounds including religion, race and membership of the Traveller community. This is also complemented by the Equal Status Act (2000), which covers education, provision of goods, services and accommodation and the disposal of property on the same grounds. The Advisory Committee also notes the new equality infrastructure put into place to underpin this legislation, including the Equality Authority, which, inter alia, works towards the elimination of discrimination and the promotion of equality, and also the office of the Director of Equality Investigations (the Equality Tribunal). The Advisory Committee considers that both of these institutions have already built up a considerable amount of expertise in dealing with equality issues.

28. The Advisory Committee acknowledges the importance and impact of this legislation and these institutions. In the light of experience to-date in implementing this legislation, certain proposals could be made to enhance further the effectiveness of this legislation and these institutions. In this regard the Advisory Committee understands that there have been calls for the creation of a positive duty on the public sector to promote equality and an extension on the prohibition on discrimination covering the functions of the public sector in the exercise of its powers and its duties.

29. The Advisory Committee is mindful that certain changes are also required in order to bring legislation and practice into line with European Union Directives 2000/43/EC and 2000/78/EC⁴. In this context the Advisory Committee notes that the shifting of the burden of proof in discrimination cases is de facto being applied by the Equality Tribunal. The Advisory Committee welcomes this situation and encourages the Government to confirm this principle in law in the context of the ongoing review of the equality legislation being undertaken to give effect to the above-mentioned European Union Directives.

30. In terms of the procedural requirements under the current equality legislation, the Advisory Committee is aware of certain criticisms relating to the levels of compensation that can be awarded by the Equality Tribunal, as well as certain criticisms concerning the time limits relating to presentation of complaints to the Equality Tribunal. The Advisory Committee is also aware that the Equality Authority has called for its role and powers to evolve to allow it to review

the compatibility of legislation with equality legislation, to take class actions where appropriate and to intervene as a third party in proceedings relating to the promotion of equality or the elimination of discrimination. The Advisory Committee considers that these matters merit further consideration by the Government, but that care should be taken to avoid, where relevant, detrimental overlap of competencies with other structures.

31. The Advisory Committee notes that the Human Rights Commission was formally established in July 2001 as provided for under The Good Friday (Belfast) Agreement (1998). The Advisory Committee welcomes that after delays in its establishment and functioning, it is now beginning to tackle a number of issues relevant to the promotion of effective equality of persons belonging to national minorities.

32. The Advisory Committee recognises the important mandate given to the Human Rights Commission to review the compatibility of draft legislation with human rights standards. In carrying out this task the Advisory Committee considers it important that the Commission takes full account of the standards under the Framework Convention. Furthermore, in view of the Human Rights Commission's important mandate, the Advisory Committee considers that it should continue to receive full support in its work from the Government and be provided with adequate funding in such a way as to ensure its independence.

33. A further important commitment under The Good Friday (Belfast) Agreement (1998) concerns the incorporation of the European Convention on Human Rights into the domestic law of Ireland. The Advisory Committee understands that legislation on incorporation is currently at Committee Stage in the Dáil. Notwithstanding that the Advisory Committee is aware of certain criticisms of the Bill, including that it does not provide for full direct incorporation, the Advisory Committee hopes that the Bill will be passed in the near future and that the legislation will be kept under review to deal with any problems that might arise after its entry into force.

34. The Advisory Committee notes however, that progress in the area of legislation and institution building has not always been matched by implementation in practice. A number of important concerns remain, notably in relation to the Traveller community. Travellers continue to suffer discrimination in a wide range of societal settings including education (see under Article 12 below), employment, health care, accommodation (see under Article 5 below) and access to certain goods and services, including access to places of entertainment.

35. The Advisory Committee is particularly concerned about the high level of unemployment of persons belonging to the Traveller community. Travellers have also seen their traditional areas of economic livelihood (scrap metal, horse trading, market trading, etc.) hit by changing economic and social climates. They consider that certain aspects of changes in legislation (such as in the Control of Horses Act (1996) and the Casual Trading Act (1995)) unduly hinder their ability to earn a living. In view of the impact that this legislation has had on Travellers, the Advisory Committee considers that the Government should examine how to promote further both traditional and new economic activities of Travellers.

36. Notwithstanding the efforts made by the authorities to support the entrance of Travellers into the labour market, the Advisory Committee considers that more needs to be done in order to improve the situation. It is clear that the lack of statistics on Traveller employment makes it difficult to monitor the situation, and that such statistics are essential to the design, implementation and monitoring in this field (see comments under the General Remarks above).

37. Concerning employment in the public service, the Advisory Committee supports the recommendations in this field made by the Committee to Monitor and Co-ordinate the Implementation of the Recommendations of the Task Force on the Travelling Community and in particular the need for setting targets to include Travellers in general recruitment strategies.

38. Other measures may also be appropriate. These include facilitating access of Travellers to mainstream training provisions and changing the criteria for keeping the medical card so that long-term employment, which brings with it the threat of losing the medical card, does not become a deterrent for Travellers dependent on the free health care associated with the medical card. Furthermore, for women, who face the double burden of discrimination as Travellers and as women, improving access to proper childcare facilities would remove one of the barriers to their participation in the workforce.

39. In the above, the Advisory Committee considers that particular attention should be paid to ensuring that Travellers have the opportunity of working in areas where they can be supportive of their own community for example in fields such as education, social services, health, etc.

40. The Advisory Committee is particularly worried about the health status of Travellers. They experience a level of health that falls far short of that enjoyed by the general population. Notwithstanding that there will have been improvements over recent years, the last statistics on the subject, published in 1987, indicate that Traveller women live on average 12 years less than women in the general population and men live 10 years less.

41. The Advisory Committee is concerned by a number of complaints from Travellers linked to access to health services and lack of sensitivity to their particular needs. These include, in particular for women, difficulties in registering with doctors and complaints that some health professionals are reluctant to carry out visits to halting sites. The Advisory Committee is also concerned that Travellers with a disability may suffer from being an almost invisible sub-group within the Traveller Community and thus face double discrimination in relation to their access to health care and other services.

42. The Advisory Committee welcomes that a Traveller Health National Strategy (2002-2005) has been adopted by the Department of Health and Children and that it has identified many of the key issues and problems that need to be addressed as well as the concrete steps to be carried out in order to begin tackling the problems. The Advisory Committee notes that in the implementation of this strategy, particular attention should be given to ensuring the active participation of Travellers and Traveller organisations in the implementation structures set up. Furthermore adequate training should be given to health staff who come into contact with Travellers and that this training should include awareness raising about intercultural and anti-discrimination practices and Traveller perspectives on health and illness.

43. The Advisory Committee is particularly concerned about the level of discrimination that is apparent in terms of access by Travellers to places of entertainment. This is attested to by the large number of complaints referred to the Equality Tribunal concerning access to public houses, clubs and hotels and provides one of an important number of indicators of the depth of prejudice and discrimination faced by Travellers in their daily lives. The Advisory Committee is at the same time aware of the submissions that have been made by those associated with the licenced liquor trade concerning the operation of the equality legislation. These concerns have been echoed in a recent Report on Admission and Service in Licensed Premises issued by the Commission on Liquor Licensing. The Commission has criticised the Equality Tribunal and, inter alia, the background and training of Equality Officers, the lack of representation in the tribunal

structure and certain procedural shortcomings. As an alternative the Commission has advocated recourse to the District Courts for all licensing issues including complaints of discrimination.

44. The Advisory Committee is concerned by this proposal and considers that the Equality Tribunal's expertise in this area is an important component in the successful functioning of the legislation. The Committee also considers it important not to weaken the equality legislation or the bodies functioning under it. In this respect, the Advisory Committee is concerned to ensure that procedures under the equality legislation remain accessible and affordable to complainants. The Advisory Committee therefore considers that the Government should, while taking careful account of the views of all interested parties in this matter, ensure that the integrity of the Equality legislation is protected and its intent promoted.

In respect of Article 4

106. The Advisory Committee finds that a number of positive steps have been taken by the Irish Government over the recent years to combat discrimination and promote equality, in particular under the Employment Equality Act (1998) and under the Equal Status Act (2000), and considers that steps could be taken to further enhance the effectiveness of this legislation and the institutions established under this legislation.

107. The Advisory Committee finds that the recently established Human Rights Commission has begun to tackle a number of issues relevant to the protection of persons belonging to national minorities and considers that the Commission should, in its work, take full account of the standards under the Framework Convention. The Advisory Committee also considers that the Commission should continue to receive full support and be provided with adequate funding in such a way as to ensure its independence.

108. The Advisory Committee finds that Travellers continue to suffer discrimination in a wide range of societal settings including in education, employment, health care, accommodation and access to certain goods and services, including access to places of entertainment.

109. The Advisory Committee considers that in the field of economic livelihood the Government should examine how to promote further both traditional and new economic activities of Travellers. The Advisory Committee also considers that the Government should examine taking a range of measures to promote Traveller employment, such as setting of targets to include Travellers in recruitment strategies, facilitating access of Travellers to mainstream training provisions, changing the medical card criteria for Travellers in long-term employment, improving access to childcare facilities, etc.

110. The Advisory Committee finds that the health status of Travellers falls far short of that enjoyed by the general population and that there are complaints from Travellers concerning access to health services. The Advisory Committee considers that these matters should be dealt with in the implementation of the Traveller Health National Strategy (2002-2005) ensuring at the same time Traveller participation in the process.

111. The Advisory Committee finds that there are a large number of complaints concerning access to public houses, clubs and hotels by Travellers. The Advisory Committee considers that notwithstanding the critical reaction by liquor licencees and the Commission on Liquor Licensing towards the equality legislation and institutions dealing with these complaints, that the Government, in response, should ensure that the integrity of the Equality legislation is protected.

ITALY (First Opinion adopted on 14/09/2001)

Article 4

22. The Advisory Committee notes that Italian legislation contains provisions against discrimination, some of which have been extended in recent years. Examples are the criminal law provisions on racial, ethnic or religious discrimination. Concurring with the European Commission against Racism and Intolerance (ECRI)², the Advisory Committee nonetheless observes that gaps remain in the protection afforded by civil law and administrative law, and that it would be expedient to develop a more comprehensive body of provisions outlawing discrimination in a number of societal settings including employment, delivery of services, and housing. It would also be expedient to review the legal remedies and the penalties prescribed in respect of discrimination and if necessary to fill any gaps. The Advisory Committee therefore considers that the Italian Government should review its anti-discrimination legislation in order to ensure that all acts of discriminations are outlawed and effective remedies and sanctions are available to all persons who suffer from discrimination, both by public authorities and private entities.

23. With regard to paragraphs 2 and 3, the Advisory Committee notes that on the whole the German-speaking, Ladin, French-speaking and Slovene minorities enjoy very favourable circumstances in the economic, social, political and cultural spheres. This situation is principally due to the self-governing status held by the regions where these minorities traditionally live, and to legislative and other measures taken by the Parliament and Government to make this status effective. It is nevertheless evident that, for other minorities whose numbers are small and who live in regions that are less favoured economically, the situation is distinctly less favourable. This applies in particular to the Albanian, Catalan and Greek minorities. The situation is also not really favourable for the numerically very important Sardinian minority. The Franco-Provencal, Occitan and Friulian minorities are clearly large in terms of numbers and traditionally live in more economically favoured regions but greater effort is required to promote effective equality in political and cultural life between these minorities and the majority population. In this respect, the Advisory Committee expresses the hope that the measures provided for by Law No. 482 of 15 December 1999 will make it possible to improve the position of all these minorities, particularly in the areas of media, education and use of the minority languages by the public authorities (see comments relating to Articles 9, 10 and 12).

24. The Roma are in a situation contrasting sharply with that of all the other minorities, whereas they form a large minority in numerical terms. The Advisory Committee notes with anxiety that the full and effective equality of many members of the Roma community with members of the majority and of the other minorities is not achieved in Italy, particularly from the socio-economic standpoint. The Roma are disadvantaged in education (see comments relating to Article 12) and contend with severe difficulties in gaining access to medical care, employment and housing (see comments relating to Article 6).

25. For years the Roma have been isolated from the rest of the population by being assembled in camps where living conditions and standards of hygiene are very harsh³. Numerous concurring reports suggest that problems of overcrowding persist: in several camps some huts have neither running water nor electricity and proper drainage is often lacking. While some Italian Roma do undeniably continue to lead an itinerant or semi-itinerant life, the fact remains that many of them aspire to live under housing conditions fully comparable to those enjoyed by the rest of the population. Far from effectively aiding integration of the Roma, the practice of placing them in camps is liable to aggravate the socio-economic inequalities affecting them, to

heighten the risk of discriminatory acts, and to strengthen negative stereotypes concerning them (see comments relating to Article 6). Considering the seriousness of the situation, the Advisory Committee feels that the government should envisage a comprehensive and coherent strategy at national level, no longer to be centred on the model of separation in camps.

26. The Advisory Committee is also concerned by information to the effect that a large number of Roma are meeting with severe difficulties in their attempts to acquire Italian citizenship. These difficulties also seem to affect individuals who have resided in Italy for some decades or were even born there. The Advisory Committee is of the opinion that the Italian authorities should ensure that the legislation on granting of citizenship is applied in a fair and non-discriminatory manner to all applicants and especially to the Roma living in camps.

27. As the government acknowledges, the statistical estimates in the State Report as regards the number of persons belonging to the national minorities not covered by a census are by nature only approximate. This is due in particular to the fact that a statistical census by the State authorities only exists for the Ladin and German-speaking populations of Bolzano province (see comments relating to Article 3). In fact, discrepancies in figures and lack of reliable socio-economic indicators for the various groups can hamper the ability of the State to target, implement and monitor measures to ensure the full and effective equality of persons belonging to minorities. The Advisory Committee therefore considers that the Italian government try to identify ways and means of obtaining reliable statistical data. Without such data, it is very difficult for the Italian authorities to operate effectively and for the international monitoring bodies to ascertain whether Italy meets its obligations under the Framework Convention.

In respect of Article 4

The Committee of Ministers concludes that for years the Roma have been placed in camps, and that this policy does not duly favour their integration into Italian society. The Committee of Ministers recommends that Italy envisage a comprehensive and coherent strategy at national level for co-ordinating the numerous measures entailed by the integration of Roma.

ITALY (Second Opinion adopted on 24/02/2005)

Article 4

Institutional and legal changes relating to discrimination

Findings of the first cycle

47. In its first Opinion, the Advisory Committee noted that Italian legislation contained provisions against discrimination but pointed at remaining gaps in the protection afforded by civil law and administrative law. It also invited the authorities to ensure that effective remedies were available to all persons who suffer from discrimination and sanctions are applied where necessary.

a) Positive developments

48. Based on article 42 of Law 40/1998 on Immigration and the Status of Foreigners, a number of institutes for research into discrimination have been created, such as the Institute of the region of Piedmont for Research into Racism, Antisemitism and Xenophobia in Italy.

49. A decree containing detailed rules about discrimination in respect of race or ethnic origin was passed in July 2003 with a view to transposing the European Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin. This decree also provides for the setting up of an Office for the promotion of equal treatment and the fight against discrimination within the Department for Equal Opportunities of the Presidency of the Council of Ministers. This body, which was actually set up in 2004 and whose creation was accompanied by an awareness-raising brochure, is meant to be an institutional point of reference to monitor the effectiveness of the tools to combat discrimination. The Office for the promotion of equal treatment and the fight against discrimination is to collect individual claims of people potentially discriminated against and will be tasked to assist them in court cases should victims decide to do so.

b) Outstanding issues

50. Law 40/1998 on Immigration and the Status of Foreigners defines direct and indirect discrimination and prohibits discrimination in a range of fields such as employment, housing, education, training and social services. It appears, however, that the relevant provisions of this piece of legislation are not frequently used in practice and that they focus on the situation of foreigners and immigrants. The Advisory Committee, however, notes that discrimination may also affect Italian citizens, including persons belonging to minorities. Existing provisions against discrimination in the legislation on immigration therefore do not necessarily alleviate the need for a more comprehensive body of civil and administrative provisions in all spheres of life, bearing in mind for example that they do not prohibit indirect discrimination consistently and do not allow for the burden of proof to be shifted to the respondent. Institutes for research into discrimination do not yet seem to have been established in all regions concerned and findings of such institutes could in the future be instrumental to guide state policies to fight discrimination.

51. In connection with the decree transposing the EU Race directive 2000/43/EC, concerns have been raised that the Office for the Promotion of Equal Treatment and the Fight against Discrimination is not guaranteed real independence and that no provision is made for a genuinely shared burden of proof between the alleged victim of discrimination and the respondent. Moreover, it seems that only those associations that are included in a list drawn up by the Ministry of Equal Opportunities will have standing to litigate on behalf of victims of discrimination, which is likely to entail undue restrictions of this possibility.

Recommendations

52. Regional institutes for research into discrimination appear to be an interesting tool to acquire a better knowledge of discrimination in practice and the Government could consider the establishment of other such bodies where they are missing. Furthermore, the newly established Office for the Promotion of Equal Treatment and the Fight against Discrimination should be provided with the necessary support. Efforts should also be made to make in the future increased use of the findings of these bodies to develop state policies to tackle discrimination.

53. The authorities are encouraged to consider the reinforcement of procedural guarantees and legal remedies so as to make existing legal provisions against discrimination more effective and widely used in practice and, where appropriate, complete the legislative framework to fight against discrimination in all fields of life.

Situation of the Roma, Sinti and Travellers

54. In its first Opinion, the Advisory Committee expressed concern at the housing situation of the Roma, Sinti and Travellers who live isolated from the rest of the population in camps where living conditions and standards of hygiene are very harsh, a state of affairs that compromises their integration and aggravates their socio-economic difficulties. Furthermore, the Advisory Committee's first Opinion and the corresponding Resolution of the Committee of Ministers called on the Italian authorities to consider a comprehensive and coherent strategy of integration vis-à-vis the Roma, Sinti and Travellers.

Outstanding issues

55. The concerns expressed about the deplorable situation of the Roma, Sinti and Travellers in the context of the first monitoring cycle remain valid in the second cycle. Indeed, recent monitoring work conducted by other international bodies and NGOs suggest that Roma still face widespread discrimination and continue to be confronted with particular difficulties in the fields of education, health care, employment and housing.

