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

FIFTH ACTIVITY REPORT
Covering the period from 1 June 2004 to 31 May 2006

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I. INTRODUCTION

1. The Framework Convention for the Protection of National Minorities is the Council of Europe's main tool to protect the rights of persons belonging to national minorities, and the Advisory Committee of 18 independent experts, set up in 1998, has a key role in ensuring that the standards of the Convention are implemented in the State Parties. The present Report provides an overview of the developments surrounding the Framework Convention and the work of the Advisory Committee between June 2004 and May 2006.

2. The Framework Convention's position as the pan-European legal yardstick on minority standards has strengthened over the last two years. The importance of the Framework Convention was highlighted by the Heads of State and Government at the Warsaw Summit in May 2005, and the ratification of the Convention by Georgia, Latvia and the Netherlands in 2005 increased the number of State Parties to 38. As of today, only four Member States of the Council of Europe have not signed the Framework Convention and four Member States have signed but not yet ratified.

3. At the same time, the monitoring of the Framework Convention progressed significantly during the period covered by the present Report. The findings of the 2nd monitoring cycle in respect of several States, together with comments made at various follow-up activities, make it possible to take stock of the actual impact of the work of the Advisory Committee and of the Committee of Ministers. In section II of the present Report, the Advisory Committee attempts to draw some preliminary conclusions in this respect. In that section, the Advisory Committee also reports on certain procedural novelties that were introduced during the reporting period, including in respect of so-called "*ad hoc* contacts", as well as on the exceptional arrangements pursued to monitor the implementation of the Framework Convention in Kosovo.

4. Section III of the present Report describes the steps taken to strengthen thematic reflections by the Advisory Committee. It shows how the Committee's thematic work has advanced notably in the field of education, which has always been a major theme in the Committee's activities.

5. The Advisory Committee's constant calls for increased transparency and public awareness of the Framework Convention's monitoring process yielded some important results during the reporting period. These results, together with shortcomings that still persist in this area, are reported in section IV of the Report.

6. Section V of the Report is devoted to the Advisory Committee's co-operation with various partners both within and outside the Council of Europe. This includes latest developments in the Committee's close co-operation with its traditional partners, but also comments on the emerging contacts with new bodies that were set up during the reporting period, notably with the intergovernmental Committee of Experts on National Minorities (DH-MIN) and the Parliamentary Assembly's Sub-Committee on the Rights of National Minorities.

7. Various organisational developments, including the changes in the composition of the Committee and its Bureau, are detailed in Section VI of the Report. In this context, the Advisory Committee also comments on the resources related to its work.

II. COUNTRY SPECIFIC MONITORING BY THE ADVISORY COMMITTEE

8. The Advisory Committee's country-specific work advanced significantly during the reporting period. The Committee carried out 16 country visits, adopted 16 country-specific Opinions, which were followed up by 16 Resolutions of the Committee of Ministers, most of which concerned the first monitoring cycle. In addition, the Advisory Committee contributed to the organisation of eight follow-up activities. This output was achieved thanks to the fact that the Advisory Committee kept its working methods under constant review, adapting them regularly in order to ensure maximum efficiency.

2nd Cycle Country Visits and Opinions

9. The main general development in the monitoring work was the commencement of the 2nd monitoring cycle. This involved revision of the structure of the Opinions of the Advisory Committee and renewed reflection of its working methods.

10. When the Advisory Committee decided on the structure of the 2nd cycle Opinions, it had a number of specific principles in mind. In particular, it wanted to make sure that the 2nd cycle Opinions:

- a. focus on key issues identified by the Advisory Committee;
- b. clearly show how the findings of the 1st cycle have been followed up, while also taking into account new issues that have emerged since the 1st cycle;
- c. point out the existing shortcomings but also recognise progress achieved;
- d. provide a good basis for the Committee of Ministers in its task of drawing up Resolutions.

11. The Advisory Committee hopes that the end-result largely reflects these goals, although the Committee will, of course, continue to consider how further improvements could be achieved. It is encouraging that the feedback the Committee has received so far suggests that the Opinions are more user-friendly than those adopted in the 1st cycle, with their clearer recommendations and thematic structure. This should contribute to their impact at the domestic level.

12. The 2nd cycle Opinions have been drafted significantly more rapidly than those in the 1st cycle in accordance with suggestions made by various NGOs and other commentators. The Committee has, as a rule, adopted the 2nd cycle Opinions within one year from the submission of the state report and in several cases the Opinion has been adopted within six months from the receipt of the state report. This is a marked improvement, bearing in mind that the average delay in the 1st cycle was 18 months.

13. At the same time, the Advisory Committee has been careful not to sacrifice quality in its efforts to improve the speed of the monitoring process, and it has maintained those elements of the process that are essential to produce balanced and reliable Opinions and to further dialogue. One such element is the practice of country visits, which the Committee has consistently pursued also in the 2nd cycle, including to minority-populated regions outside capitals. As a result of its constant efforts to streamline the working methods and to accommodate budgetary constraints, the Committee reduced the average size of the visiting delegations from four to three members.

14. The Advisory Committee's efforts to ensure smooth functioning of the 2nd monitoring cycle have been significantly hampered by the delays in the submission of state reports. Delays were a problem already in the 1st cycle, but the Advisory Committee notes with regret that the situation has further deteriorated in the 2nd cycle. So far, not a single State has submitted its 2nd report by the deadline foreseen in the Framework Convention and the Committee of Ministers' Resolution (97)10, and delays going even beyond two years are disconcertingly common (see the chart in Appendix II). The Advisory Committee welcomes the support it has received from the Secretary General to prompt timely reporting, and calls on the authorities to fulfil their reporting obligations more vigorously.

15. At the same time, the Advisory Committee notes that the process of preparing such reports has, in many cases, become more inclusive and most States report that representatives of minorities, NGOs and other civil society actors have contributed to the 2nd cycle state report. This may require that the preparation of the report be started earlier than has previously been the case.

16. An overview of the content of the 2nd cycle Opinions adopted so far shows that the points raised by the Advisory Committee have prompted concrete improvements in minority protection in practically all State Parties. These include new legislation devoted to, or directly touching upon, national minorities, but also various steps taken to improve the implementation of the existing legislation. The Advisory Committee has also noted a range of positive initiatives to launch consultation and other mechanisms aimed to improve participation of national minorities in decision-making. Such mechanisms, if properly designed and supported, can enhance the implementation of various articles of the Framework Convention.

17. At the same time, the 2nd cycle Opinions indicate that problems and challenges in the implementation remain rather common. The Advisory Committee has identified various new disconcerting developments, but there are also a number of concerns raised in the 1st cycle Opinions that the Advisory Committee has had to repeat in the 2nd cycle. It is also worth noting that the remaining shortcomings in the area of data collection on minority issues make it often difficult to assess how far the reported improvements in legislation, policies and practices have yielded concrete improvements on the ground.

Kosovo (Serbia and Montenegro)

18. The extraordinary process launched to monitor the implementation of the Framework Convention in Kosovo was one major challenge of the Advisory Committee during the period covered by the present Report. The report submitted by UNMIK on 2 June 2005, on-the-spot

visit by the Advisory Committee on 11-15 October 2005 and the adoption of the Advisory Committee Opinion on 25 November 2005 were all precedent-setting events not only for the Framework Convention but for international human rights treaty monitoring in general. The Opinion is at present pending before the Committee of Ministers, and it is essential to ensure that this exceptional effort to ensure accountability of an internationally administered entity is pursued in a vigorous manner and that decisive follow up to the findings is ensured on the ground.

Co-operation with the Committee of Ministers

19. The Advisory Committee continues to enjoy excellent working relations with the Committee of Ministers of the Council of Europe. While fully respecting the independence of the Advisory Committee and its Members, the Committee of Ministers has provided important political backing to the findings of the Advisory Committee. In the 16 Resolutions adopted during the period covered by the present Report, the Committee of Ministers has not only echoed the conclusions of the Advisory Committee but also encouraged further dialogue between the Advisory Committee and the State Parties, which has helped to expand follow-up activities and other innovative working methods described elsewhere in this Report.