56. During its above-mentioned visit to Italy, the delegation of the Advisory Committee visited the unauthorised Roma camp of Casilino 900 in Rome, where hundreds of persons - including many asylum seekers and refugees from the Balkans - live in shacks lacking the most basic facilities like running water, electricity, regular garbage removal, etc. Credible reports from various NGOs and human rights activists indicate that similar sub-standard housing conditions prevail in most of the camps that now exist in many cities of Italy. In this regard, the fact that a camp is labelled as "authorised" or "unauthorised" by the authorities does not seem to make a real difference as in both cases the local authorities, which are in charge of social and housing issues and are not supported by the state authorities, offer limited intervention to equip the camps with minimal shared facilities like toilets or showers.

57. As is the case in many other countries, the Roma, Sinti and Travellers living in Italy are by no means a homogenous group. Moreover, their legal situation in terms of residence is complex since it covers a range of situations from illegal immigrants to asylum seekers and refugees, persons with regular residence permits and even Italian citizens. A significant number of Roma, Sinti and Travellers, including adults, who were born in Italy still do not have regularised resident status. Few of them have maintained an itinerant or semi-itinerant way of life linked to their seasonal economic activities and the great majority are unemployed and consider themselves as sedentary people.

58. In spite of this very heterogeneous pattern, the Advisory Committee is deeply concerned that the integration model widely called for by the authorities is still based on the life in camps, which is presented as an appropriate way through which Roma, Sinti and Travellers can continue to live as "nomads". In fact, living in such camps isolated from the Italian society renders access to employment, education and health care extremely difficult and the resulting situation cannot be regarded as compatible with the Framework Convention. The absence of serious perspectives of integration especially for Roma who have often lived in such camps for several years render these persons - especially women and children - particularly vulnerable to various kinds of abuses, including human trafficking.

Recommendations

59. Italy should step up its efforts, as a matter of priority, both at the local and state levels to ensure that Roma, Sinti and Travellers residing in camps enjoy decent living conditions. At the same time, Italy should design, in consultation with those concerned, a comprehensive strategy of integration for Roma, Sinti and Travellers with a view to eliminating the placement in camps and instead ensuring access to housing, employment, education and health care.

60. In the context of the above-mentioned strategy of integration, particular care should be taken to respond to the specific needs of the various groups concerned. Whereas the improvement of the living conditions of Roma having recently settled in Italy as asylum-seekers or refugees could legitimately be seen as extremely important, stronger emphasis could be put on the preservation and development of the identity of Sinti and Travellers who have been traditionally present in Italy.

LICHTENSTEIN (Second Opinion adopted on 01/10/2004)

Article 4 and 6 of the Framework Convention

Promotion of tolerance and fight against discrimination

Findings of the first cycle

9. During the first monitoring cycle, the Advisory Committee attached importance to promotion by the authorities of a spirit of tolerance and mutual respect between all persons living on the territory of Liechtenstein. It added that the authorities should try to remedy any possible integration difficulties certain groups may encounter because of religious or cultural differences.

Present situation

a) Positive developments

10. The Advisory Committee notes with satisfaction that the State Report contains relatively detailed information on the composition of the population and the characteristics of the various constituent groups. It also welcomes the fact that Liechtenstein has included information in its State Report on measures taken to improve the integration of foreign nationals and prevent racism and discrimination, even though the Government does not consider these groups as national minorities.

11. In this connection, the Advisory Committee recalls that legal provisions and other measures aimed at combating discrimination and promoting effective equality, a spirit of tolerance and intercultural dialogue must not themselves constitute a source of unjustified distinctions but protect all individuals against any form of discrimination on the grounds of language, culture, ethnic background or religion. These provisions and measures are therefore also covered by Articles 4 and 6 of the Framework Convention, the scope of which cannot be restricted to national minorities alone.

12. The Advisory Committee welcomes the adoption by the Government in February 2003 of a National Action Plan aimed at implementing the conclusions of the Durban World Conference against Racism, Racial Discrimination, Xenophobia and related Intolerance. This plan is scheduled to run for five years and is aimed in particular at making the public more aware of the various forms of racism and their causes and encouraging the integration of foreign nationals in Liechtenstein. The Advisory Committee also welcomes the setting up, in July 2003, of a Commission for the Protection against Violence to observe and document acts of violence linked to right-wing extremism and identify dangerous developments in this field.

b) Outstanding issues

13. The Advisory Committee notes that ECRI's second report on Liechtenstein highlights the many significant steps taken by the authorities to combat racism and intolerance, while drawing attention to the particularly exposed position of some vulnerable groups such as persons – particularly women – of immigrant origin and Muslims, and the lack of a comprehensive integration strategy. The concluding observations of CERD also contain relevant recommendations in this respect.

Recommendations

14. The authorities should pay all the requisite attention to the full implementation of the National Action Plan and attempt to remedy the shortcomings identified both by ECRI in its second report and by CERD in its Concluding Observations, including as concerns law enforcement officers training. It is also important that the authorities regularly assess the impact of the measures taken. As information and statistical data on the extent of discrimination in Liechtenstein are still incomplete, the authorities should make a special effort to collect data in such key areas as access to employment, education and social services.

LITHUANIA (First Opinion adopted on 21/02/2003)

Article 4

28. The Advisory Committee notes that Article 29 of the Constitution, and a number of Lithuanian legislative provisions, lay down the principles of equality and non-discrimination. The Advisory Committee welcomes the fact that the new Civil Code contains a number of articles designed to eliminate any discrimination on grounds of race, ethnic origin, religion, etc. and that the provisions of the new Labour Code, currently being drafted, will extend the principle of non-discrimination to employment. The Advisory Committee encourages the authorities to ensure that the legislative provisions against discrimination on the grounds of race or ethnic origin cover the key sectors of social life, such as housing, health, the supply of goods and services and to rectify any shortcomings that may exist. The Advisory Committee notes with interest the discussions concerning the possible extension of the terms of the law on equal opportunities (of 1 December 1998, amended in June 2002), aimed at the promotion and protection of equality between the sexes, to discrimination on other grounds, including ethnic origin.

29. The Advisory Committee notes the existence in Lithuania of three institutions having the functions of an Ombudsman (the Office of the Parliamentary Ombudsman, the Office of the Equal Opportunities Ombudsman and the Office of the Ombudsman for Children's Rights). However, discrimination and issues connected with the protection of national minorities are not specifically covered in the terms of reference of these three institutions. The Advisory Committee welcomes the fact that the Parliamentary Ombudsman has already considered these questions, especially in relation to the situation of the Roma. Since the possible extension of the terms of

reference of the Parliamentary Ombudsman as well as the possibility of merging the three offices are currently being discussed, the Advisory Committee expresses the hope that the solutions that are identified, whatever they may be, will lead to a strengthening of the role, effectiveness and visibility of those bodies, including by incorporating in their responsibilities the prevention and monitoring of discriminatory acts relating to the ethnic origin of persons.

30. The Advisory Committee is deeply concerned that the new law on citizenship (which was adopted in September 2002 and entered into force on 1 January 2003) introduces an ethnic dimension into the right to dual citizenship. In accordance with Article 18.2.2 of this new law, the rule that Lithuanian citizenship is lost where an individual acquires the citizenship of another State (a rule set out in Article 18.1.2 of that law in conjunction with Article 17), does not apply to persons of Lithuanian origin⁶. Representatives of the national minorities expressed their deep dissatisfaction with the content of the new law and the manner in which it was introduced into the Lithuanian legal system. They consider the above mentioned provisions discriminatory, since they establish two categories of persons among Lithuanian citizens, to whom different standards apply depending on their ethnic origin (see also the comments on Article 3, paragraph 24).

31. The Advisory Committee regrets the absence of any prior consultation with the representatives of the national minorities, who became aware of the content of the law only after it had been adopted. The Advisory Committee understands that the primary intention behind the drafting of the new law was to allow Lithuanians living abroad to return to the country without difficulty and to resettle there as citizens, without losing the citizenship of the countries in which they currently reside. However, this legitimate intention does not justify the distinction which, according to the criterion of ethnic origin, is drawn between Lithuanian citizens who, under Article 29 of the Constitution referred to above, are equal before the law. The Advisory Committee finds that the legislative provisions in question are discriminatory and represent also an infringement of the right of persons belonging to national minorities to equality before the law. The Advisory Committee considers therefore that the authorities should seek appropriate solutions, in consultation with the persons concerned, in order to remedy the situation.

32. As regards implementation of the anti-discrimination legislation, the Advisory Committee notes that certain representatives of the Roma report cases of discrimination with regard to housing, the labour market and education, and also abuse on the part of police officers carrying out searches at the Roma camp in Vilnius (see also comments under Articles 6, 12 and 15).

33. The Advisory Committee notes with concern the socio-economic difficulties that the Roma face and welcomes the efforts recently undertaken to address this issue in the framework of the long-term programme for the integration of the Roma (2000-2004) adopted by the Government. The Advisory Committee however considers that further steps are required in order to reduce the gap in the standard of living between the Roma and the rest of the population. More resolute action is necessary in order to improve the situation of these persons with regard to education, housing conditions, access to health care and to social benefits and also their access to the labour market. More also needs to be done to regularise the identity documents of these persons. In all these areas, special attention must be paid to the situation of Roma women. The Advisory Committee emphasises that all these measures must, in order to be effective, be applied consistently by all the responsible authorities as well as accompanied by adequate resources and systematic monitoring of their application. The Advisory Committee also considers that special attention should be paid to the ongoing involvement of the Roma in the implementation of the abovementioned programme, in the spirit of Committee of Ministers' Recommendation No. (2001) 17 on improving the economic and employment situation of Roma/Gypsies and Travellers in Europe.

34. The Advisory Committee regrets that no acceptable solution has thus far been found to the question of the illegal settlement of the Roma in the camp site at Kirtimai (Vilnius). The Advisory Committee notes that these Roma have been established there for several decades and that the site area (owned by the State) is only approximately 2.5 hectares. It also notes that the number of families concerned is quite small - approximately 50, many of whom are single mothers. The Advisory Committee considers that the authorities, in consultation with the persons concerned, should examine all possible ways of resolving the situation. This would then make it possible to seek appropriate solutions for the many other difficulties facing these persons (unhealthy accommodation, lack of water and heating, etc.), while encouraging the Roma to become more actively involved in the efforts to improve their situation. The Advisory Committee notes that if the Roma were forced to leave and settle elsewhere (such a proposal, already formulated by the authorities, was rejected by the majority of the members of the community), the very purpose of the Community Centre at Kirtimai would disappear (see also relevant comments in paragraph 38 below).

35. With regard to employment, the Advisory Committee notes that statistics established by reliable international sources indicate a higher rate of unemployment for persons belonging to national minorities than for those belonging to the majority. This situation is acknowledged by the authorities, who consider that further measures are necessary in that regard. In this context, the Advisory Committee is of the view that special attention should be paid to those persons belonging to national minorities who risk finding themselves in a precarious situation following the closure in the near future of the nuclear installation at Visaginas (Ignalina)⁷. The Advisory Committee emphasises that the very complex position of these persons, exacerbated in some cases by factors such as their legal status, their family circumstances and their poor command of Lithuanian, requires a genuine support policy, guided by a coherent strategy and maintained by adequate resources. The Advisory Committee notes that the persons concerned find the measures announced inadequate, too general and inappropriate for their specific needs. It encourages the authorities to make greater efforts, including of a financial nature, to find effective solutions for these problems, taking into consideration the wishes of the persons concerned as well as the intellectual potential which exists in a city like Visaginas (see also relevant comments in paragraph 80 below).

36. The Advisory Committee notes the problems indicated in regard to the implementation on the law on the restitution of land (dating from 25 July 1991), which particularly affect persons belonging to national minorities living in the Vilnius area. According to the representatives of the Polish minority, a significant number of plots of land were attributed to persons coming from other regions of Lithuania, whereas the law provides priority to the return of land to original owners. These original owners, for the most part belonging to minorities, are still waiting for their situation to be regulated by the authorities in charge of applying the law. The Advisory Committee is aware that these difficulties, which are often encountered in countries in transition, do not generally affect only persons belonging to national minorities. The Advisory Committee nonetheless urges the authorities to ensure that these persons do not suffer discrimination in the implementation of the legislation concerned and that solutions are found to those problems.

In respect of Article 4

92. The Advisory Committee finds that the new law on citizenship, drafted without consulting the national minorities, is discriminatory, and considers that the authorities should, in consultation with the persons concerned, take all the action needed to remedy this situation.

93. The Advisory Committee finds that there are significant socio-economic differences between many Roma and the rest of the population, and that the Roma complain of difficulties and instances of discrimination in such areas as employment, housing and education. The Advisory Committee considers that more resolute action is needed to improve the living conditions of Roma and reduce the existing inequalities. It considers that the authorities should explore, in consultation with the persons concerned, all possible ways of solving the problems which have arisen in relation to the Roma camp site at Kirtimai (Vilnius).

94. The Advisory Committee finds that according to their representatives, the persons belonging to national minorities from Visaginas face a complex situation and various difficulties. The Advisory Committee also finds problems with the restitution of land in the Vilnius area, which adversely affect a significant number of persons belonging to national minorities. The Advisory Committee considers that the authorities should redouble their efforts to find appropriate solutions to these problems.

MOLDOVA (First Opinion adopted 01/03/2002)

Article 4

28. With regard to the implementation of Article 4 paragraph 1 of the Framework Convention, it should be noted that Article 16 of the Constitution of Moldova establishes the principle of equality of citizens "before the law and the public authorities without distinction of race, nationality, ethnic origin, language, religion, sex, opinion, political allegiance, wealth or social origin". The Advisory Committee further notes that Article 4.1 of the National Minorities Act guarantees to persons belonging to national minorities the right of equality before the law and equal protection of the law. Article 4.2 of the same legislation prohibits all discrimination based on belonging to a national minority.

29. Other laws, which apply to persons belonging to national minorities as to all Moldovan citizens, contain similar provisions concerning the principles of equality and non-discrimination: the Electoral Code, the Public Service Act, the Code of Criminal Procedure, the Code of Civil Procedure, the Labour Code, the Judiciary Act, the Associations Act. Penal provisions provide for sanctions against acts of discrimination based on linguistic grounds as well as sanctions for creating obstacles to the "functioning of the languages" on the territory of Moldova.

30. The Advisory Committee welcomes the efforts made in the legislation to foster equality and combat discrimination. It notes that judicial remedies are open to victims of unequal treatment and discrimination, but regrets that difficulties are encountered in practice. One example, according to the Government, concerns the lack of financial resources for the translation of relevant documents into minority languages during judicial proceedings (see also comments under Article 10 below).

31. The Advisory Committee emphasises the important role to be played in combating discrimination by governmental bodies and non-governmental organisations working in the human rights field in Moldova. The Advisory Committee encourages the three Parliamentary Advocates to pay particular attention in the future to issues relating to the protection of national minorities.

32. With regard to practice concerning implementation of anti-discrimination legislation, the Advisory Committee notes that only a limited number of cases of discrimination have been brought to its attention and that very limited information is available from official sources. The

Advisory Committee considers it disconcerting that the authorities are not in a position to provide information on the number and nature of such cases. In such circumstances, it is impossible for the Advisory Committee to evaluate the effectiveness of the anti-discrimination mechanisms and to examine to what extent the principles contained in Article 4 of the Framework Convention are being implemented. The Advisory Committee therefore believes that it is imperative that monitoring of developments in this field be intensified.

33. More specifically, the Advisory Committee received complaints from representatives of the Roma minority, who felt that they did not receive equal treatment in terms of their official status as a national minority and in terms of support from the authorities. Although the Roma have several types of organisation (Roma women, young Roma, etc.), these have no adequate support, such as provision of premises where they can develop their activities, compared to the organisations of other minorities. Also, according to the information provided to the Advisory Committee, some Roma are facing serious problems of social exclusion. These Roma appear to have been completely ignored by Moldovan society with both the authorities and the general population unaware of the extremely difficult situation currently faced by these people.

34. The Advisory Committee notes with concern that certain Roma are facing serious socio-economic difficulties when compared with the majority and other national minorities and do not enjoy the same opportunities as the rest of the population. In some cases they lack the minimum means necessary to provide for their basic needs (food, drinking water, access to medical care, transport, communication). The Advisory Committee has been given to understand that the Roma are discriminated in fields such as employment (it appears that the unemployment rate in the Roma community is very high), housing, access to property in the context of privatisation, access to education, access to health care, participation in the running of public affairs (see also related comments under Articles 5, 12 and 15).

35. Aware of the difficulties faced by persons belonging to the Roma minority, the Advisory Committee considers that this situation, which is acknowledged by the Government, calls for the planning and application of special measures combined with appropriate financial resources. The Advisory Committee welcomes the adoption by the Government, on 16 February 2001, of Decision (No. 131) providing for long-term support measures (2001-2010) for the Roma population. This covers such fields as social protection, education and the development of the Roma language and culture. The Advisory Committee encourages the Government to consult with the representatives of this minority on a regular basis so that their living conditions and specific interests are properly taken into account, and to base its action on the guidelines laid down in Recommendation No. (2001) 17 on the economic and employment situation of Roma/Gypsies and Travellers in Europe. The Advisory Committee stresses that when special measures are introduced, particular attention should be paid to Roma women.

36. The Advisory Committee wishes to draw attention to another question likely to affect Moldovan policy on the protection of national minorities, namely the discrepancies between official government statistics and the estimates made by certain national minorities, particularly the Roma, of the number of persons belonging to the minorities concerned and their situation. The Advisory Committee considers that the lack of reliable statistical data can seriously hamper the ability of the state to target, implement and monitor measures to ensure the full and effective equality of persons belonging to national minorities, and make it more difficult for the international monitoring bodies to ascertain whether Moldova meets its obligations under the Framework Convention. The Advisory Committee therefore suggests that, on condition that the principles identified in the Committee of Ministers' Recommendation No. (97) 18 concerning the protection of personal data collected and processed for statistical purposes are respected, the

Government try to identify, in view of the next census, the most appropriate ways and means of obtaining reliable statistical data. This data should be broken down by age, gender and location (see also related comments under Article 3 above).

37. The Advisory Committee considers that the Government should consult the national minorities, through their associations, on practical arrangements for the census and the content of the census forms. The Advisory Committee also supports the idea of recruiting and training observers from national minorities, who could play a useful part in advising minorities of the importance of the census.

In respect of Article 4

103. The Advisory Committee finds that the Roma consider that they do not receive equal treatment in terms of their official status as a national minority and the support they are entitled to expect from the authorities as a result. The Advisory Committee considers that the Moldovan authorities should pay more attention to this minority and give it proper support.

104. The Advisory Committee finds that certain Roma face serious socio-economic difficulties and problems of social exclusion and are also victims of discrimination in several fields. The Advisory Committee considers that the authorities should step up their efforts to improve the situation of these persons, in particular by implementing, in consultation with them and having particular regard to Roma women, the long-term support measures for the Roma population provided for in the government's decision of 16 February 2001.

MOLDOVA (Second Opinion adopted on 09/12/2004)

Article 4

Developments in combating discrimination

Findings of the first cycle

35. In its first Opinion, the Advisory Committee noted that official information on cases of discrimination on grounds of ethnicity was very limited and invited the authorities to improve the means of assessing the situation in this respect. The Parliamentary Advocates were encouraged to give more specific attention in their activities to issues connected with the protection of national minorities.

Present situation

a) Positive developments

36. The number of cases of discrimination brought to the attention of the Advisory Committee by persons belonging to national minorities remains limited. The Advisory Committee also notes that the problems of persons belonging to national minorities continue to account for only a very small number of the cases dealt with by the Parliamentary Advocates.

b) Outstanding issues

37. Like ECRI in its Second Report on Moldova, the Advisory Committee notes that the authorities still do not have sufficient data on the situation of persons belonging to national minorities in a number of areas of economic and social life. It notes in this context that, according

to different sources, a significant proportion of the Roma population still faces difficulties and discrimination in various sectors (see in this connection “The situation of the Roma” below).

38. As to the Parliamentary Advocates, the Advisory Committee considers that, in order to make sure that the limited number of complaints addressed to them reflects the real situation, further efforts could be made to inform the population potentially concerned, in particular the Roma, of the opportunities this body provides for combating discrimination. The Advisory Committee takes note of the pending revision of the law governing the functioning of this body, aiming to make it more efficient, and considers that this could also be beneficial for persons belonging to national minorities.

39. In addition, the Advisory Committee notes that shortcomings are reported with regard to the conditions in which NGOs promoting human rights and fighting against discrimination work in Moldova.

Recommendations

40. The authorities should step up their efforts to find ways of obtaining a more complete picture of the implementation of the principles of non-discrimination and full and effective equality with respect to persons belonging to national minorities.

41. The authorities are encouraged to pursue their plans aiming to improve the legal framework and practical conditions for the activities of the Parliamentary Advocates. The latter are encouraged to be more active in informing the population of the mechanisms available to ensure protection from discrimination, including the possibility for non-governmental organisations to represent victims of discrimination before the Parliamentary Advocates. It is also important to ensure that appropriate attention is paid to ethnic grounds whenever they appear in a case.

42. More generally, it is important for the protection of national minorities to create in Moldova all the conditions enabling NGOs to freely pursue their activities and to support them in this.

The situation of the Roma

Findings of the first cycle

43. In its first Opinion, the Advisory Committee encouraged the authorities to intensify their efforts to find appropriate solutions to the serious social and economic difficulties, social exclusion and discrimination suffered by a significant number of Roma.

Present situation

a) Positive developments

44. In recent years, the authorities have introduced measures in various sectors in order to improve the situation of the Roma. As mentioned in the State Report, direct support, including financial, has been given to Roma in education, health, housing and other relevant areas.

b) Outstanding issues

45. Despite the measures mentioned, the implementation of the 2001 Governmental Programme for Roma Integration has not resulted yet in tangible improvement of the situation. A significant proportion of the Roma population of Moldova continues to face serious problems in virtually all key areas of life. In some rural areas they are still almost completely isolated in their villages, which are a long way from other localities and economic centres and in which living conditions continue to be particularly difficult – lacking basic sanitation, heating, running water and electricity. In this context, a high rate of unemployment is reported among the Roma – who have difficulty finding any source of income –, housing and health problems, difficulty accessing social services, no or very limited help from local authorities. In the educational field, it is noted inter alia that Roma children are isolated due to the geographic distance of their villages. There are high rates of illiteracy and absenteeism and virtually no access to education of or in the mother tongue. Similar difficulties are reported with respect to access to the courts and participation in public life (see also the comments under Articles 5, 6, 12, 14 and 15, below).

46. Although the whole population of Moldova has been suffering as a result of the serious economic difficulties of the country, the Roma suffer in addition social exclusion and marginalisation. They are the victims of prejudices and stereotypes, often disseminated by the media. Discriminatory practices against them, including, in some cases, on the part of members of the law-enforcement bodies, are reported in most areas (see also the comments under Article 6 below).

47. With the backing of the Council of Europe, there have recently been a number of consultations with representatives of the Roma on the possible adoption of a comprehensive strategy to supplement and develop the above-mentioned programme. In this context, a negotiating group composed of representatives of various Roma organisations was set up to be the Government's main partner in this process and to put forward concrete proposals in the name of the Roma. Although some governmental bodies have shown themselves to be open to this process, the drafting of the strategy at present seems to be blocked. The authorities seem to prefer the development of more specific measures, in pursuit of the Governmental Programme of 2001, than to the drawing up of the strategy mentioned above.

Recommendations

48. More determined efforts are needed, at both central and local levels, to achieve tangible improvements in the situation of the Roma. In particular, the improvement of their socio-economic situation is essential. The co-operation developed with the Council of Europe in this field should continue.

NORWAY (First Opinion adopted on 12/09/2002)

Article 4

21. The Advisory Committee notes the normative guarantees against discrimination contained in the 1902 Penal Code and in the 1977 Act relating to Worker Protection and Working Environment (as amended on 4 May 2001) and that some additional protection was put in place through the incorporation of specific human rights treaties by the 1999 Human Rights Act. However, the Advisory Committee notes with concern that the scope of these guarantees is very

limited and that there are no detailed and comprehensive civil and/or administrative law provisions pertaining to a number of pertinent fields, such as housing.

22. The Advisory Committee notes that the need to improve legislation in the sphere of ethnic discrimination is recognized by the authorities and that a detailed report on the ways in which to improve the content and implementation of legislation against ethnic discrimination was submitted by a legislative committee, appointed by the King in Council, to the Ministry for Local Government and Regional Development on 14 June 2002. The legislative committee concluded that more comprehensive legislation against ethnic discrimination is indeed needed and it called for an Act on Ethnic Discrimination that would generally apply in all areas of society with the exception of private relations and family life as well as for a number of changes in other pertinent laws. The Advisory Committee expects that the authorities will consider the implementation of the findings of the said committee as a matter of priority with a view to improving the legislative framework pertaining to the implementation of Article 4 of the Framework Convention.

23. The Advisory Committee notes with concern that in practice, persons belonging to national minorities are still subject to discrimination in a number of fields. For example, Romanies and Roma have in some cases been denied access to campsites in a discriminatory fashion. In addition to abolishing such discriminatory practices, the authorities should ensure that an adequate number of sites suitable for caravans of persons belonging to these minorities are made available, bearing in mind the lack of such sites in the city of Oslo and elsewhere in the country.

24. The Advisory Committee is also concerned about reports of ethnic discrimination of persons belonging to minorities in connection with access to bars and certain other places of entertainment and welcomes the recent efforts of the authorities to stamp out such practices.

25. The Advisory Committee notes that the authorities have also designed a number of measures to address concerns pertaining to discrimination in other spheres. The Government's action plan against racism and discrimination for 2002-2006 contains important initiatives in such fields as education and employment and, while it focuses on recent immigrant groups, the concerns of persons belonging to national minorities should also be taken into account in its implementation. The Advisory Committee finds it is essential that the authorities allocate adequate resources to support and monitor the implementation of the new action plan, bearing in mind the criticism that was expressed by certain independent bodies with respect to the implementation of the previous plan in this field covering the period from 1998-2001.

26. It is also essential that there are adequate structures in place to monitor and address the issue of discrimination. In this connection, the Advisory Committee welcomes the work carried out by the Centre for Combating Ethnic Discrimination, established by the King in Council in 1998, which has also drawn on the Framework Convention in a commendable fashion. The Advisory Committee encourages the Government to pursue its plans to turn the Centre, which is operating on a trial basis until the end of 2002, into a permanent office with promotional and documentary functions, and urges the authorities to allocate adequate funding to enable the Centre to pursue its activities. From the perspective of national minorities, it would also be advisable to strengthen the presence of the Centre in those regions where national minorities reside in high numbers. Furthermore, the Advisory Committee is of the opinion that the Government should consider the establishment of a special supervisory body to ensure compliance with the proposed laws against ethnic discrimination, as proposed by the legislative committee mentioned above in paragraph 22. The Advisory Committee furthermore notes with satisfaction the sensitivity shown by the Office of Parliamentary Ombudsman towards the

protection of national minorities and the fact that he has resorted to the Framework Convention in formulating views in this sphere (see related comments under Article 11 below).

27. Regardless of the efforts mentioned in the preceding paragraph, there is no systematic collection of data pertaining to ethnic discrimination in Norway. In such circumstances, it is difficult to evaluate the effectiveness of the current mechanisms and to examine to what extent the principles contained in Article 4 of the Framework Convention are being implemented. Therefore, the Advisory Committee urges the authorities to design new methods of collecting data in this sphere, bearing in mind the experience gained by the Centre for Combating Ethnic Discrimination in its related activities. It further notes that there is a need to improve the methods of collecting statistical data on the number of discrimination cases pursued, and decided upon, on the basis of the penal and administrative/civil law provisions.

28. Aside from a range of positive measures designed to promote the effective equality of the Sami, there are only a limited number of positive measures put in place to address, inter alia, the socio-economic differences between the majority population and the Romani and Roma populations. A survey conducted by the Centre for Combating Ethnic Discrimination in 2000 concerning the implementation of Article 4, paragraph 2, of the Framework Convention by municipalities suggests that such measures are also extremely limited at the local level. At the same time, reports indicating that shortcomings exist in terms of ensuring effective equality for persons belonging to these minorities, e.g in the field of employment and housing, suggest that more efforts are required in these spheres. In addition to supporting additional special measures in these specific fields, the Advisory Committee is convinced that improvements in the sphere of education - addressed elsewhere in this opinion - may also yield positive results in the field of employment and housing. Finally, the Advisory Committee underlines that, when implementing special measures, particular attention should be paid to the situation of Romani and Roma women.

In respect of Article 4

72. The Advisory Committee finds that the scope of the normative guarantees against discrimination is very limited and considers that the authorities should examine, as a matter of priority, the proposals by the legislative committee to adopt a specific law against ethnic discrimination, combined with a number of changes in other pertinent laws.

73. The Advisory Committee finds that persons belonging to national minorities are still subject to discrimination in a number of fields, including in terms of their access to certain services, and considers the authorities should pursue their plans to address these problems and allocate adequate resources to support and monitor the implementation of such plans.

74. The Advisory Committee finds that adequate structures need to be in place to monitor and address the issue of discrimination and considers that the Government should examine the establishment of a special supervisory body to ensure compliance with the proposed laws against ethnic discrimination. It further considers that the Government should pursue its plan to turn the Centre for Combating Ethnic Discrimination into a permanent office with promotional and documentary functions, and allocate adequate funding to enable the Centre to carry out its activities, including in those regions where national minorities reside in high numbers.

75. The Advisory Committee finds that there is no systematic collection of data pertaining to ethnic discrimination in Norway and considers that the authorities should design new methods of collecting data in this sphere.

76. The Advisory Committee finds that there are only a limited number of positive measures put in place to address, inter alia, the socio-economic differences between the majority population and the Romani and Roma populations, despite reports indicating that shortcomings exist, e.g. in the field of employment and housing. It considers that additional special measures should be considered in these specific areas, paying particular attention to the situation of Romani and Roma women.

POLAND (First Opinion adopted on 27/11/2003)

Article 4

30. The Advisory Committee notes that Article 32 of the Constitution guarantees the principle of equality and non-discrimination and that Article 11 paragraph 3 of the Labour Code prohibits any form of ethnic discrimination in employment. However it is difficult to assess the scope and effectiveness of Article 11 paragraph 3 as the authorities do not collect any statistics on proceedings concerning alleged contraventions of that legal provision. The Advisory Committee therefore strongly urges the authorities to develop new methods of data collection in this field.

31. Several institutions currently play an important role in combating discrimination. The Ombudsman, for instance, annually deals with dozens of cases concerning persons belonging to national minorities, including discrimination cases. The Advisory Committee welcomes the Ombudsman's work in this area, which seems highly appreciated by representatives of national minorities. It involves not only handling complaints from persons belonging to national minorities but also, and primarily, a large amount of mediation work during on-the-spot visits in which the Ombudsman meets representatives of national minorities and local authorities. Such mediation work has proved useful and constructive in a number of situations, including in the controversy on the possible erection of a watchtower in Puńsk, near the Lithuanian border.

32. The Advisory Committee also notes with interest that the Plenipotentiary for Equal Treatment Between Women and Men has had her terms of reference widened, by Government order of June 2002, to address all discrimination matters until a new anti-discrimination body is set up. Although the Plenipotentiary does not have the same status as the Ombudsman, being a governmental agency, her role is nonetheless crucial to development of Government anti-discrimination policy.

33. From the foregoing, it is clear that the authorities have recently paid closer attention to the legislative anti-discrimination framework, primarily with regard to its institutional aspect. Bearing in mind the need to transpose the European Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, and as other Council of Europe bodies have already done, the Advisory Committee can but encourage the Polish authorities to pursue their efforts to complete the legislative framework so as not only to prohibit discrimination in all areas of life, particularly housing, contractual relations between individuals, access to welfare benefits or access to public places, but also to ensure that effective remedies are available to victims of discrimination⁷. The same goes for their efforts to consolidate the institutional framework in that sphere.

34. The Advisory Committee notes however that the Draft Law on National and Ethnic Minorities provides for a new body that would develop and implement policy on national minorities, including elimination of discrimination, as well as take action to prevent discrimination of persons belonging to national minorities. In this connection the Advisory Committee considers that care should be taken, both in legislation enacted and terms of reference

issued, that the various institutions are able to co-ordinate their anti-discrimination work properly. The Advisory Committee considers that it will also be necessary to clarify relations between new structures such as the body for implementing policy on national minorities and existing structures, notably the Ombudsman and the Plenipotentiary for Equal Treatment between Women and Men, because it is important that everyone concerned, including persons belonging to national minorities, has a clear idea of how responsibilities are divided in this field.

35. The Advisory Committee notes that it is difficult to measure full and effective equality between persons belonging to national minorities and the majority given the lack of statistical and qualitative data in this field. According to the authorities, for instance, the statistics do not cover employment among national minorities, though the results of the 2002 census should provide various demographic and socio-economic data on national minorities by the end of 2003. In addition to data resulting from the 2002 census, the Advisory Committee is of the opinion that the Government should endeavour to find additional means to collect reliable statistical data concerning national minorities. Without such data, it may be very difficult for the Polish authorities to operate effectively and for the international monitoring bodies to ascertain whether Poland meets its obligations under the Framework Convention.

36. The Advisory Committee notes that there continue to be great socio-economic differences between many Roma and the rest of the population. Such differences, together with persisting discriminatory practices against Roma which are still reported in various fields (see related comments under paragraphs 49 and 50 below), render the requirement for special measures in respect of this minority a matter of priority. However, the Roma minority is not a homogeneous community and the socio-economic situation of its component groups can vary considerably from one region to another. It seems that the Roma in the mountains of the Małopolskie province are particularly hard hit, sometimes suffering, inter alia, deplorable housing conditions, poor water supply and educational difficulties, including illiteracy and school drop-out.

37. The Government recognises the particular difficulties which the Roma face in this region. On 13 February 2001, the Council of Ministers adopted a Pilot Programme of support to the Roma community in Małopolskie for 2001-2003. This Programme, whose main emphasis is on education and which representatives of the Roma community and many NGOs helped draw up, also includes a range of measures to improve standards of living, access to employment and public health of the population concerned. Although there will not be a final evaluation of the Programme until 2004, the Advisory Committee notes with satisfaction that results so far have mostly been considered positive, including by representatives of the Roma. Substantial progress has been recorded in the education field, where the school drop-out rate has been lowered and results have improved, thanks in particular to the introduction of Roma educational-support staff, a measure which has proven promising and would be worth extending to other regions.

38. The authorities have indicated that they intend using the results of the Małopolskie Pilot Programme as a basis for developing longer-term, nationwide measures within a support programme for the whole of Poland's Roma community so that Roma in other regions, particularly in the province of Podkarpackie, can also benefit. The Advisory Committee welcomes in this context the adoption in August 2003 of a Programme for the Roma community in Poland with emphasis on educational measures.

39. Given the important needs in this area and the repeated requests from representatives of the Roma minority, the Advisory Committee considers it essential that the Government makes available the necessary resources for its effective implementation⁸, which should take place in

full consultation with Roma and representatives of civil society. The Advisory Committee also notes that during implementation, special attention will need to be paid to Roma women. More generally, the Advisory Committee recalls that, in designing further measures to promote full and effective equality in favour of the Roma, the Polish authorities should take into due account the Committee of Ministers' Recommendation (2001) 17 on improving the economic and employment situation of Roma/Gypsies and Travellers in Europe.

In respect of Article 4

100. The Advisory Committee finds that the authorities have recently paid closer attention to the legislative anti-discrimination framework, however mainly with regard to its institutional aspect. The Advisory Committee considers that care should be taken that various institutions like the General Inspectorate for the Prevention of Discrimination or the body for implementing policy on national minorities are able to co-ordinate their anti-discrimination work properly. The Advisory Committee considers that the relations between these new bodies and existing ones, above all the Ombudsman and the Plenipotentiary for Equal Treatment between Women and Men, should be clarified.