20. During the 2nd cycle, the Advisory Committee introduced more detailed concluding remarks in its Opinions than was the case in the 1st cycle. It hoped that this would lead to more detailed Committee of Ministers' Resolutions, bearing in mind that the Committee of Ministers built its 1st cycle Resolutions on the Advisory Committee's concluding remarks. The Advisory Committee is pleased to note that this has indeed happened: the 2nd cycle resolutions are significantly more developed and concrete than those of the 1st cycle, containing conclusions and recommendations that stem directly from the Opinions.

21. The Advisory Committee is convinced that direct contacts between the representatives of the two bodies contribute to the spirit of trust and co-operation that prevails. It therefore finds it important that the Human Rights Rapporteur Group (GR-H) of the Ministers' Deputies has continued to invite the President of the Advisory Committee to its meetings to introduce the Opinions of the Advisory Committee. During the period covered by the present Report, the President of the Advisory Committee took part in six meetings of the GR-H. The Advisory Committee hopes that, despite the reduction in the number of meetings of the GR-H, this direct dialogue will continue on a regular basis throughout the 2nd cycle.

22. In order to ensure that the Framework Convention's monitoring results are timely and pertinent, it is important that the consideration of the Opinions and adoption of the corresponding Resolutions by the Committee of Ministers take place within a reasonable time after the adoption of the Opinions of the Advisory Committee. In this respect, the Advisory Committee welcomes the fact that certain Resolutions, that had been pending for two years or even more, were finally adopted during the period covered by the present Report. However, the Committee notes that, in the 2nd cycle, the average delay between the adoption of the Opinion and the Committee of Ministers Resolution has so far been approximately one year, which is longer than the average delay between the state report submission and the adoption of the Advisory Committee Opinion. The Committee understands that delays may occur in relation to dossiers related to politically

and legally complicated issues. However, the Advisory Committee hopes that the Committee of Ministers will consider new ways of streamlining the process, for example, by reviewing its decision according to which States have always four months to prepare comments on the Opinion before the Opinion is considered in the GR-H. While understanding that preparation of such comments may be a time-consuming process, for example, in the States Parties with a federal structure, the Advisory Committee believes that in many cases such comments could be submitted, and the Opinion considered, more rapidly. This would reduce the overall delays in the monitoring process, and increase the relevance and impact of resulting findings.

Follow-up activities

23. The Advisory Committee has continued to encourage the State Parties to host so called follow-up seminars, in order to provide an inclusive forum to discuss the findings of the monitoring and to consider ways to implement recommendations of the Committee of Ministers and the Advisory Committee.

24. The Advisory Committee is pleased to note that most States have reacted positively to such proposals. During the period covered by the present Report, such seminars were organised in nine States Parties to discuss the findings of the 1st cycle (in Azerbaijan on 19 December 2005, in Bosnia and Herzegovina from 5-6 December 2005, in Serbia and Montenegro on 10 October 2005, in “the former Yugoslav Republic of Macedonia” on 03 October 2005, in Albania from 27-28 September 2005, in Poland on 26 September 2005, in Sweden on 25 April 2005, in Ireland on 28 February 2005, and in Lithuania on 18 October 2004), and that the follow-up seminars have continued also in the 2nd cycle of monitoring, the first having been organised in Croatia on 15 to 16 September 2005 and in Moldova on 30 May 2006.

25. The Advisory Committee highlights the fact that follow-up events are often the only opportunity for all those concerned to discuss together the findings of the monitoring. In many cases, such seminars have brought together not only Government representatives, minority associations, NGOs and independent experts, but also representatives of international organisations working on the ground, and, increasingly, representatives of other Council of Europe sectors working on issues related to the Framework Convention (including colleagues working on Roma questions and on minority language issues).

26. In addition to prompting action and facilitating constructive dialogue, follow-up seminars serve an important awareness-raising function (for more on the issue of awareness-raising, see section IV). Therefore, the Advisory Committee considers that the follow-up events merit being organised in all those countries on which the Framework Convention has produced substantial results.

27. In those countries where the authorities have not decided to convene such seminars (see the chart in appendix II for details), NGOs and other civil society representatives may organise similar events to discuss, and promote the implementation of findings of the Framework Convention monitoring, and the Advisory Committee stands ready to contribute to such initiatives.