101. The Advisory Committee finds that there continue to be great socio-economic differences between many Roma and the rest of the population, and the Roma in the mountains of the Małopolskie province sometimes suffer inter alia deplorable housing conditions, poor water supply and educational difficulties, including illiteracy and school drop-out. Given the important needs in this area and the repeated requests from representatives of the Roma minority and despite progress made by the authorities, the Advisory Committee considers it essential that the Government makes available the necessary resources for the effective implementation of the newly adopted Programme for the Roma community in Poland, which should take place in full consultation with Roma and representatives of civil society.

ROMANIA (First Opinion adopted on 06/04/2001)

Article 4

22. Concerning implementation of Article 4, paragraph 1 of the Framework Convention, at the constitutional level, it is to be noted that Article 16 of the Constitution guarantees the general principle of equality, whereas Article 6 paragraph 2 requires that any measure taken to promote the right to identity complies with the principles of equality and non-discrimination. As concerns the Criminal Code, Articles 247 and 317, are of relevance, but punish only certain discriminatory acts and have a limited scope of application. All in all, the combination of these constitutional and legal provisions has not proven its effectiveness to tackle the issue of discrimination.

23. The Advisory Committee therefore strongly welcomes that the Romanian Government has recently adopted an Ordinance on Preventing and Punishing All Forms of Discrimination. It is to be hoped that the Parliament will be in a position to enact this Ordinance as a law in order to consolidate its status in the domestic legal order. Insofar as this new piece of legislation, long-awaited by national minorities, punishes discrimination and expressly covers a number of situations pertaining to private and public sectors, it represents a considerable extension of the protection so far offered by the Romanian legal framework. It is now essential that the State authorities ensure that this ordinance is promptly and fully implemented. The Advisory Committee expresses the hope that the National Council for the Prevention of Discrimination, to be set up by the Government to investigate and punish offenders, will promptly be given the resources it needs for its work, and will enjoy the support and co-operation of all State bodies.

24. The Advisory Committee also welcomes the useful role played by the institution of the People's Advocate in combating discrimination, and particularly its efforts in favour of persons belonging to national minorities. It hopes that this institution will be given the necessary resources. While noting that the People's Advocate is a recent institution, the Advisory Committee regrets that many of his requests for information from State bodies and services have gone unanswered, or have received only late or incomplete answers. The Advisory Committee considers that, to combat discrimination more effectively, the institution of the People's Advocate must have the co-operation of all the authorities. It is also important for minorities to be informed of the work of this institution, including in minority languages.

25. The Advisory Committee takes note with satisfaction of the Romanian authorities' determination to launch a significant action programme to speed up full integration of the Roma minority within the community. The initial stage of this "National Plan for improving the social, medical and educational situation of the Roma communities" (hereinafter: the Plan) sets out to be ambitious. It is important that this Plan be well resourced in the future. The Advisory Committee notes that the different ministries vary considerably in their commitment to take effective action to improve the situation of the Roma. The Romanian Government should thus take special care to ensure that the Plan is fully and consistently implemented by all the bodies concerned, given that the National Office for Roma has only very limited resources and competences. The Advisory Committee is pleased that the Romanian authorities have, from the outset, envisaged co-operating closely with civil society on defining the Plan's sectoral strategies and thinks that such a co-operation is essential to ensure successful implementation of the Plan. The Advisory Committee expresses the hope that this Plan will give due consideration to professional education of young Roma and that it will remedy many of the shortcomings mentioned below.

26. The Advisory Committee wishes to draw attention to a serious matter of general importance to the policy of Romania concerning the protection of national minorities. It notes that there are wide discrepancies between official statistics of the Government and the estimates of national minorities about the numbers of persons belonging to national minorities in Romania. The Advisory Committee is concerned that such wide discrepancies in figures can seriously hamper the ability of the state to target, implement and monitor measures to ensure the full and effective equality of persons belonging to national minorities. The Advisory Committee therefore considers that the Government should seek to identify ways and means of obtaining reliable statistical data. Without such data being available, it is very difficult for the Romanian authorities to operate effectively and for the international monitoring bodies to ascertain whether Romania meets its obligations flowing from the Framework Convention.

27. As a general observation concerning the realisation of full and effective equality between persons belonging to a national minority and those belonging to the majority, the Roma in Romania face a broad range of serious problems to a disproportionate degree. This state of affairs certainly justifies that specific measures be designed and implemented to tackle these problems. As concerns other minorities, the Advisory Committee considers that further efforts should also be made to reach a full and effective equality. The Advisory Committee finds the current situation in the areas of education (see comments under Article 12), employment (see comments under Article 15) and health particularly alarming.

28. The Roma are seriously disadvantaged in relation to health care. The Advisory Committee is notably deeply concerned by credible reports from various sources that maternity units in some hospitals refuse to issue birth certificates to mothers – most of them Roma – who are unable to pay the bill of their childbirth. This practice is also denounced in the Special Report of the People's Advocate. According to other allegations, some public hospitals also refuse to

treat members of the Roma community, on the grounds that they can neither afford to pay for their medical treatment nor prove that they are covered by a medical insurance. In view of the Roma community's health situation, the Advisory Committee further stresses the importance of developing preventive measures in this field.

29. More generally, the Advisory Committee notes that the above-mentioned discrimination, mainly affecting Roma, is partly due to problems arising with implementation of Act No. 67/1995 on social welfare by local authorities. As the People's Advocate says in his Special Report, some authorities misinterpret the Act, arbitrarily depriving certain people of social benefits to which they are entitled. The Advisory Committee is concerned by complaints of discrimination, hostility and harassment in some local authorities' treatment of Roma. These concern, in particular, the registration formalities for social benefits. In view of all this, it is essential that the Romanian Government ensure that - regardless of their margin of discretion in this area - local authorities implement Act No. 67/1995 on social welfare with due respect for the principles of equality and non-discrimination, and so fulfil their responsibilities to the Roma community¹. The Advisory Committee is also of the opinion that the Government should examine the possibility of improving the situation by drawing up guidelines for local authorities, in order to harmonise the implementation of Act No. 67/1995.

In respect of Article 4

The Committee of Ministers concludes that, due to a restricted scope of application and a weak system of sanctions, the existing legal provisions for ensuring protection from discrimination have not proven their effectiveness so far. The Committee of Ministers recommends that Romania ensure that the recently adopted Ordinance on Preventing and Punishing All Forms of Discrimination is promptly and fully implemented and that the National Council for the Prevention of Discrimination enjoys the support and co-operation of all State bodies.

The Committee of Ministers concludes that the wide discrepancies between the figures of the Government and those of national minorities about the numbers of persons belonging to national minorities can seriously hamper the ability of the state to target, implement and monitor measures to ensure the full and effective equality of persons belonging to national minorities. The Committee of Ministers recommends that the Government consider ways and means of obtaining reliable statistical data.

The Committee of Ministers concludes that there are reasons for concern about credible reports of discrimination against Roma in the access to basic medical care and recommends that the authorities ascertain whether those allegations are well-founded and, if they are, try to remedy the situation, including by ensuring a fair implementation of Act No. 67/1995 on social welfare by local authorities.

The Committee of Ministers concludes that the social and economic inequalities between many members of the Roma community and the rest of the population are still considerable and recommends that Romania consider a wider use of positive measures to overcome them and ensure that in the implementation of the "National Plan for improving the social, medical and educational situation of the Roma communities", sufficient attention is paid to reduce those inequalities.

RUSSIAN FEDERATION (First Opinion adopted on 13/09/2002)

Article 4

32. The Advisory Committee notes that the Constitution of the Russian Federation as well as the new Criminal Code of the Russian Federation contain general anti-discrimination provisions. The Labour Code, adopted on 1 February 2002, also contains provisions against discrimination, but there are no detailed and comprehensive civil and/or administrative law provisions pertaining to discrimination in a number of other pertinent fields, such as education and housing. The Advisory Committee is of the opinion that it would be desirable to develop such legislation in order to protect, in a comprehensive manner, individuals from discrimination by both public authorities and private entities³.

33. With regard to practice concerning implementation of anti-discrimination legislation, the Advisory Committee notes that there appears to be a very limited number of cases pursued on the basis of the Criminal Code, notably on the basis of Article 136 on the violations of equality, and no detailed information is available on any cases brought on the basis of the anti-discrimination articles in civil/administrative law. It is disconcerting that the authorities are not in a position to provide information on the number and nature of cases in the latter category. In such circumstances, it is impossible to evaluate the effectiveness of the current mechanisms and to examine to what extent the principles contained in Article 4 of the Framework Convention are being implemented. It is therefore imperative that the monitoring of developments in this field is intensified.

34. At the same time, credible reports indicate that the conflict in Chechnya has contributed to the discrimination in various parts of the Russian Federation vis-à-vis Chechens in particular but also in respect of persons belonging to minorities originating in other parts of the Caucasus and in Central Asia. In this respect, an increasingly vigorous investigation and prosecution of human rights violations that have been committed during the conflict in Chechnya is essential also for developments outside Chechnya, in order to ensure that no real or perceived atmosphere of impunity prevails over abuse and discrimination of the persons belonging to the minorities concerned.

35. The Advisory Committee is aware that discriminatory attitudes have contributed to various problems pertaining also to other human rights. For example, the system of residency registration continues to be a particular problem in this respect. Whereas the federal norms have been markedly improved in the past years, the developments at the local and regional level have been less satisfactory, and, as a result, both de facto and de jure shortcomings remain severe despite the fact that the Constitutional Court, invoking the right to freedom of movement and choice of place of residence guaranteed in Article 27 of the Constitution of the Russian Federation, has declared a number of normative acts in this field unconstitutional.⁴ The efforts to ensure that the registration system is truly a system based on notification rather than permits and that it is not open to abuse and discriminatory practices have not yet been successful in a number of subjects of the federation, including in the city of Moscow as well as in the Stravropol and Krasnodar regions.

36. The Advisory Committee is particularly concerned about the fact that these shortcomings in the residency registration regime disproportionately affect persons belonging to national minorities. There are also credible reports suggesting that the regional or local registration regimes have been in some instances abused by law-enforcement officials who have targeted, in particular, the persons from Caucasus and Central Asian origin for repeated unjustified document checks. The Advisory Committee recognises that certain important initiatives have been taken to

counter such practices, but they need to be expanded and implemented more vigorously. It needs to be emphasised that the shortcomings in the registration regime pose problems not only with respect to Article 4 of the Framework Convention, but they also hamper the implementation of other articles of the Framework Convention as access to education and other rights have in some instances been de facto conditioned upon the registration of the persons concerned.

37. The above-mentioned problems related to registration are often particularly acute in situations where the citizenship status of the persons concerned is not, in the view of the authorities, defined, as is the case with respect to a number of Meskhetians in Krasnodar who have been unable to obtain citizenship of the Russian Federation. The Advisory Committee therefore expects that the Law on Citizenship, which entered into force on 1 July 2002, is implemented in a manner that addresses the difficulties faced by such persons and enables them to obtain confirmation of the citizenship of the Russian Federation in accordance with the applicable norms. The Advisory Committee also notes that Article 4, paragraph 6, of the said law endorses efforts to grant citizenship to stateless persons residing in the Russian Federation.

38. The Advisory Committee notes that in a number of subjects of the Russian Federation the legal status of Meskhetians has been addressed in a satisfactory manner as they have been provided adequate access to both citizenship and registration procedures. Such solutions should be drawn upon by the authorities in those regions where widespread difficulties persist, notably in Krasnodar (see also related comments under Article 16).

39. The Advisory Committee welcomes the efforts that have been taken by the Federal Authorities, including the Prosecutor General, to bring the regional laws and practices on registration into compliance with the applicable human rights standards but considers that these efforts should be further stepped up by all actors concerned, including by the Presidential Representatives in the federal districts and the Ministry of Justice. The Advisory Committee considers that these efforts should also encompass other procedures, such as the monitoring of the implementation of legislation concerning “forced migrants” with a view to making sure that they are implemented with due regard to the applicable human rights standards and with no discrimination of persons belonging to Chechens or others concerned.

40. In this connection, the Advisory Committee welcomes the fact that the Parliamentary Ombudsman has drawn attention to problems pertaining to the implementation of Article 4 of the Framework Convention, including to the way in which the registration regime is implemented. In this connection, the Advisory Committee welcomes the commitment of the Parliamentary Ombudsman to address also other issues pertaining to the implementation of the Framework Convention more comprehensively, including with respect to the situation of persons belonging to indigenous peoples. The Advisory Committee hopes that the Ombudsman offices in the subjects of the federation will also focus increasingly on these issues. At the same time the Advisory Committee notes the fact that the State Duma is currently considering the creation of an Ombudsman office that would be devoted to the protection of national minorities.

41. The Advisory Committee notes with deep regret that ensuring full and effective equality has been particularly difficult with respect to persons belonging to many of the numerically small indigenous peoples of the north, who continue to face wide-ranging problems in economic, social, political and cultural life to the extent that the situation is not compatible with Article 4 of the Framework Convention. The Advisory Committee notes that the continuing marginalization of these minorities has contributed to the deeply disconcerting health situation amongst them. Furthermore, the generally low educational level amongst the group concerned, coupled with the decline in their access to their traditional means of livelihood, have led to disproportionately high

unemployment. The Advisory Committee is of the opinion that the authorities should give increasing attention to their situation, including by taking more effective measures to ensure the implementation of the new legislation concerning their rights (see also related comments under Articles 5 and 15 in the present opinion).

42. The Advisory Committee considers that, despite the introduction of some individual initiatives, the Russian Federation has not been able to secure full and effective equality between the majority population and Roma and that the situation of Roma remains difficult in such fields as employment and housing (see also related comment under Article 15). These problems are exacerbated by the unsatisfactory situation of Roma in the educational system (see related comments under Article 12). The Advisory Committee is of the opinion that these issues merit increasing attention.

In respect of Article 4

124. The Advisory Committee finds that there are no detailed and comprehensive civil/administrative law provisions pertaining to discrimination in a number of pertinent fields and considers that the Russian Federation should develop such legislation in order to protect, in a comprehensive manner, individuals from discrimination by both public authorities and private entities.

125. The Advisory Committee finds that government officials have very limited information available on the practice concerning implementation of anti-discrimination articles in civil/administrative law and considers that monitoring of developments in this field needs to be intensified.

126. The Advisory Committee finds that problems in the residency registration disproportionately affect persons belonging to national minorities and hamper the implementation of a number of articles of the Framework Convention. It considers that efforts to make the system compatible with applicable human rights standards need to be stepped up.

127. The Advisory Committee finds that ensuring full and effective equality has been particularly difficult with respect to numerically small indigenous peoples of the north, to the extent that the situation is not compatible with Article 4 of the Framework Convention, and that the position of Roma is also difficult in this respect. It considers that the authorities should give increasing attention to the situation of the populations concerned.

SERBIA AND MONTENEGRO (First Opinion adopted on 17/11/2004)

Article 4

31. The Advisory Committee notes with satisfaction that there exist general guarantees against discrimination, including in the Union Charter of Human Rights and Minority Rights and Civil Freedoms, in the federal Law on the Protection of Rights and Freedoms of National Minorities and in criminal legislation as well as in civil law legislation. The Advisory Committee notes however that the provisions would merit being developed further. It therefore welcomes the fact that a working group has been set up in Serbia and Montenegro for drafting an anti-discrimination law whereby the matter of discrimination would be fully regulated. The Advisory Committee expects that this work will lead to comprehensive anti-discrimination legislation that protects individuals from discrimination by both public authorities and private entities.

32. The Advisory Committee considers that guarantees against discrimination should also be carefully examined in the on-going constitutional reform process. The Advisory Committee notes that the relevant guarantees in the Constitution of Serbia and the Constitution of Montenegro are largely limited to “citizens” only. While acknowledging that certain differences in treatment between citizens and others are legitimate, the Advisory Committee urges the authorities to expand the scope of the constitutional guarantees against discrimination to everyone, as provided by the Union Charter of Human Rights and Minority Rights and Civil Freedoms. Similarly, the Advisory Committee considers it essential that any undue citizenship criteria is also eliminated from other related legislation, bearing in mind that, for example, Article 134 of the federal Criminal Code protects only “citizens” from violence motivated by ethnicity or race. This is particularly important bearing in mind that, following the break-up of Yugoslavia, there have been a range of difficulties in terms of confirmation of citizenship in Serbia and Montenegro.

33. While stressing the importance of having adequate legislation in place to protect persons belonging to national minorities from discrimination, the Advisory Committee is particularly concerned about problems related to the implementation of such legislation in practice. While the situation has clearly improved in this respect following the end of the Milosevic regime, the problem of de facto discrimination of persons belonging to national minorities still persists. Such problems appear particularly prevalent in relation to Roma, including those who have been displaced from Kosovo or who have been repatriated from abroad.

34. The Advisory Committee welcomes the fact that the authorities recognise that the problem of ethnic discrimination exists in Serbia and Montenegro, in particular in relation to Roma, and that they are taking certain measures to address this issue. The Advisory Committee is nevertheless concerned that the developments in this field are not adequately monitored. The State Report refers to individual court cases concerning discrimination of Roma notably in their access to public services, but the Advisory Committee regrets that, according to the authorities of Serbia and Montenegro, no detailed statistics are available on the implementation of civil or criminal law provisions on ethnic discrimination. The Advisory Committee urges the authorities to step up its monitoring in this field as this would contribute to the design, implementation and evaluation of anti-discrimination measures.

35. In this connection, the Advisory Committee urges the authorities to consider the setting up of specific structures to combat ethnic discrimination. In addition, the Advisory Committee is of the opinion that these issues should be incorporated as a main element of the future activities of the Ombudsman offices. The Advisory Committee therefore welcomes the information that the Ombudsman of Montenegro, who is to operate in accordance with the law adopted in July 2003, as well the Ombudsman of Vojvodina, established pursuant to a decision taken by the Assembly of the Autonomous Province in December 2002, will have a Deputy specifically devoted to the protection of national minorities, and the Advisory Committee calls for adequate support and guaranteed independence for these institutions. Furthermore, the Advisory Committee supports efforts in Serbia to swiftly adopt a law on the institution of the Ombudsman and to make the said institution operational.

36. The importance of such non-judicial mechanisms is underlined by the shortcomings that persist in terms of effectiveness and independence of the judiciary in Serbia and Montenegro as well as in the functioning of the prosecuting bodies. These shortcomings – many of which have been inherited from the previous regime – account for the limited trust amongst the public towards the said institutions and negatively affect the implementation of the non-discrimination provisions and other principles of the Framework Convention and should be addressed as a matter of priority.

37. Furthermore, the Advisory Committee notes that the Court of Serbia and Montenegro, envisaged in the Constitutional Charter of the State Union of Serbia and Montenegro, is not yet operational at the time of the adoption of the present Opinion. Bearing in mind that the Court's jurisdiction contains elements that are also important to further the implementation of the Framework Convention and to implement constitutional guarantees in this sphere, the Advisory Committee considers it essential that the Court commence its activities as soon as possible.

38. The Advisory Committee considers that one key to reaching full and effective equality for persons belonging to national minorities is the launching of additional positive measures in the field of employment and it supports efforts to seek financing for such measures. The situation of persons belonging to Albanian, Bosniac, Croatian and Muslim minorities merits particular attention, taking into account the past discriminatory measures aimed at curtailing their numbers in various fields of employment, including in the judiciary and other fields (see also related comments under Article 15 below). In this respect, the Advisory Committee welcomes the positive measures that have been launched in the municipalities of Bujanovac, Preševo and Medvedja in Southern Serbia, where there are a substantial number of Albanian and Roma inhabitants, aimed at promoting full and effective equality in the domain of economic life. The Advisory Committee urges the authorities to pursue such measures further and to draw on these practices in other relevant regions as well (see also related comments under Article 15 below).

39. As recognised by the authorities concerned, they have not been able to secure full and effective equality between the majority population and the Roma. It has been pointed out that the situation of Roma remains extremely difficult in such fields as housing, education and employment. The Advisory Committee is particularly concerned about reports of alarming situation in informal Roma settlements, where thousands of Roma, including internally displaced Roma from Kosovo and Roma repatriated from abroad who face particularly serious difficulties, live in substandard housing conditions without basic sanitary facilities, heating, water or power supplies. The Advisory Committee notes with concern that the conditions are in many settlements so sub-standard that they constitute a health risk for the residents, and, for example, the epidemiological situation in the Roma settlements of Palilula has been described as catastrophic by researchers. The Advisory Committee is of the opinion that the situation as described in these reports is not compatible with the principles contained in Article 4 of the Framework Convention and that these problems merit urgent attention and targeted measures by both domestic authorities as well as support by international donor agencies. In this connection, the Advisory Committee stresses that Roma women – many of whom have only limited information for example on reproductive health issues and who often go through pregnancies without any medical control – are particularly exposed to health risks and their situation merits specific emphasis.

40. Furthermore, Roma residing in settlements that have not been legalised are vulnerable to forced evictions without being provided alternative accommodation, as manifested by recent cases in both Serbia and Montenegro. It is therefore essential that the authorities address the legal status of these settlements as a matter of priority, including by using the new possibilities for legalisation offered by the Law on Project Design and Construction of the Republic of Serbia adopted in March 2003, and that no evictions involving human rights violations are carried out.

41. The problems of Roma are exacerbated by the fact that many of them do not possess personal documents, which in turn hampers their access to basic public services and causes some problems with regard to confirmation of their citizenship. The Advisory Committee is encouraged by the fact that certain NGO initiatives aimed at improving Roma's access to personal documents – such as the one carried out with Roma in Nikšić, where serious problems had been reported in this domain in the past – show that positive measures can yield impressive results. The Advisory

Committee considers that the authorities should support similar initiatives in other locations as well.

42. Against this background, the Advisory Committee finds it encouraging that Roma issues have recently received increasing attention from the authorities of Serbia and Montenegro and the authorities openly admit that serious problems exist in this sphere. This increasing commitment is reflected in the initiative to draw up a comprehensive Strategy for the Integration and Empowerment of Roma. The Advisory Committee agrees that the themes identified in the ambitious draft Strategy as top priorities, namely housing, economic empowerment, education and living-conditions of displaced Roma, are indeed key questions in ensuring full and effective equality for Roma. The Advisory Committee regrets however that the formal endorsement of the draft Strategy has been delayed, and the Advisory Committee calls on the authorities to finalise and adopt the said Strategy as a matter of urgency. It is also essential to ensure that adequate structures are put in place, and resources allocated, for the Strategy's implementation, which should be pursued and monitored according to clearly set targets.

43. The Advisory Committee further notes that it is essential that such a strategic approach to Roma issues is also adopted and implemented by the authorities of Montenegro, where the protection of Roma has in recent years become an increasingly important issue with the arrival of internally displaced Roma from Kosovo and Roma repatriated from abroad. The Advisory Committee considers that the lack of de facto applicable detailed norms on minority protection – such as the federal Law on the Protection of Rights and Freedoms of National Minorities – underlines the need to develop a clearer legal and policy framework for positive measures in support of Roma in Montenegro.

44. The Advisory Committee notes that there are wide discrepancies between the existing official statistics of the Government and the unofficial estimates of the actual number of persons belonging to certain national minorities in Serbia and Montenegro, including the Roma. The Advisory Committee is concerned that such discrepancies in figures can hamper the ability of the state to target, implement and monitor measures to ensure the full and effective equality of persons belonging to national minorities. The Advisory Committee expects that the results of the censuses conducted in Serbia in 2002 and in Montenegro in 2003 will be of assistance in this respect. The Advisory Committee notes, however, that, despite the improvements in relation to the past practices, these censuses alone do not necessarily satisfy the continuous need for up-to-date data, especially since the demographic picture of Serbia and Montenegro is currently in a state of flux (see related comments under Article 3 above and Article 5 below). In this connection, the Advisory Committee also notes that a number of persons belonging to national minorities have argued that, despite clear improvements in relation to past practices, the process of gathering census data in 2002 in Serbia left scope for improvements and that for example NGO efforts to improve awareness amongst Roma of the importance of the census were not always adequately supported.

45. The Advisory Committee therefore suggests that, on condition that the principles identified in the Committee of Ministers' Recommendation (97) 18 concerning the protection of personal data collected and processed for statistical purposes are respected, the Government try to identify further ways and means of obtaining reliable statistical data and notes that some steps in this direction are already being taken by the Ministry of National and Ethnic Communities which has initiated research aimed at creating a "database or a social map" to determine the number of the Roma and their settlements as well as statistics on their position in such fields as education, health and employment.

In respect of Article 4

125. The Advisory Committee finds that the legal guarantees against discrimination are limited in their scope and considers that they should be developed further.

126. The Advisory Committee finds that the problem of de facto discrimination of persons belonging to national minorities still persists, in particular in relation to Roma. It considers that the authorities should step up monitoring in this field and give thought to the setting up of specific structures to combat ethnic discrimination and incorporate these issues as a main element of the future activities of the Ombudsman offices.

127. The Advisory Committee finds that the shortcomings in the effectiveness and independence of the judiciary in Serbia and Montenegro as well as in the functioning of the prosecuting bodies negatively affect the implementation of the Framework Convention and considers that they should be addressed as a matter of priority.

128. The Advisory Committee finds that the Court of Serbia and Montenegro has not yet started operating and considers it important that the Court commence its activities as soon as possible.

129. The Advisory Committee finds that positive measures in the field of employment are important, in particular for persons belonging to those national minorities that were targets of past discriminatory measures in this sphere. The Advisory Committee considers that the positive measures that have been launched in this field should be expanded.

130. The Advisory Committee finds that the authorities have not been able to secure full and effective equality between the majority population and Roma and that the housing and health situation in informal Roma settlements, as described in various reports, is alarming and not compatible with the principles contained in Article 4 of the Framework Convention. The Advisory Committee considers that these problems merit urgent attention and targeted measures, including as regards the legal status of such settlements.

131. The Advisory Committee finds that problems of Roma are exacerbated by the fact that many of them do not possess personal documents and considers that the authorities should support additional initiatives aimed at improving Roma's access to such documents.

132. The Advisory Committee finds that the authorities' increasing commitment to Roma issues is reflected in the initiative to draw up a comprehensive Strategy for the Integration and Empowerment of Roma and considers that a strategy should be finalised and adopted as a matter of urgency, and that such a strategic approach should also be adopted and implemented by the authorities of Montenegro.

133. The Advisory Committee finds that there are wide discrepancies between the existing official statistics of the Government and the unofficial estimates of the actual number of persons belonging to certain national minorities in Serbia and Montenegro and considers that the authorities should identify further ways and means of obtaining reliable statistical data.

SLOVAK REPUBLIC (First Opinion adopted on 22/09/2000)

Article 4

17. The Advisory Committee recognises the efforts that have been made to expand the scope of legislative guarantees against discrimination by both public authorities and private entities. Considering that there are still some uncertainties concerning the scope of related legislation (see also below comments under Article 6), the Advisory Committee welcomes the fact that the above-mentioned Strategy, approved by the Government in September 1999, envisages an analysis of the existing situation as concerns racial discrimination, including, if necessary, draft amendments to relevant laws or new draft laws.¹ The Advisory Committee invites the relevant Ministries to allocate adequate resources for this work, with a view to securing a thorough and timely analysis and its follow-up (see also related comments under Article 5).

18. While recognising the need to analyse the legal situation concerning discrimination, the Advisory Committee is particularly concerned about problems related to the implementation of such legislation in practice and credible reports concerning de facto discrimination in particular against Roma in various fields ranging from health care facilities to education. The Advisory Committee regrets the fact that the Government was not in a position to provide detailed information on the cases of discrimination investigated and brought to trial in various fields, and considers that the Government should monitor and react to cases of discrimination in a more effective manner. The Advisory Committee notes that the potential effectiveness of such measures is evidenced by certain past examples, such as the intervention, in 1999, by the central authorities that led to the cancellation, in the municipalities of Nagov and Rokytovce, of local ordinances that had explicitly banned Roma from entering these towns.

19. In addition to the legislative guarantees and mechanisms that are currently in place, the Advisory Committee notes that the Government is considering the establishment of an Ombudsman Office.

20. The Advisory Committee welcomes the fact that the Government has designed a range of initiatives aimed at promoting full and effective equality, notably in the above-mentioned Strategy concerning Roma, adopted in September 1999. Such initiatives are clearly needed since full and effective equality between persons belonging to Roma and those belonging to the majority has not yet been achieved in Slovakia and the socio-economic differences between the majority population and many of the Roma remain considerable (see also comments under Article 15). Areas where the Advisory Committee finds the current situation particularly alarming include employment, housing and education. Bearing in mind that earlier governmental programmes for Roma, such as those adopted in 1991, 1996 and 1997, were not fully implemented in practice, the Advisory Committee considers it important that the Government ensure that adequate attention is paid to, and resources allocated for, the implementation of the new Strategy. In this connection, the Advisory Committee notes that, at the initial stage of the process, the degree of commitment to the implementation of the Strategy appears to vary greatly between different Ministries involved, and that, therefore, particular care should be taken to ensure that the Strategy is fully and consistently put into practice by all Ministries charged with its implementation. Finally, the Advisory Committee underlines that, when implementing such programmes, particular attention should be paid to the situation of Roma women.

21. The Advisory Committee notes that there are wide discrepancies between the official statistics of the Government and those of national minorities about the numbers of persons belonging to national minorities in Slovakia. The Advisory Committee is concerned that such wide discrepancies in figures can seriously hamper the ability of the state to target, implement

and monitor measures to ensure the full and effective equality of persons belonging to national minorities. The Advisory Committee therefore considers that the Government should seek to identify ways and means of obtaining reliable statistical data. Without such data being available it is very difficult for the Slovak authorities to operate effectively and for the international monitoring bodies to ascertain whether Slovakia meets its obligations flowing from the Framework Convention.

In respect of Article 4

The Committee of Ministers concludes that the socio-economic differences between the majority population and the Roma remain considerable and recommends that Slovakia pay full attention to, and allocate resources for, the implementation of new initiatives aimed at promoting full and effective equality, including those contained in the Strategy concerning Roma, adopted in September 1999.

The Committee of Ministers concludes that there are still some uncertainties concerning the scope of legislation related to racial discrimination in Slovakia and recommends that Slovakia allocate adequate resources for the envisaged review of the existing practical and legal situation as concerns racial discrimination.

The Committee of Ministers concludes that the wide discrepancies between the official statistics of the Government and those of national minorities about the numbers of persons belonging to national minorities seriously hamper the ability of the state to target, implement and monitor measures to ensure the full and effective equality of persons belonging to national minorities. The Committee of Ministers recommends that the Government considers ways and means of obtaining reliable statistical data.

SLOVENIA (First Opinion adopted on 12/09/2002)

Article 4

26. The Advisory Committee notes that Article 14 of the Constitution guarantees the principle of equality and that Article 141 of the criminal code lays down penalties for breach of the right to equality, especially when discrimination based on membership of an ethnic or national minority is involved. In spite of the existence of these two provisions and many others prohibiting acts of intolerance and discrimination in the criminal code, the Associations Act, the Media Act and the Aliens Act, the Advisory Committee is of the opinion that the legal framework relating to discrimination could be extended by means of specific provisions in civil and administrative legislation designed to prohibit discrimination in the field of public or private housing, employment and access to services.

27. In view of the very small number of cases which give rise to legal proceedings on the basis of alleged discrimination, the Advisory Committee urges the authorities to make sure that sufficiently effective legal remedies exist, in particular to enable victims of acts of discrimination to obtain compensation for damage suffered. In this context, the Advisory Committee also welcomes the positive role played by the Ombudsman in the fight against discrimination, especially through action in favour of persons belonging to national minorities or other ethnic communities. To increase the effectiveness of his action against discrimination, the Advisory Committee considers that it is indispensable for the Ombudsman to be able to rely on co-operation from all authorities. It is also important that persons belonging to national minorities and other ethnic communities should be better informed about the Ombudsman's action, including, as appropriate, in minority languages.

28. The Advisory Committee notes that the authorities possess detailed statistical data about persons belonging to the Hungarian and Italian minorities, especially regarding their demographic and socio-economic situation. These data are broken down by age, geographical distribution and to some extent by gender. As the authorities point out, these data indicate that full equality between persons belonging to the Hungarian and Italian minorities on the one hand and persons belonging to the majority population on the other is to a large extent effective in economic, social, political and cultural life.

29. Despite the absence of adequate statistical data in this sphere (see General remarks) and notwithstanding the steps already taken by the Slovene authorities, the Advisory Committee finds that there are important socio-economic differences between many Roma and the rest of the population. The Advisory Committee welcomes the high level of integration of the Roma community living in the Prekmurje region and notes that the coexistence with other groups has been harmonious for a long time. It expresses the hope that other regions will draw inspiration from this achievement. It is to be noted, in this context, that the situation of the Roma in the Dolenjska region is much less favourable, as they still often seem to be the targets of discrimination and hostility on the part of the population. These geographical variations notwithstanding, the Roma continue to be particularly disadvantaged in the fields of education, employment and housing, and the Advisory Committee consequently finds it essential to adopt further measures in these fields. It appears that efforts undertaken as part of the programme of governmental measures to assist the Roma adopted by the Government in November 1995 have not been comprehensive enough to reduce permanently and substantially the gap between the Roma and the majority population. The Advisory Committee therefore welcomes that the Programme for active employment policy adopted in March 2002 addresses the need to improve employment opportunities for Roma. In designing further measures to promote full and effective equality for the Roma, the Slovenian authorities should take due account of the Committee of Ministers' Recommendation No. (2001) 17 on improving the economic and employment situation of Roma/Gypsies and Travellers in Europe.

30. It appears that before Slovenia's declaration of independence in 1991 many Roma lived on State-owned land. After 1991 and subsequent to denationalisation, this land was returned to persons who had owned it before nationalisation, with the result that many dwellings occupied by Roma have become illegal according to the Slovenian authorities. In response to this situation, the authorities are attempting to find new sites for the Roma concerned, but this is proving to be a lengthy process. The Advisory Committee notes that the Government is aware of the problem and that legislation is being drafted to solve the problem of Roma illegal housing. The Advisory Committee finds that the Roma have been proportionately far more affected by this phenomenon than persons belonging to other minorities or the majority population and that this factor should be taken into account when remedial measures are designed. In view of this situation, it is essential that the authorities adopt additional measures and speed up the introduction of the necessary legislative changes that are planned. Meanwhile urgent measures should be taken to improve housing conditions where necessary.

31. The Advisory Committee considers that lack of citizenship or of a residence permit often has a negative impact on the enjoyment of full and effective equality and may lead to discriminatory practices, inter alia regarding access to social welfare benefits and, according to some sources, to schooling. Although official statistics on the subject are lacking, it seems that a limited number of persons originating from other Republics of former Yugoslavia who were legally resident in Slovenia when independence was declared were unable to obtain Slovene citizenship within the short time-limit allowed by the authorities for this purpose. While the Act on the "Settling of the Status of Citizens of Other SFRY Successor States in the Republic of

Slovenia” passed in 1999 improved the situation to some extent by granting these persons the opportunity to apply for a residence permit within a three-month period, it does not seem to have settled the situation of people who were legally resident in Slovenia before the declaration of independence but who were unable, for various reasons, to file their applications in due time and/or provide all the requisite documents.

32. In this context, the Advisory Committee is concerned about reports according to which a significant number of Roma already resident in Slovenia in 1991, may still face undue difficulties in their efforts to obtain Slovene citizenship or residence permits. The Advisory Committee is therefore of the opinion that the Slovene authorities should ensure that legislation governing citizenship and residence permits is applied in a fair and non-discriminatory manner to all candidates, especially those originating from regions within the former Yugoslavia where it is difficult

In respect of Article 4

85. The Advisory Committee finds that there are important socio-economic differences between many Roma and the rest of the population and that, in spite of geographical variations, the Roma continue to be particularly disadvantaged in the fields of education, employment and housing. The Advisory Committee therefore considers it essential to adopt further measures in these fields.