***Ad hoc* contact procedure**

28. In many countries, the field of minority protection is subject to constant developments that have an impact on the implementation of the Framework Convention. The monitoring mechanism of the Framework Convention provides the Advisory Committee many opportunities to have a dialogue on such developments with the States Parties. These include country visits, introduction of the Opinions, follow-up seminars, etc. The Committee of Ministers' Resolution (97)10 also envisages the possibility that the Advisory Committee proposes to the Committee of Ministers that the latter requests an *ad hoc* report from a State Party. The Advisory Committee has never invoked this possibility and it continues to consider that such an *ad hoc* procedure should indeed be resorted to in only exceptional circumstances.

29. At the same time, the Advisory Committee considers it important that there is a procedure in place allowing the Committee to obtain adequate information to determine whether a particular development warrants a proposal for an *ad hoc* report to be submitted to the Committee of Ministers for consideration. This is particularly relevant for cases when such a development does not coincide with a country-visit or other regular contacts between the Committee and the State in question. Against the above background, the Advisory Committee agreed, in November 2005, on the following "*ad hoc* contact" procedure:

- An "*ad hoc* contact" can be considered when the Advisory Committee receives information, from credible sources, suggesting that a particularly disconcerting development, negatively affecting the protection of minorities in a manner than extends beyond individual cases, is taking place in a State Party.
- Should there be no imminent possibility to seek clarification through a follow-up seminar or other stages of the monitoring dialogue, the Bureau of the Advisory Committee, after consulting the country working group and the "national" member concerned, takes a decision as to whether the President should send a letter to the State Party, seeking clarification on the issue. The letter should refer to the fact that the aim of the letter is to find out whether there is a need to bring the said situation to the attention of the Committee of Ministers with a view to invoking the *ad hoc* procedure under Resolution (97)10.
- At the subsequent plenary meeting of the Advisory Committee, the Bureau informs the Advisory Committee of the *ad hoc* correspondence and makes a recommendation as to whether, on the basis of the information at its disposal, the Advisory Committee should make a proposal to the Committee of Ministers to request an *ad hoc* report from the Party concerned.
- Bearing in mind that such an *ad hoc* contact would be of preliminary nature and, as such, would involve no findings by the Advisory Committee, the Committee considers that related correspondence should be confidential, unless the country concerned agrees to make the substance of the exchange public.

30. The Advisory Committee considers that the above procedure reflects the standard recommendations of the Committee of Ministers, contained in all country-specific resolutions under the Framework Convention, that the Party in question "continue the dialogue in progress with the Advisory Committee" and "keep the Advisory Committee regularly informed of the measures it has taken in response to the conclusions and recommendations". At the same time, the Advisory Committee stresses that the procedure should not be invoked routinely, and it hopes that in most cases where such a contact is established, the information received shows that there is no need to propose that the Committee of Ministers requests an *ad hoc* report from the Party in question.

III. THEMATIC WORK OF THE ADVISORY COMMITTEE

31. The Advisory Committee has, from the outset of its activities, considered that it would be useful to produce thematic comments on the key issues addressed by the Advisory Committee in its monitoring work, to complement and guide the country-specific work the Committee carries out. However, due to its limited resources and heavy workload, the Committee has repeatedly had to postpone this element of its work up until the present reporting period, during which the Advisory Committee made significant progress, notably on the theme on education. The Committee's work on education was led by its Second Vice-President, Ms Sia Spiliopoulou-Åkermark, who was the principle drafter on the topic, drawing on the state reports, Advisory Committee Opinions and other key sources.

32. The resulting drafts were discussed on several occasions with invited guests, including experts from Directorate Generals I, II, III and IV, the Committee of Experts of the Language Charter and the Office of the OSCE High Commissioner on National Minorities, who made substantial contributions to the process. This work resulted in a "Commentary on Education under the Framework Convention for the Protection of National Minorities", adopted by the Advisory Committee on 2 March 2006. The commentary, which is appended to the present Report, is meant to serve as a reference document for governmental officials and other stakeholders dealing with the issue of minority and intercultural education. The Committee looks forward to pursuing co-operation with various bodies dealing with related issues, ranging from ECRI to the DH-MIN.