86. The Advisory Committee finds that, after 1991 and subsequent to denationalisation, many dwellings occupied by Roma, amongst others, have become illegal according to the Slovenian authorities. The Advisory Committee finds that the Roma have been proportionately far more affected by this phenomenon than persons belonging to other minorities or the majority population and that this factor should be taken into account when remedial measures are designed. In view of this situation, the Advisory Committee considers it essential that the authorities adopt additional measures and speed up the introduction of the necessary legislative changes that are planned. It also considers important that urgent measures are taken to improve housing conditions where necessary.

87. The Advisory Committee finds that there is reason for concern about reports according to which a considerable number of Roma already resident in Slovenia in 1991, may still face undue difficulties in their efforts to obtain Slovene citizenship or residence permits. The Advisory Committee therefore considers that the Slovene authorities should ensure that legislation governing citizenship and residence permits is applied in a fair and non-discriminatory manner to all candidates, especially those originating from regions within the former Yugoslavia where it is difficult to obtain identity papers.

SLOVENIA (Second Opinion adopted on 26/05/2005)

Article 4

Legal and institutional protection from discrimination

Findings of the first cycle

47. In its first Opinion on Slovenia, the Advisory Committee encouraged the authorities to develop and strengthen arrangements for legal and institutional protection from discrimination, and to step up information and awareness-raising measures for the public in this area.

a) Positive developments

48. The Advisory Committee notes that, in May 2004, Slovenia passed an Act on Equal Treatment, aiming to transpose the European Union Directive n° 2000/43/EC on Equal Treatment Irrespective of Racial or Ethnic Origin into national law. At the institutional level, it notes the recent setting up, within the Government, of a Council for the Implementation of the Principle of Equal Treatment - where only the Hungarians, the Italians and the Roma are represented - and the establishment of the institution of Advocate for the Principle of Equality, responsible for dealing with complaints of discrimination. The Advisory Committee expresses the hope that every effort will be made to ensure that this institution enjoys the necessary independence.

49. The Advisory Committee also welcomes the work and particular commitment of the Ombudsman in promoting the principles of equality and non-discrimination. The efforts of the Slovene Constitutional Court, through its case-law, to ensure the effective implementation of the aforementioned principles in Slovenia (see paragraphs 55 and 93 below) are also to be welcomed.

b) Outstanding issues

50. Aside from the information provided on the situation of Roma in various sectors and the measures taken to address the problems faced by these persons, the State Report does not supply information about the frequency of cases of discrimination against persons belonging to minorities, the associated investigations and the action taken. The Advisory Committee considers that the limited number of complaints of discrimination submitted to the relevant public institutions might also indicate that the victims of such acts are inadequately informed, and that the persons concerned lack confidence in the ability of those institutions to afford them protection and help them secure compensation.

Recommendations

51. Additional monitoring measures are needed with a view to obtain more accurate information on the effective implementation of the principle of non-discrimination in respect of the persons belonging to national minorities and on any violations of this principle. Increased efforts should also be made to better inform the general public and public institutions about the principles of equality and non-discrimination and the remedies available to the victims of discrimination.

52. The authorities are encouraged to take all necessary measures to ensure the effective implementation of the Act on Equal Treatment and the smooth operation of the institutions established under that Act. In this context, it is essential to ensure that the views of the persons belonging to the various ethnic groups living in Slovenia are taken into account.

53. At the same time, the authorities should provide the Ombudsman with their full support, and ensure that his recommendations generate the expected response from the relevant public institutions.

Legal status of persons deleted from the list of permanent residents

Findings of the first cycle

54. In its first Opinion on Slovenia, the Advisory Committee noted with concern the problematic situation of a number of former citizens of other republics of former Yugoslavia (SFRY), who found themselves foreigners in the territory they were living in and without confirmed legal status, following their removal from the register of permanent residents, in 1992.

Present situation

a) Positive developments

55. The Advisory Committee notes that a number of positive developments have taken place in this area. For instance, the Constitutional Court has taken a stand on these issues by clearly stating the need to restore, without further delay and retrospectively, the rights of non-Slovene former Yugoslav citizens who were, according to the Court, illegally removed from the register of permanent residents. The Advisory Committee also notes that efforts have been made at the legislative level to regularise the legal status of these persons, and that most of them have been granted permanent resident status in recent years on the basis of individual decisions issued by the Ministry of the Interior.

b) Outstanding issues

56. The Advisory Committee notes with concern that, despite the relevant Constitutional Court decisions, several thousand persons whose names were deleted from the registers of permanent residents on 26 February 1992, and automatically transferred to the registers of foreigners, are still, more than ten years on, awaiting clarification of their legal status. This concerns citizens of other former Yugoslav republics, including a number of Roma, who were legally resident in Slovenia and, for various reasons, did not wish – or were unable – to obtain Slovene citizenship within the short time-limit allowed by the authorities after the country's independence.

57. In many cases, the lack of citizenship or of a residence permit has had a particularly negative impact on these persons' situation. It has, in particular, paved the way for violations of their economic and social rights, with some of them having lost their homes, employment or retirement pension entitlements, and has seriously hindered the exercise of their rights to family life and freedom of movement.

58. The Advisory Committee notes that more recent government initiatives have sought, in accordance with the relevant decisions of the Constitutional Court, to restore these persons' rights retrospectively. It finds it disturbing that these initiatives have been stalled for over a year, and that the social climate in Slovenia has not been conducive to a speedier resolution of these matters. In the referendum held in April 2004 on the Act on the Implementation of Item n° 8 of Constitutional Court Decision n° U-I-246/02 (the so-called "Technical Act on Erased Persons"), 94.7% of participants (representing 31.45% of voters) expressed their opposition to this Act (see also comments under Article 6 below).

59. The Advisory Committee notes that the authorities are in the process of drafting, at the governmental level, a new normative text expected to provide solutions to the problems mentioned above. Insofar as this new initiative is not yet in the public domain, it is difficult to

ascertain, at this stage, whether the measures envisaged – legislative or other – will be likely to resolve the situation in a comprehensive manner once and for all.

Recommendations

60. Without further delay, the authorities should find solutions to the problems faced by non-Slovenes from former Yugoslavia (SFRY) who have been deleted from the register of permanent residents, in connection with the regularisation of their legal status, including access to citizenship and social and economic rights.

61. At the same time, they should assist these persons in their efforts to overcome the difficulties arising from this situation, and facilitate their effective participation and integration in the Slovene society by means of targeted measures.

Implementation of the principles of equal treatment and non-discrimination in respect of the Roma

Findings of the first cycle

62. In its first Opinion on Slovenia, the Advisory Committee found that there were considerable socio-economic differences between most of the Roma and the rest of the population, and urged the authorities to adopt more decisive measures to remedy the situation. In view of the persistence of discriminatory practices towards the Roma in most fields, the authorities were urged to combat this problem by every possible means.

Present situation

a) Positive developments

63. The Advisory Committee welcomes the efforts made by the authorities in many areas with a view to improving the living conditions of the Roma. Specific education and employment projects developed and financed by the relevant ministries, in some cases with international support, have supplemented the national programmes adopted in 1995 and 2000 with a view to gradually eliminating the disparity between the socio-economic situation of Roma and that of the rest of the population. The Advisory Committee also notes the development – currently in progress – of new health and social security measures that are more geared to the specific situation of the Roma, and, more generally, the existence of a genuine political commitment to helping the Roma emerge from the precarious situation in which they continue to find themselves. More attention is now being paid to involving the Roma in the development and implementation of such measures.

64. At the local level, some municipalities have made provision in their local development plans and strategies for various forms of support for this population. In this connection, the Advisory Committee notes the financial assistance granted in recent years to the municipalities concerned with a view to improving the housing conditions of the Roma. Furthermore, according to the State Report, the legislation on spatial planning now establishes a legal basis for finding ways of legalising illegal Roma settlements.

65. The Advisory Committee is pleased to find that the authorities' efforts, with active involvement of the Roma, are gradually yielding results in this area. The impact of their action is particularly clear in some cases, as the Committee observed in the region of Prekmurje, where Roma are in a more favourable socio-economic situation and well integrated.

b) Outstanding issues

66. The Advisory Committee notes that, although improvements in the situation of the Roma have been reported in some regions, this does not apply to the whole Roma population or to all of the localities where Roma communities have settled. In some cases, as in the Dolenjska region, Roma continue to face problems in a range of fields, particularly when it comes to housing conditions, employment, health and education. These differences between Roma residing in different localities appear to result from numerous factors, including the political commitment of local authorities, regional economic development and the involvement and efficacy of Roma councillors and organisations.

67. The Roma continue to face a particularly difficult situation in respect of housing. Many Roma live on sites isolated from the rest of the population, and their living conditions are generally below minimum standards, owing to a lack of adequate infrastructure - electricity, running water, access to transport, etc. The Advisory Committee notes that these problems are often accentuated by the reluctance of certain local authorities, in the face of the prejudices of the non-Roma population, to make more efforts to assist the Roma and to use local resources for this purpose. On the other hand, it notes cases where struggling Roma families have been evicted and subsequently rehoused in settlements that are separated from the rest of the population and lack adequate facilities (see also comments under Article 6 below).

68. In addition, the problem of settlements having become illegal after 1991 is still ongoing. The new legal framework applicable to this situation and the assistance measures announced by the Government are very recent, and are only just beginning to be implemented.

69. In the education sector, it is reported that some Roma children continue to attend separate classes, and that the practice of unjustified placement of Roma children in "special" schools (for children with special needs) has not been completely eliminated (see also comments under Article 12 below).

70. In the employment sector, various estimates, including those of the Government, indicate a particularly high rate of unemployment among the Roma (exceeding 80%, according to some sources). The reasons given for this situation include inadequate levels of education and qualifications and the persistent prejudice against such persons in the labour market. According to government sources, temporary work is prevalent and regular employment is rare among the Roma. The same sources indicate that most Roma live off income derived from social welfare, child benefits and other forms of state support, which often leads to tensions between them and the non-Roma population at the local level.

71. In addition to the problems highlighted in the preceding paragraphs, the Advisory Committee finds the distinction between "autochthonous" Roma and "non-autochthonous" Roma – which some authorities continue to make – problematic, and considers that, where applied, this approach leads to discriminatory practices. It notes that, although "non-autochthonous" Roma often face the same problems, they are not systematically covered by the measures provided for in government programmes to improve the socio-economic situation of the Roma community or to combat poverty and social exclusion (see also comments under paragraphs 30, 31, 41 above).

72. The most vulnerable Roma in Slovenia are undoubtedly those whose legal status has still not been regularised. The Advisory Committee notes with concern that, as yet, the authorities have not been able to come up with a proper solution to the problems faced, in attempting to obtain Slovene citizenship or a residence permit, by some of those Roma who were legally resident in Slovenia in 1991. The Advisory Committee also notes the problems faced for a number of years by Roma from Kosovo, who have stayed in Slovenia but have lost their temporary refugee status. Without identity papers, these people face numerous problems in various areas, particularly when it comes to access to health care, housing and social welfare, as well as education.

Recommendations

73. The authorities should continue, and step up, the initiatives and programmes designed to improve the situation of the Roma, particularly in the areas of housing, employment and education, and allocate adequate resources to them. In this connection, it is particularly important to ensure that the measures in question are geared to the needs of the Roma, by actively involving the latter in the various stages of development, implementation and evaluation of such measures.

74. In planning and developing assistance measures, the authorities are strongly encouraged to adopt an inclusive approach and to avoid making distinctions among the Roma that are likely to result in the exclusion, in a discriminatory manner, of certain persons from the scope of such measures. Urgent consideration should be given to the specific situation of Roma awaiting regularisation of their legal status.

SPAIN (First Opinion adopted on 27/11/2003)

Article 4

25. The Advisory Committee finds that the principles of equality and non-discrimination are safeguarded in Spain by numerous constitutional and legislative provisions. Thus, while Article 14 enshrines the principle of non-discrimination of Spaniards, Article 1.1 of the Constitution includes equality as one of the main values of the Spanish legal order.

26. The Advisory Committee notes that, in addition to a large number of provisions to counter discrimination in the Criminal Code, the principle of non-discrimination is contained in various laws and regulations⁷ under civil and administrative law in several important spheres such as employment, education and access to services. The Advisory Committee also notes that there are clauses outlawing discrimination on grounds of language in the various Autonomy Statutes of the Autonomous Communities.

27. While welcoming the efforts made to develop this anti-discrimination legislation, the Advisory Committee considers it desirable to review all the existing provisions in order to ensure that all relevant spheres are covered. Similarly, it is essential to ensure that protection is afforded against any discrimination either by public authorities or by private entities. The Advisory Committee expresses the hope that the current measures designed to transpose European Council Directive 2000/43/CE of 29 June 2000, on implementation of the principle of equality of treatment between persons irrespective of race or ethnic origin, will make it possible to remedy any shortcomings and where necessary adopt additional measures to combat discrimination.

28. Although remedies are available to the victims of acts of discrimination (including the possibility of appeal to the Constitutional Court), it appears that anti-discrimination provisions are rarely applied in practice and that the cases which come before the courts do not reflect the actual number of acts of discrimination or racism. The Advisory Committee notes that a reform of the Spanish justice system designed, inter alia, to render these judicial protection remedies more accessible and effective, is under way.

29. The Advisory Committee notes furthermore that in Spain there is no specialist body to combat discrimination, racism and intolerance which could be made responsible, inter alia, for monitoring the application of the afore-mentioned legislation. The Advisory Committee notes with approval that the authorities envisage the establishment of such a structure. Given the fact that, at least at present, the afore-mentioned provisions are scattered among a large number of standard-setting texts and in some cases lack clarity and coherence, it believes that this body could play an important coordination and guidance role so as to render them more effective. The Advisory Committee furthermore hopes that the authorities will include training and awareness activities among the attributions of this body, both for the population and for the circles concerned (police, justice, media, public authorities, etc.).

30. The Advisory Committee notes that problems of discrimination are not explicitly mentioned as part of the mandate of the Ombudsman and that very few complaints directly linked to discrimination or racism have been lodged with this institution. It is nonetheless encouraging to see that this dimension has been indirectly taken into account in the manner of dealing with certain complaints. It should also be noted that, in response to complaints by Roma in this connection, the Ombudsman has made recommendations relating to the situation of Roma in the matter of housing and education. The Advisory Committee further notes that most of the Autonomous Communities have ombudsmen and expresses the hope that these institutions will give appropriate attention, within their terms of reference, to questions linked to the principles of equality and non-discrimination.

31. While acknowledging the efforts made by Spain to promote full and effective equality, the Advisory Committee is concerned by the considerable socio-economic differences between a considerable number of Roma and the rest of the population. The Advisory Committee notes that a development programme for the Roma population (the Governmental Roma Development Programme) was launched by the Spanish Government already in 1988. Specific financial resources were earmarked for its implementation in the general State budget and a special administrative unit was created in the Ministry of Labour and Social Affairs. This programme, broadly described in the State Report, was aimed particularly at an improvement in the living conditions of Roma, their fuller involvement in all areas of public life, a reduction in the gulf between them and the rest of the population, and better cohabitation with the other communities inside Spanish society.

32. The Advisory Committee observes with concern that, despite the measures taken and the progress achieved in the different areas covered by this programme, Roma still face marginalisation and social exclusion and that discriminatory attitudes to them are evident in many fields. For example, according to various sources of information, the number of persons living below poverty level is markedly higher among the Roma than among the majority. The representatives of non-governmental organisations criticise the above-mentioned programme in particular for no longer being suited to the present situation of Roma and point to inadequate resources, the very limited involvement of Roma in its implementation and the lack of sufficient coordination or strategic vision. The Advisory Committee notes that publication of the stocktaking report commissioned by the Government on the programme is eagerly awaited in the

circles concerned, together with proposals for new measures to bring about a clearer improvement in the situation. The Advisory Committee wishes to emphasise in this connection that the authorities, which have a duty to ensure respect for the principles of equality and non-discrimination, should give the new programmes being devised in this field the political support that is vital to their success.

33. More specifically, particular problems remain over access to employment, where a sizeable proportion of Roma (approximately 46% according to some sources) remain unemployed. In this sphere, Roma are at a disadvantage both because of their low standard of education and vocational specialisation and because of hostile and discriminatory attitudes on the part of potential employers. These attitudes affect Roma women especially, both in recruitment and in the workplace. The Advisory Committee welcomes recent initiatives aimed at vocational training for young Roma, and the development of counselling and guidance programmes for them. It also takes note of the measures taken by the Autonomous Communities to foster the recruitment of persons from disadvantaged groups, especially Roma. However, the Advisory Committee wishes to stress that more determined action is required in combating the discriminatory attitudes observed in this field and urges the authorities to ensure effective enforcement of the relevant legislation. Specific efforts are needed to encourage and prepare Roma women to enter the labour market and to promote the revaluation of their role in the family and in society, while respecting the traditions peculiar to Roma lifestyle and culture.

34. Roma also face serious difficulties over housing. A large proportion of the Roma population live in precarious conditions, and are also affected by the phenomena of drugs and violence. In some cases, initiatives on the part of the authorities to offer provisional rehousing pending a more lasting solution to their tenancy problems have met with opposition from those concerned, as well as from human rights defence organisations. The Advisory Committee notes that the opponents of these measures fear that these temporary solutions might lead to new forms of marginalisation or isolation.

35. The Advisory Committee is deeply concerned by cases of refusal by the local population to accept the settlement of Roma groups on the outskirts of certain localities, and the violent incidents generated by such refusal.⁸ Although isolated, these cases are all the more serious when, according to certain sources, the local authorities take sides instead of preventing and forestalling such incidents. The Advisory Committee considers that this state of affairs calls for particular attention on the part of the government, which ought to take all necessary steps to counter the phenomenon while at the same time respecting local autonomy and the distribution of competencies between central, regional and local authorities (see also the comments in respect of Article 6 below).

36. Disparities are also observed with regard to education (see also the specific comments in respect of Article 12 below), access to public services and medical care. The Advisory Committee is worried by the reports which mention an infant mortality rate much higher and life expectancy much lower than for the rest of the population. In order to foster a significant improvement in the situation of the Roma population in the health field, the Advisory Committee considers that the authorities should take more suitable measures, including measures under specific prevention and promotion programmes among the communities concerned.