33. The Advisory Committee has also continued its work on other key themes, and in particular on the issue of participation of persons belonging to national minorities, not only in public affairs, but also in social, economic and cultural life. The Committee expects that findings on these themes will be concluded during the period covered by the next Activity Report. The Committee also continued its reflections on the personal scope of application, and it hopes to launch its thematic work on media issues in the near future.

IV. TRANSPARENCY OF THE PROCESS AND AWARENESS-RAISING

34. The Advisory Committee has continued to encourage increased transparency of the monitoring process, which, in the Committee's view, is essential to ensure inclusive dialogue and maximum impact of the process. In particular, the Committee has repeatedly urged States to make the Opinions of the Advisory Committee public rapidly after their receipt, i.e. well before their automatic publication at the time of the adoption of the corresponding Committee of Ministers Resolution.

35. The Advisory Committee welcomes the fact that most countries concerned (20 out of 34) agreed to make the 1st cycle Opinion public before the adoption of the Committee of Ministers' Resolution. Support for early publication seems to have strengthened in the 2nd cycle: the Committee of Ministers has to date adopted seven Resolutions, and in five of these cases the corresponding Opinion was made public at an earlier date. Some States (including Finland, and

Romania, and in the first cycle, Serbia and Montenegro) agreed to make the Opinion public prior to submitting their comments thereon. In only three out of ten cases (Hungary, Liechtenstein and the Slovak Republic) the second cycle Opinion remained confidential up until its obligatory publication upon the adoption of the Committee of Ministers Resolutions.

36. At the same time, the Advisory Committee notes that certain Opinions remained confidential for a very long time, as the Committee of Ministers' consideration of the dossier involved delays and the State Parties concerned did not agree to make the Opinion at issue public during that period.

37. The availability of the monitoring results in local languages is another key factor in ensuring that the Opinions of the Advisory Committee and Resolutions of the Committee of Ministers reach all the relevant actors and prompt dialogue at the domestic level. In this respect, the Advisory Committee welcomes the fact that certain countries, such as Armenia, Lithuania, Moldova, Romania, Switzerland and "the former Yugoslav Republic of Macedonia", have undertaken translation not only into the state or official language but also into minority languages. It would also like to commend the civil society initiatives that have involved translation into minority languages, such as the Lezgin, in which there is only scant literature available on minority issues.

38. The Advisory Committee has, throughout the period covered by the present Report, supported various awareness-raising activities, aimed to make the Framework Convention better known amongst key audiences. Members of the Advisory Committee contributed to such activities throughout the reporting period, including by giving presentations on the work of the Committee at various conferences and seminars devoted to the topic. Some of these have been organized by the Council of Europe, but it is encouraging to note that academic and other circles have also promoted debates on the Framework Convention. One particularly important event was the International Conference on the Framework Convention, organized in Brussels on 5 May 2006 by the Catholic University of Leuven and the Academy of European Law of Florence, which provided new academic insight into various aspects of implementation of the Framework Convention.

39. The availability of general publications devoted to the Framework Convention is another key to improved knowledge about the Framework Convention. The 3rd edition of the Collected texts on the Framework Convention, published in 2005, is a useful tool, which will soon be complimented by a compilation of the 1st cycle Opinions of the Advisory Committee. The Advisory Committee would also like to highlight the importance of the detailed Commentary on the Framework Convention, edited by Mr Marc Weller of the European Centre for Minority Issues and published by the Oxford University Press in 2005 and of the book "Minority rights in Europe: a review of the work and standards of the Council of Europe" authored by Patrick Thornberry and María Amor Martín Estébanez and published by the Council of Europe in 2004.

40. The Web pages of the Secretariat of the Framework Convention are for many a key source of information on the Advisory Committee, and the visits to these pages have markedly increased during the reporting period. The information contained in these pages is usefully complemented by various civil society on-line initiatives on the Framework Convention, such as

MINELRES site, which contains a range of alternative reports submitted to the Advisory Committee by various NGOs and minority associations.

V. CO-OPERATION WITH OTHER BODIES

41. The Advisory Committee has continued to place great emphasis on synergies within and outside the Council of Europe, and it has maintained close contacts with its traditional partners within the organization and it has established good working relations with the new bodies that have been established during the period covered by the present Report. The Advisory Committee would also like to highlight the support it has received from Mr. Terry Davis, Secretary General of the Council of Europe, with whom the Committee had a constructive exchange of views on 21 February 2005 (see also comments under paragraph 14).

42. The Committee's co-operation with the Committee of Experts of the European Charter for Regional or Minority Languages has continued to be practical and useful, involving various direct contacts not only between the respective Secretariats, but also between the Committees. At a meeting between the bureau of the Committee of Experts of the European Charter for Regional or Minority Languages and the Advisory Committee on 25 May 2005, various ideas for strengthening co-operation further were discussed, and the Charter's experts also provided their input to the Advisory Committee's thematic reflections on education.

43. The Committee's co-operation with the ECRI has also continued, and this can but be further facilitated by the fact that the new President of ECRI, Ms Eva Smith Asmussen will again join the Advisory Committee in June 2006.

44. The Advisory Committee's co-operation with the new Commissioner for Human Rights has started on an excellent note. Mr Thomas Hammarberg held an exchange of views with the Advisory Committee in May 2006, and demonstrated great commitment to strengthening contacts and synergies between the Commissioner and the Advisory Committee.

45. The Venice Commission is another important Council of Europe body that deals with minority issues in its work, and the Advisory Committee attached great importance, for example, to inclusive reflections the Commission has initiated on the issue of citizenship criterion in the minority protection.

46. During the period covered by the present Report, two new Council of Europe bodies dealing with national minority questions were set up: the intergovernmental expert committee DH-MIN and the Parliamentary Assembly's Sub-committee on National Minorities.

47. When the mandate of the DH-MIN was being drafted, the Advisory Committee expressed its support for increased inter-governmental co-operation on minority issues, but it also stressed that the work of the DH-MIN should not interfere with the Advisory Committee's work. The Committee is pleased to note that, to date, the DH-MIN has fully respected the role of the Advisory Committee and in its work, for example, on the issue of consultative bodies, the DH-

MIN has drawn on the Advisory Committee's Opinions, and it could help to increase their impact (on the resource implications, see below under Section VI).

48. The Parliamentary Assembly's increasing support for the Framework Convention and its monitoring mechanism is greatly appreciated by the Advisory Committee, and the Committee acknowledges the role played by the Parliamentary Assembly and its various committees, for example, in achieving new ratifications of the Framework Convention. The establishment of the Sub-Committee on the Rights of National Minorities in 2004 is another sign of the Parliamentary Assembly's commitment to minority issues, and the Advisory Committee and the Secretariat of the Framework Convention are pleased to support the Sub-Committee's work and provide input to its work, which can usefully echo the findings of the Advisory Committee.

49. During the reporting period, the Advisory Committee welcomed the inauguration of the European Roma and Travellers Forum in Strasbourg in 2005. The Advisory Committee has had two meetings with the representatives of the Forum, and it considers that there are excellent prospects for close co-operation between the Advisory Committee and the Forum.

50. The OSCE High Commissioner on National Minorities remained a close partner of the Advisory Committee. In addition to close contacts on specific issues, the High Commissioner held a general exchange of views with the Advisory Committee on 23 November 2005 and his office contributed to the Advisory Committee's thematic work on education. The OSCE missions in various countries were of significant assistance to the Advisory Committee during its country visits.

51. The Advisory Committee is of the opinion that the support of the European Union is instrumental in ensuring progress on the implementation of the Framework Convention, and it pursued co-operation with various bodies of the union. This included contacts with the European Union Monitoring Centre against Racism (EUMC) facilitated by the fact that the Chairman of the Board of the EUMC, Ms Anastasia Crickley, was also a Member of the Advisory Committee. The Advisory Committee provided input *inter alia* to a European Parliament's hearing on "Promoting EU Fundamental Rights Policy: from words to deeds or how to make rights a reality?" in April 2005, the EUMC, and the EU Seminar on "The Contribution of Local and Regional Authorities to the Protection of Minorities and Anti-Discrimination Policies" in Vienna in March 2006. The Committee also took note of the extensive reference to the Framework Convention and the Advisory Committee's findings in the report on national minorities, published by the EU Network of Independent Experts on Fundamental Rights in 2005. While welcoming the co-operation that exists, the Advisory Committee is of the opinion that the Framework Convention and its monitoring results could be more regularly invoked by various EU bodies as they deal with minority issues. The Advisory Committee's unique role should also be taken into account in the on-going discussion on the future mandate of the EU Fundamental Rights Agency.