37. The Advisory Committee notes that, although these problems have received priority attention from the authorities, in many cases the measures taken have proved unsuited to the Roma lifestyle and traditions, and consequently ineffective. It should also be stressed that, despite a strong sense of identity and a common ethnic origin, the Roma population of Spain is very

heterogeneous in terms of level of education, vocational skills, way of life and beliefs. For this reason it is essential that the authorities at every level (central, regional and especially local) consult Roma representatives in order to take their lifestyles and socio-economic circumstances fully into account. On this point the Advisory Committee wishes to draw the authorities' attention to the guidelines offered in Committee of Ministers' Recommendation No. (2001) 17 on improving the economic and employment situation of Roma/Gypsies and Travellers in Europe.

38. The Advisory Committee further notes that certain sources⁹ report a disproportionate number of Roma, and especially Roma women, in Spanish prisons. The Advisory Committee is of the opinion that this situation deserves examination by the authorities, who should verify, in the light of the non-discrimination principle, that the reasons for this are not linked to shortcomings in the administration of justice (see also the comments in respect of Article 6 below).

39. The Advisory Committee wishes to draw attention to another matter which could have implications for Spain's efforts to implement the principle of full and effective equality, namely the availability of reliable demographic and socio-economic indicators for the different population groups in the country. In this connection the Advisory Committee notes that the latest population and housing census was held in November 2001 and that the results are expected to be made public in their final form in late 2003.

40. The Advisory Committee notes however that the authorities do not consider themselves legally entitled to gather information on individuals' ethnic origin; their position on this is based primarily on Article 16.2 of the Constitution and on Organic Law 15/1999 on the protection of private data.¹⁰ The Advisory Committee takes the view that gathering such data is nonetheless helpful and is compatible with the principles of the Framework Convention, provided it is coupled with the necessary safeguards to protect the persons concerned from abuses, particularly with regard to the collecting, processing and dissemination of such data without informing and obtaining the prior consent of those concerned.

41. The Advisory Committee considers that the government ought therefore to try to identify the most appropriate means of obtaining reliable statistical data on the composition of the population, broken down by age, sex and geographical distribution, while respecting the principles contained in Committee of Ministers' Recommendation No. (97) 18 concerning the protection of personal data collected and processed for statistical purposes. This is a factor that may have considerable impact on the preparation and monitoring of measures designed to ensure full and effective equality, as well as on the work of the international supervisory bodies aiming to ensure that Spain meets its obligations under the Framework Convention.

42. The Advisory Committee welcomes the fact that, without prejudice to the existence of the above-mentioned constitutional principles, such data are gathered at local level, particularly on the Roma population, on the basis of Municipal Registers and estimates derived from sociological studies.¹¹ The Advisory Committee considers it essential that the gathering and processing of this information be conducted in conformity with the safeguards referred to above (see paragraph 40) and with respect for the right guaranteed by Article 3 of the Framework Convention to choose freely whether or not to be treated as a person belonging to a national minority.

In respect of Article 4

87. The Advisory Committee finds that the anti-discrimination provisions in Spanish legislation are rarely applied in practice and that the number of cases which come before the courts do not reflect the actual number of acts of discrimination or racism. The Advisory

Committee further finds that there is no specialized body in Spain to combat discrimination and considers that such a body, which the authorities intend to set up, could make recourse to the relevant legislative provisions more effective and raise awareness in Spanish society about discrimination.

88. The Advisory Committee finds that considerable socio-economic differences remain between a large number of Roma and the rest of the population, in spite of the efforts made under the Governmental Roma Development Programme. The Advisory Committee considers that more determined action is needed in order to improve the living conditions of those concerned and narrow the gap identified. The Advisory Committee finds that cases of discrimination against Roma are recorded in different sectors and considers that more suitable measures are needed in order to remedy this state of affairs.

89. The Advisory Committee finds that, according to the authorities, Spanish legislation does not allow the gathering of information on individuals' ethnic origin. However, the Advisory Committee finds that the lack of reliable statistical data on the various population groups may hinder the Spanish authorities' efforts to ensure full and effective equality. The Advisory Committee considers that the authorities should therefore try to identify means of obtaining reliable data in this respect, while making sure that the necessary safeguards are in place for protecting personal data.

SWEDEN (First Opinion adopted on 20/02/2003)

Article 4

21. The Advisory Committee notes that Swedish legislation contains certain commendable norms prohibiting ethnic discrimination. In addition to general constitutional provisions, there is a provision concerning discrimination in Chapter 16, Section 9 of the Penal Code of Sweden and that, in the field of civil law, the Act on the Measures to Counteract Discrimination in Working Life (1999:131) prohibits discrimination in working life on grounds of ethnic affiliation and the Law on Equal Treatment of Student Life in Higher Education (2001:1286) prohibits both direct and indirect ethnic discrimination. However, the Advisory Committee notes that the scope of these guarantees is limited and that there are no detailed and comprehensive civil and/or administrative law provisions pertaining to a number of pertinent fields, such as housing. Furthermore, it considers that increasing attention could be given, where applicable, to the relevant provisions of the Framework Convention.

22. The need to improve legislation in the sphere of ethnic discrimination is recognized in an official report entitled "An extended protection against discrimination", submitted to the Government on 2 May 2002. The report calls for a new Act on Prohibition against Discrimination on grounds of Ethnic affiliation, Religion or Belief, which would cover a number of fields, such as education services, access to and provision of goods/services and housing. The Advisory Committee encourages the authorities to consider the findings contained in this report as a matter of priority, while taking into account also the views of the Ombudsman against Ethnic Discrimination as regards the details of the envisaged legislation, with a view to improving the legislative framework pertaining to the implementation of Article 4 of the Framework Convention. It hopes that the reforms in this sphere will address the overall protection scheme in the field of ethnic discrimination, making it both streamlined and effective.

23. The Advisory Committee notes that the existing penal law provisions are not fully effective. In this connection, it is noted that convictions based on Chapter 16, Section 9 of the Penal Code are extremely rare. The Advisory Committee welcomes the fact that the Prosecutor General has recently encouraged more vigilance in prosecuting alleged ethnically motivated crime. This is of particular importance in the light of the reports suggesting that at present such cases are not always given adequate priority by law-enforcement officials and that this has contributed to the relatively low level of reporting of such incidents to the police.

24. As regards the de facto situation, the Advisory Committee notes with concern that persons belonging to national minorities are still subject to discrimination in different sectors of society, as indicated, for example, in the Government's National action plan to combat racism, xenophobia, homophobia and discrimination, presented to Parliament on 7 February 2001. The Advisory Committee is particularly concerned about the discrimination of Roma in such fields as housing and employment and supports the initiatives of the Ombudsman against Ethnic Discrimination to combat such practices. It further notes that Roma women face particular difficulties in terms of the implementation of Article 4 of the Framework Convention. For instance, Roma women wearing traditional dresses continue to encounter discriminatory practices in shops and other private businesses, despite the fact that some sanctions have already been imposed for such practices in the past. In this connection, the Advisory Committee commends the initiative of the authorities to establish a network of Roma women to address problems faced by Roma women and encourages the introduction of further initiatives in this sphere in consultation with the persons concerned.

25. The Advisory Committee notes with satisfaction that Sweden attaches importance to adequate structures to monitor and address the issue of ethnic discrimination and that, in recent years, increased funding has been allocated to initiatives in this sphere. These measures are of clear relevance also for the protection of national minorities. The Advisory Committee welcomes in particular the extensive work carried out by the Ombudsman against Ethnic Discrimination but also other pertinent initiatives, such as the initiatives carried out by the Integration Office and by local anti-discrimination offices. It also takes note of new initiatives, such as the proposal to establish a Centre against Racism and other forms of Intolerance, contained in the recent report of the working group established by the Ministry of Industry, Employment and Communications (Ds 2002:26). The Advisory Committee stresses that the proposed adoption of more comprehensive legal guarantees against ethnic discrimination (see paragraph 22 above) should be coupled with adequate additional resources for the monitoring of their implementation.

26. The Advisory Committee notes that Sweden has only relatively recently started to formulate positive measures, other than those addressing immigrants, designed specifically to promote the effective equality of persons belonging to national minorities. For example, despite shortcomings as regards ensuring effective equality for Roma in such fields as employment, housing and education, the authorities have only recently started to introduce specific measures to address the concerns of this minority in a more systematic manner. Such measures are still regrettably rare notably at the local level, despite some positive examples in the city of Stockholm and elsewhere.

27. The Advisory Committee notes that some general legal provisions have potential to improve the situation of persons belonging to national minorities as regards the implementation of Article 4, paragraph 2 of the Framework Convention. This is the case, for example, as regards Article 4 of the Act on the Measures to Counteract Discrimination in Working Life, which provides that employers "shall carry out goal-oriented work in order to actively promote ethnic diversity in working life". It appears however that awareness of this obligation is not wide-spread

and that only a limited number of employers have taken specific steps on the basis of this provision. The Advisory Committee finds it important that the efforts of the Ombudsman against Ethnic Discrimination to promote awareness and full implementation of these norms are expanded further and that the employers are given practical guidance as to how to design and implement such promotional measures.

In respect of Article 4

73. The Advisory Committee finds that the scope of the normative guarantees against discrimination is limited and considers that the authorities should give thought, as a matter of priority, to the findings contained in the official report “An extended protection against discrimination”, submitted to the Government on 2 May 2002.

74. The Advisory Committee finds that persons belonging to minorities, including Roma women, are still subject to discrimination in different fields, and considers that the authorities should continue to increase their efforts to monitor and address the issue. It further considers that the law-enforcement authorities should ensure that ethnically motivated crime is given adequate priority.

75. The Advisory Committee finds that the authorities have only recently started to formulate positive measures designed to promote effective equality of persons belonging to national minorities and considers that additional measures should be introduced, notably at the local level, and that the implementation of the relevant existing norms in the field of employment should be expanded further.

In respect of Article 4

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SWITZERLAND (First Opinion adopted on 20/02/2003)

Article 4

25. The Advisory Committee notes that Article 8 of the Federal Constitution guarantees equality before the law and the principle of non-discrimination. In addition, numerous cantonal constitutions expressly prohibit discrimination. For its part, Article 261bis of the Swiss Criminal Code prohibits racial discrimination and resulted in some 50 convictions in 1999 and a similar number again in 2000.

26. The Advisory Committee notes with satisfaction the existence of a range of special measures aimed at promoting full and effective equality, especially in favour of Italian- and Romanche-speakers. Such measures have been developed mainly in the fields of language and culture (see related comments under Article 5, paragraph 30), but also in the field of media as evidenced by the financial system of the Swiss Broadcasting Company (SSR) which allocates preferential funding from licence fees for programmes broadcast in minority languages.

27. The Advisory Committee points to some anti-discriminatory provisions in the field of civil and administrative law, in particular Articles 328 and 336 of the Code of Obligations, which protect workers. It notes with interest that despite the regrettable lack of statistics on proceedings brought and judgments given in relation to discrimination, the aforementioned anti-discriminatory provisions have resulted on several occasions in judicial decisions compensating individuals who have been the victim of discriminatory acts. In order to reinforce the existing legislative provisions and notwithstanding that persons belonging to linguistic minorities do not seem to be more affected by discrimination than the rest of the population, the Swiss authorities might consider adopting fuller legislation covering discrimination in a number of fields⁴. The Advisory Committee further considers that the Swiss authorities might consider collecting statistical data on discrimination more systematically, in particular as regards judicial decisions.

28. The Advisory Committee is deeply concerned about the indirect discrimination which Travellers continue to suffer, in particular in the fields of land-use planning, the regulation of constructions and the regulation of commerce. That discrimination stems from the application of legal provisions which, although they do not lay down discriminatory distinctions, simply fail to take account of the specific characteristics of the Travellers' culture and way of life. Although the Advisory Committee is aware that the necessary elimination of such discrimination may on occasion meet with institutional difficulties connected with federalism, it is nonetheless convinced of the need to adopt additional measures in those specific fields, in particular legislative measures (see related comments under Article 5). The Advisory Committee also notes that particular attention should be given to Traveller women when such measures are implemented. More generally, the Advisory Committee recalls that in designing further measures to promote full and effective equality for the Travellers, the Swiss authorities should take due account of the Committee of Ministers' Recommendation No. (2001) 17 on improving the economic and employment situation of Roma/Gypsies and Travellers in Europe.

In respect of Article 4

85. The Advisory Committee finds that the existing anti-discriminatory provisions have resulted on several occasions in judicial decisions compensating individuals who have been the victim of discriminatory acts. Notwithstanding that persons belonging to linguistic minorities do not seem to be more affected by discrimination than the rest of the population, the Advisory Committee considers that the Swiss authorities might envisage the adoption of fuller legislation covering discrimination. The Advisory Committee also considers that the Swiss authorities should contemplate collecting statistical data on discrimination more systematically, in particular as regards judicial decisions.

86. The Advisory Committee finds that there is reason for concern about the indirect discrimination which Travellers continue to suffer, in particular in the fields of land-use planning, the regulation of constructions and the regulation of commerce. It considers that the Swiss authorities should adopt additional measures in those specific fields, in particular legislative measures.

“THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA” (Opinion adopted on 27/05/2004)

Article 4

28. The Advisory Committee notes that Article 9 of the Constitution of “the former Yugoslav Republic of Macedonia” embodies the principle of equality before the law. The Advisory Committee observes that the principle of non-discrimination appears in the Criminal Code and in other civil and administrative legislation. It would appear, however, that some areas (such as housing, health care, access to services) are not covered by specific anti-discrimination legislation.

29. The Advisory Committee notes, from the Government’s reply to its questionnaire, that the authorities do not intend to consider adopting a general anti-discrimination law, as recommended by ECRI in its second report on “the former Yugoslav Republic of Macedonia” (2000)⁴. The Advisory Committee nevertheless urges the authorities to examine all the legislation in place and to fill any gaps in the protection against discrimination, including by covering indirect discrimination and ensuring that no undue citizenship criteria are included. It likewise considers that the results of the study on non-discrimination conducted by a group of Macedonian experts under the Stability Pact⁵ could make a useful contribution to this review process.

30. The Advisory Committee notes that the Roma are in a particularly vulnerable position and that there is a real socio-economic divide between this minority and the rest of the population: the Roma, indeed, have to contend with a whole series of problems in a large number of areas (see also Articles 14 and 15 below) and are often the victims of discrimination and prejudice. The Advisory Committee was informed, for example, of cases where persons belonging to the Roma minority were refused entry to swimming pools, notably in Delchevo and Skopje.

31. On the subject of housing, the Advisory Committee notes that many Roma live in settlements with no clear legal status or in areas not connected to basic infrastructures (water supply, electricity, etc.). The Advisory Committee urges the authorities to take the requisite steps to address the legal status of these settlements and to ensure that the necessary resources are put in place so that the Roma can enjoy decent housing conditions.

32. In the social field, the Advisory Committee notes allegations of discrimination against the Roma in terms of access to social assistance and health care. The attention of the Advisory Committee was repeatedly drawn to the interpretation given in practice to the law on social assistance of 2003 by social services, whereby persons applying for social assistance are required, for example, to produce evidence of an electricity supply contract. Because of the aforementioned housing situation, however, many Roma are unable to produce an electricity bill in order to receive social assistance. Likewise, the conditions imposed in practice in order to qualify for medical insurance create great obstacles for the Roma population. In theory, medical insurance is available to unemployed persons who have registered with the employment agency office. However, it appears in practice that there is a widespread practice of the employment offices to require that applicants prove that they finished eight years of education in order to register, a requirement that is not stated in the law and that many Roma are unable to meet. The Advisory Committee considers that these problems demand the full attention of the authorities, which should take appropriate steps to revise these practices.

33. In view of the above, the Advisory Committee welcomes the steps taken by the Government to develop a national strategy for the Roma, encompassing various ministerial departments, Roma organisations and various political representatives. It urges the Government to step up its efforts to develop this strategy, taking care not only to continue communicating, conferring and liaising with all the parties concerned at governmental level and in civil society (and in particular, Roma women within Roma associations), but also to ensure that this strategy, once developed, is accompanied by adequate funding and independent monitoring and evaluation procedures.

34. The Advisory Committee notes that only a few cases of alleged discrimination have come to court. In the opinion of the Advisory Committee, this seemingly satisfactory state of affairs does not necessarily mean that discrimination is not a problem. The Advisory Committee considers, indeed, that the fact that there has been only a small number of cases may be due to other factors, such as the difficulty of gaining access to the courts owing to language problems (see also Articles 10 and 15 below).

35. Besides legal action, the Advisory Committee is of the opinion that the introduction of an ombudsman may be helpful in identifying instances of discrimination and combating them. It notes in this respect that the Ombudsman's Office, which has been operational since 1998, acquired new powers in conformity with the Ohrid Agreement, effectively strengthening its remit in matters relating to non-discrimination and equitable representation (see also Article 15 below), widening its sphere of action and giving it greater financial independence (Law on the Ombudsman of 10 September 2003). The Advisory Committee hopes that the fresh impetus given to the Ombudsman's Office in protecting persons belonging to minorities will be fully reflected in practice and that its place in the institutional landscape of the country will be enhanced as a result, thus paving the way for greater recognition of its activities and any recommendations that it may be called upon to make in this area.

36. The Advisory Committee welcomes the opening, as envisaged in the aforementioned law, of local ombudsman's offices in Bitola, Kumanovo, Tetovo, Stip, Strumica and Kicevo: it considers that the fact that some of these offices are located in areas inhabited by persons belonging to minorities is likely to make the Ombudsman more accessible to these sections of the population. The Advisory Committee further notes that the provisions on the use of languages other than Macedonian (see also comments under Article 10 below) and the principle of equitable representation with regard to the recruitment of staff for the ombudsman's offices (see also comments under Article 15 below) will likewise help to make the Ombudsman's office more accessible.