52. The Advisory Committee's contacts with the United Nations have also continued, partly thanks to the extensive UN experience of Mr Asbjørn Eide, the President of the Advisory Committee. The Advisory Committee has continued its contacts with the UN Working Group on Minorities, and it looks forward to expanding its contacts with Ms Gay McDougall, the UN

Independent Expert on Minority Issues, appointed in July 2005. (On co-operation in the Kosovo context, see above section II).

53. The Advisory Committee has continued to reply on NGOs and other civil society partners in its work. In addition to its country-specific contacts and co-operation with minority associations and human rights NGOs during the preparation of the Opinions and on their follow-up, the Advisory Committee has actively taken part in more general capacity building and reflections on NGOs' role in the monitoring process. For example, the Advisory Committee members and Secretariat provided input to the NGO training on the Framework Convention in 2004 and 2005, organised with the Minority Rights Group, and the Advisory Committee also took part in the brainstorming organised on 08 December 2005 in Strasbourg by the Secretariat of the Framework Convention with the Advisory Committee's key NGO partners on how to enhance the NGO input role in the monitoring process.

VI. ORGANISATIONAL ISSUES: MEMBERSHIP, RESOURCES

54. There were no changes in the composition of the Advisory Committee during the period covered by the present Report, the latest rotation having taken effect on 1 June 2004 (see appendix I containing the List of Members). The main change in the Committee was the election of the new Bureau on 30 September 2004. The Committee elected Mr Asbjørn Eide (elected in respect of Norway) as its President, Ms Lidija Basta Fleiner (elected in respect of Serbia and Montenegro) as its First Vice-President and Ms Anastasia Spiliopoulou Åkermark (elected in respect of Sweden) as its Second Vice-President, all for a term expiring with their membership mandates on 31 May 2006.

55. The Advisory Committee notes that the results of the election and appointments conducted by the Committee of Ministers during the period covered by the present Report (with a view to the next membership rotation in the Advisory Committee on 1 June 2006), show that State Parties and the Committee of Ministers have continued to attach importance to the requirement of independence and impartiality of members. The results also show that many experts who have previously served in the Advisory Committee are slated to return to the Committee, which is likely to enhance continuity in the Committee's work and suggest that there is trust amongst the Governments towards the approach pursued by the Committee.

56. The Advisory Committee has consistently raised the issue of resources in its contacts with the Committee of Ministers, with only limited results. As the workload of the Committee has increased, resources allocated to its Secretariat have remained stagnant since 2001.

57. The Advisory Committee understands that, in this period of zero-growth budget, it is difficult to address resource concerns, and it acknowledges that there are serious constraints that have to be taken into account. For its part, the Advisory Committee can confirm that it will continue to search for efficiency savings through streamlining its procedures as it has done up until now. However, the Advisory Committee stresses that the marked increase in the number of State Parties (with three new Parties in 2005) is but one factor that is going to make it

increasingly difficult for the Advisory Committee to maintain the quality and speed, and thereby the impact and effectiveness, of the monitoring process without additional resources.

VII. CONCLUDING REMARKS

58. The position of the Framework Convention as Europe's key instrument on national minorities has only strengthened during the last two years. New ratifications have expanded the reach of the Convention and the monitoring work has advanced significantly with second cycle results providing increasingly targeted advice to the State Parties on how to advance implementation of the treaty.

59. The Advisory Committee has succeeded in increasing the speed of its monitoring work while continuing to stress the quality of its output and while making progress also in its thematic reflections. These advances have been possible thanks to the consistent support the Committee, and its critical but constructive approach, has received from the Committee of Ministers, the State Parties, Secretary-General and other partners. The Committee has also benefited significantly from its constant co-operation with minority associations and other civil society representatives.