37. As mentioned in connection with Article 3, the Advisory Committee notes that following the break-up of the SFRY, a number of people did not manage to acquire citizenship of "the former Yugoslav Republic of Macedonia" within the 1-year period allowed under the facilitated access provided for in the transitional provisions of the law on citizenship of 1992. This was partly due to the fact that these transitional provisions were not widely known among the persons concerned, and the naturalisation requirements themselves – namely 15 years of continuous residence, a permanent source of income and production of the necessary identity papers – were less easily met by certain persons belonging to minorities and in particular Albanians and Roma. The Advisory Committee notes with concern that as a result, these people are still without citizenship of "the former Yugoslav Republic of Macedonia", ten years after the country's independence, with all the attendant consequences in terms of lack of access to political, economic and social rights (see also Article 3 above, paragraph 23).

38. In these circumstances, the Advisory Committee welcomes the fact that the naturalisation requirements have been relaxed (the requisite period of residence, for example, has been reduced from 15 to 8 years) following the adoption of amendments to the law on citizenship on 5 December 2003. It notes, however, that some provisions may still make it difficult in practice for Albanians and Roma in particular to obtain citizenship. Notable examples include the conditions related to the need to have a permanent source of income, proof of legal residence (and not just habitual residence) and the requisite identity papers.

39. With regard to identity papers in particular, the Advisory Committee is concerned about reports of officials demanding bribes from persons belonging to minorities in return for issuing the necessary documents. The Advisory Committee emphasises that the authorities have a duty to prevent such practices and believes that adequate measures must be taken early on to resolve problems connected with the issuance of identity papers.

40. In view of the above-mentioned difficulties, the Advisory Committee urges the authorities to ensure that this legislation, as amended in December 2003, is implemented in such a way as to overcome the problems facing the individuals concerned in the naturalisation procedure, taking due account of any actual or genuine ties which individuals have with the country.

41. The Advisory Committee wishes to emphasise the importance of having reliable data in order to implement policies that ensure full and effective equality for persons belonging to national minorities. The Advisory Committee takes note of the fact that the results of the population census have been disputed, notably by persons belonging to minorities, who cite figures that differ significantly from the official statistics. The Advisory Committee further considers that while the census results provide useful information that would allow the country to design, implement and monitor effective policies for persons belonging to minorities, censuses alone do not necessarily satisfy the ongoing need for up-to-date data, because of population movements, for example.

42. The authorities, therefore, should consider supplementing this information with other statistical surveys, in keeping with the principles laid down in Committee of Ministers' Recommendation No. (97) 18 concerning the protection of personal data collected and processed for statistical purposes. The Advisory Committee is of the opinion that the authorities could consider, for example, setting up a demographic institute which would centralise all the demographic data gathered in the country. The Advisory Committee encourages the authorities to consider this possibility in consultation with the National Bureau of Statistics, while taking care to ensure that persons belonging to minorities are involved in this process.

In respect of Article 4

114. The Advisory Committee finds that there exist gaps in the specific legal guarantees against discrimination and considers that the authorities should examine the extension of the scope of non-discrimination provisions.

115. The Advisory Committee finds that Roma are faced with de facto discrimination in various fields such as housing, access to social assistance and in health care. It considers that the authorities should monitor the situation and take appropriate steps to put an end to discriminatory practices.

116. The Advisory Committee finds that there is a socio-economic gap between the Roma and the rest of the population and considers that the Government should step up its efforts to establish

a national strategy for the Roma and ensure that adequate funding is allocated to this strategy and that evaluation procedures are put in place.

117. The Advisory Committee finds that the Ombudsman has an important role to play in identifying and combating discrimination, including through its decentralized offices and considers that it is important that the work of the Ombudsman be given adequate recognition and follow-up.

118. The Advisory Committee finds that certain persons belonging to minorities, in particular the Roma and the Albanians are still without the citizenship of the country and considers that the authorities should take into account the problems faced in practice by these persons in the naturalization procedure under the recently adopted law on citizenship of February 2003.

UKRAINE (First Opinion adopted on 01/03/2002)

Article 4

26. The Advisory Committee notes that there exist general anti-discrimination provisions in the Constitution of Ukraine as well as in the new Criminal Code, which entered into force in September 2001, but that there are no detailed and comprehensive civil and/or administrative law provisions pertaining to discrimination in specific fields. Furthermore, the applicability of the general provisions that exist e.g. in the Labour Code of 1997 is restricted to citizens only. The Advisory Committee is of the opinion that it would be desirable to develop such legislation in order to protect, in a comprehensive manner, individuals from discrimination by both public authorities and private entities.

27. The Advisory Committee notes that a provision contained in Article 24 of the Constitution stipulating that there shall be no privileges based on ethnic origin has been at times used in public discussions as an argument against the introduction of special measures for the benefit of persons belonging to national minorities aimed at promoting full and effective equality. This has been the case for example in the context of public discussions on the electoral rules aimed at effective participation of persons belonging to national minorities in decision-making processes. The Advisory Committee stresses that, pursuant to Article 4, paragraph 3, of the Framework Convention, such measures must not be considered to be an act of discrimination and that additional steps are needed to inform the officials concerned and the public at large of the applicable principles.

28. With regard to practice concerning implementation of anti-discrimination legislation, the Advisory Committee notes that the officials concerned have very limited information available. It is disconcerting that the authorities are not in a position to provide information on the number and nature of such cases. In such circumstances, it is impossible to evaluate the effectiveness of the current mechanisms and to examine to what extent the principles contained in Article 4 of the Framework Convention are being implemented. It is therefore imperative that the monitoring of developments in this field be intensified.

29. The Advisory Committee notes that ensuring full and effective equality has been particularly difficult with respect to Crimean Tatars, who continue to face wide-ranging difficulties in economic, social, political and cultural life. The Advisory Committee is of the opinion that the authorities should continue to pay increasing attention to their situation, including in the context of the on-going work to improve the legislative framework touching upon Crimean Tatars and national minorities in general. In this context, it welcomes the fact that there has

recently been progress in solving the problems related to citizenship, which have been a major obstacle in the enjoyment of full and effective equality by a large number of Crimean Tatars and by other persons deported during the Soviet era and their descendants, including Armenians, Bulgarians, Greeks, and Germans (hereinafter: “formerly deported people”). The Advisory Committee underlines that, equally, the authorities of the Autonomous Republic of Crimea should address the concerns of the Crimean Tatars and other formerly deported people in an increasingly vigorous manner, including through comprehensive programmes and strategies aimed at promoting full and effective equality in various fields.

30. The Advisory Committee considers that Ukraine has not been able to secure full and effective equality between the majority population and Roma and that the situation of Roma remains difficult in such fields as employment and housing (see also related points under Article 15). These problems are exacerbated by the unsatisfactory situation of Roma in the educational system (see related comments under Article 12). The Advisory Committee is of the opinion that these issues merit increasing attention.

31. The Advisory Committee notes that the Parliamentary Ombudsman has taken some measures to counter discrimination against Roma. The fact that the Parliamentary Ombudsman intends to step up her work on the protection of national minorities in general is to be welcomed as it is likely to contribute to the implementation of Article 4 and other provisions of the Framework Convention.

In respect of Article 4

85. The Advisory Committee finds that there are no detailed and comprehensive civil and/or administrative law provisions pertaining to discrimination in specific fields and considers that Ukraine should develop such legislation in order to protect, in a comprehensive manner, individuals from discrimination by both public authorities and private entities.

86. The Advisory Committee finds that the government officials have very limited information available on the practice concerning implementation of anti-discrimination legislation and considers that monitoring of developments in this field needs to be intensified.

87. The Advisory Committee finds that ensuring full and effective equality has been particularly difficult with respect to Crimean Tatars and Roma and considers that the Ukrainian authorities should pay increasing attention to these issues.

UNITED KINGDOM (Opinion adopted on 30/11/2001)

Article 4

20. The Advisory Committee recognises the positive steps that have been taken by the United Kingdom over the recent years to fight against discrimination and promote equality.

21. The Race Relations Act (1976), as amended recently by the Race Relations Amendment Act (2000), provides an important body of anti-discrimination legislation, making discrimination unlawful in employment and training, the provision of goods, facilities and services, education, housing and certain other specified activities. The Act enables individuals who have been discriminated against to bring proceedings and claim damages. The Act also provides for the establishment of the Commission for Racial Equality. The Amendment Act (2000) significantly strengthens the protection by outlawing race discrimination (direct and indirect) in all public authority functions (including the police) with certain limited exceptions. The Amendment Act

(2000) also places a general duty on the main public authorities to be proactive in promoting race equality in carrying out their functions. The Advisory Committee welcomes the adoption of this legislation and notes that there have been calls from different quarters in Northern Ireland for equivalent provisions of the Amendment Act (2000) to be extended to Northern Ireland (in particular to cover the police, prisons and other public services). The Advisory Committee supports these calls and urges that the matter be examined further in the context of the proposed Single Equality Bill for Northern Ireland.

22. A further important step has been the adoption, in November 1998, of the Human Rights Act, which gives further effect in United Kingdom law to the rights and freedoms contained in the European Convention on Human Rights. The Advisory Committee welcomes the coming into force of the Human Rights Act, but notes that the Act does not contain an independent prohibition against discrimination and only provides protection against discrimination with regard to the rights and freedoms listed. The Advisory Committee encourages the United Kingdom Government to extend the protection by including an independent prohibition on discrimination.

23. The idea for a United Kingdom wide Human Rights Commission has been put forward by a number of different parties, in particular with a view to assisting in enforcing the Human Rights Act, providing legal advice and raising public awareness. The Advisory Committee notes that the Government is not yet convinced of the need for such a body and that there are concerns as to how such a body would operate in relation to existing bodies (including the Commission for Racial Equality). The Advisory Committee while noting these concerns believes that such a Commission could further contribute to the general protection and promotion of human rights, including the rights of persons belonging to national minorities, and invites the Government to examine this issue further.

24. The Advisory Committee is encouraged by the work being carried out by the Northern Ireland Human Rights Commission set up under the Northern Ireland Act (1998) in compliance with the Belfast (Good Friday) Agreement (1998). This is a young institution working to ensure that the human rights of everyone in Northern Ireland are fully and firmly protected in law, policy and practice. The Advisory Committee notes in particular the important work being carried out by the Commission on consulting and advising on the scope for defining a Bill of Rights for Northern Ireland to take account of the particular circumstances in Northern Ireland. These circumstances include the need for ensuring equality of treatment between the two main communities and the need to protect the rights of members of smaller communities and those who do not wish to be treated as belonging to any particular community. In view of the Commission's important role, it is essential that it be adequately funded and resourced, and that its powers be sufficient for it to carry out its mandate. The Advisory Committee notes in this respect that calls have been made for greater funding for the Commission as well as for a number of changes in its functioning, in particular in relation to its investigative functions (access to documentation, access to places of detention, etc.). The Advisory Committee considers it important that full support be given to the Commission to enable it to carry out its valuable function in Northern Ireland. Furthermore the Advisory Committee considers that proposals for a Bill of Rights for Northern Ireland be given priority attention in view of its potential benefits for the people of Northern Ireland.

25. The Advisory Committee also notes that a consultation process has been launched on whether a Human Rights Commission should be established in Scotland and that there has been some debate on the appropriateness of such an institution for Wales. The Advisory Committee welcomes these steps and considers that the Government, as well as the devolved Executives, should continue their reflection on the value of such institutions.

26. The response of the Government to the Stephen Lawrence Inquiry Report, published on 24 February 1999, is a further indication of the Government's commitment to fighting discrimination and promoting equality. This is examined in more detail under Article 6.

27. The Report has proved to be a landmark and has provided a motor for change and progress, raising awareness of issues of race and mobilising resources. Notwithstanding the efforts and achievements, the Advisory Committee is concerned by the remaining challenges to transform legislation, policy and good intent into practice. The recent riots that have taken place in different parts of the United Kingdom in 2001, together with the ensuing investigations into the root causes of these events, serve as a reminder of the need for constant vigilance and a need to question whether the approaches adopted are adequate and appropriate.

28. The Advisory Committee takes note of the Government's Equality Statement of 30 November 1999 as well as the Scottish Executive's "Equality Strategy: Working Together for Equality", published on 6 November 2000. The Advisory Committee furthermore notes that a range of different programmes and grants are supported by the Government to promote equality. Despite these and other private grant schemes, the message being delivered to the Advisory Committee from the communities concerned is that more is required. In this respect, the Advisory Committee notes that the different public sector programmes and consultations that will be carried out, whether under the Race Relations Amendment Act (2000) or under the race equality audit for the purpose of Section 75 duties under the Northern Ireland Act (1998), will place further demands on the limited resources available to the communities concerned. The Advisory Committee therefore encourages the Government to reflect further with those concerned on how to meet the needs for adequate funding, including in the area affected by the duty on public bodies to promote race equality.

29. The Advisory Committee notes with concern that many of the Roma / Gypsies and Irish Travellers face considerable socio-economic difficulties in comparison to both the majority and other national minorities, in particular in the fields of education, health, employment and housing, including the availability of stopping sites (examined further under Article 5). This situation is recognised by the United Kingdom Government. The situation calls for the preparation and implementation of further measures to realise full and effective equality taking into account the Committee of Ministers' Recommendation No. (2001) 17 on improving the economic and employment situation of Roms/Gypsies and Travellers in Europe.

30. The Advisory Committee notes the range of measures already being taken. These include research by the Government on sites and plans to provide £17 million to refurbish some 300 local authority sites. The Advisory Committee also notes that the Scottish Executive has set out proposals based on recommendations of the "Advisory Committee on Scotland's Travelling People" for analysing the accommodation and other needs (including health and education) of Travelling People. Furthermore, the proposed Housing (Scotland) Bill will place a statutory duty on local authorities to prepare local housing strategies taking account and accommodating the needs of Roma / Gypsies and Irish Travellers. In Northern Ireland, Direct Rule Ministers have set up a Working Group to consider difficulties which Irish Travellers face and the Working Group has set out 33 recommendations on which a public consultation has been carried out. The Advisory Committee also notes with interest that the right to nomadism is being discussed in the context of preparing a Bill of Rights for Northern Ireland.

31. Despite these efforts, the Advisory Committee considers that the Government and the devolved Executives should continue their efforts to ensure full and effective equality for Roma / Gypsies and Irish Travellers.

32. The Advisory Committee notes that the Government, in the State Report, has emphasised that the situation where unemployment rates in the United Kingdom are generally higher amongst the ethnic minority population is unacceptable and that the Government is determined to address the problem. Statistics still show that unemployment rates of persons from the African and African Caribbean, Pakistani and Bangladeshi communities are considerably higher. Differentials between women and men and between those over 45 and under 45 are similarly marked, with, for example, very high levels of unemployment recorded for Bangladeshi and Pakistani women. Statistics are not provided for Roma / Gypsies and Irish Travellers, but indications are that unemployment rates are also high.

33. A wide range of measures has been adopted by the Government to tackle unemployment. Some of these include the establishment of a Race Employment and Education Forum, a Race Relations Employment Advisory Service, a New Deal scheme to help young unemployed people to move from welfare into work and to improve their longer term employability and an equal opportunities strategy through the Training and Enterprise Councils. The Advisory Committee welcomes these measures taken by the Government and the devolved Executives to reduce unemployment and considers that these efforts should be continued and extended where necessary in order to reduce the disparity in employment levels (see also under Article 15, paragraph 95).

34. The Advisory Committee notes that employment tribunals deal with complaints relating to discrimination in employment. It is noted that the Government states that these tribunals are intended to be an easily accessible mechanism that should not require legal representation. The Advisory Committee has however received information from various sources that lack of legal aid for legal representation before employment tribunals may have an adverse effect on the outcome of the complaint. The Advisory Committee therefore considers that the Government should consider further the merits for introducing legal aid for representation at employment tribunals.

35. The Advisory Committee notes from information it has received, the different health needs of the various ethnic minorities and that problems persist in accessing public health care, due in part to language difficulties and sometimes the hostile reaction of services. Furthermore there exists a lack of awareness of cultural needs, including dietary and religious needs. Also highlighted to the Advisory Committee are the problems ethnic minority health staff face to be promoted, in particular to senior positions, and that they often have to take up the least desired specialities.

36. The Advisory Committee is aware that many housing estates in Northern Ireland are split along sectarian lines and that the same applies to schools. The Advisory Committee, while recognising the particular circumstances that have led to this situation, believes that the Government should explore further with the communities concerned how a more integrated approach to both housing and education could lead to strengthening of relations between the two communities. In this, the Advisory Committee recognises that there will be a need for the release of additional funding to encourage a more integrated approach. The recent school route riots in Belfast attest to the importance of further action in this sensitive area. The Advisory Committee notes in this context that certain steps have already been taken and that there has been some success in encouraging integrated schooling. Some of these steps include the commissioning by

the Housing Executive of an investigation into the possibilities for the development of further integration, as well as work by a Ministerial Working Group responsible for examining issues concerning strategic planning of integrated school provisions which has published a progress report entitled “Towards a Culture of Tolerance: Integrating Education”.

In respect of Article 4

107. The Advisory Committee finds that there exists in the United Kingdom an important body of anti-discrimination legislation, but that not all provisions, in particular those under the Race Relations Amendment Act (2000), are applied to Northern Ireland and considers that the United Kingdom should look at the possibility of extending these provisions to Northern Ireland.

108. The Advisory Committee finds that the Northern Ireland Human Rights Commission is carrying out important work for which it is necessary to ensure that it receives adequate resources and powers to be able to carry out its mandate and considers that further support should be given to this institution.

109. The Advisory Committee finds that the socio-economic differences between the majority population and Roma / Gypsies and Irish Travellers remain high and considers that the United Kingdom should intensify its efforts to address and alleviate these shortcomings.

110. The Advisory Committee finds that unemployment rates in the United Kingdom are generally higher amongst the ethnic minority population and considers that the United Kingdom should intensify its efforts to reduce these rates of unemployment, paying special attention to the African and African Caribbean communities and the Bangladeshi and Pakistani communities, and within the two latter communities, paying particular attention to the situation of women. (See also in respect of Article 15 (paragraph 127) below).

111. The Advisory Committee finds that many housing estates and schools in Northern Ireland are split along sectarian lines and considers that the United Kingdom should examine the need for the release of additional funds to deal with this issue and also to explore with the communities concerned how a more integrated approach to both housing and education could lead to strengthening of relations between the two communities.