60. At the same time, the Advisory Committee finds it important that various actors involved in the monitoring and implementation of the Framework Convention must not become complacent. Further progress is still required both in the implementation of the monitoring findings and in the operation of the monitoring mechanism per se. The Committee is convinced that reducing further the delays in the monitoring process, increasing transparency and strengthening co-operation with partners both within and outside the Council of Europe would further bolster the impact of the Framework Convention on the ground and help to ensure that the protection of national minorities receives constant due attention.

Appendix I

COMPOSITION OF THE ADVISORY COMMITTEE UNTIL 31 MAY 2006

President

Mr Asbjørn EIDE (Norway)

First Vice-President

Ms Lidija BASTA FLEINER (Serbia and Montenegro)

Second Vice-President

Ms Athanasia SPILIOPOULOU ÅKERMARK (Sweden)

Ms Arzu AGHDASI-SISAN (Azerbaijan)

Mr Mihai CERNENCO (Moldova)

Mr Stanislav CHERNICHENKO (Russian Federation)

Ms Anastasia CRICKLEY (Ireland)

Ms Mirjana DOMINI (Croatia)

Mr Zdzisław W. GALICKI (Poland)

Mr Ivan GARVALOV (Bulgaria)

Mr Gunnar JANSSON (Finland)

Mr Vigen KOCHARYAN (Armenia)

Mr Mathias-Charles KRAFFT (Switzerland)

Ms Marju LAURISTIN (Estonia)

Mr Gjergj SINANI (Albania)

Mr Vladas SIRUTAVIČIUS (Lithuania)

Ms Regina TAVARES DA SILVA (Portugal)

Mr Ahmed ŽILIC (Bosnia and Herzegovina)

COMPOSITION OF THE ADVISORY COMMITTEE AS FROM 31 MAY 2006

Ms Arzu AGHDASI-SISAN (Azerbaijan)
Mr Sergio BARTOLE (Italy)
Ms Ilze BRANDS-KEHRIS (Latvia)
Mr Stanislav CHERNICHENKO (Russian Federation)
Ms Mirjana DOMINI (Croatia)
Ms Bohumila FERENČUHOVÁ (Slovakia)
Mr Ivan GARVALOV (Bulgaria)
Mr Ferenc HAJÓS (Slovenia)
Mr Gunnar JANSSON (Finland)
Mr Dalibor JÍLEK (Czech Republic)
Mr Vigen KOCHARYAN (Armenia)
Ms Marju LAURISTIN (Estonia)
Mr Joseph MARKO (Austria)
Mr Alan PHILLIPS (United Kingdom)
Mr Gjergj SINANI (Albania)
Ms Eva SMITH-ASMUSSEN (Denmark)
Mr Demetrios STYLIANIDES (Cyprus)
Ms Regina TAVARES DA SILVA (Portugal)

Appendix II

CHART OF SIGNATURES AND RATIFICATIONS AND STATUS OF MONITORING WORK – First and Second Cycle

Version of 5 September 2006

MEMBER STATES	a) Date of signature b) Date of ratification c) Date of entry into force	a) 1 st report due b) 1 st report received* c) 2 nd report due d) 2 nd report received	a) 1 st ACFC country visit b) 2 nd ACFC country visit	a) 1 st ACFC ¹ opinion adopted on b) 2 nd ACFC opinion adopted on	a) 1 st CM ² Resolution adopted b) 2 nd CM Resolution adopted	a) 1 st Follow-up Seminar b) 2 nd Follow-up Seminar
ALBANIA	a) 29/06/1995 b) 28/09/1999 c) 01/01/2000	a) 01/01/2001 b) 26/07/2001 c) 01/01/2006	a) 29/04-03/05/2002	a) 12/09/2002 Published on 18/02/2003**	a) 11/05/2005	a) 27-28/09/2005
ANDORRA						
ARMENIA	a) 25/07/1997 b) 20/07/1998 c) 01/11/1998	a) 01/11/1999 b) 11/06/2001 c) 01/11/2004 d) 24/11/2004	a) 10-14/12/2001 b) 28-30/03/2006	a) 16/05/2002 Published on 15/01/2003 b) 12/05/2006 Not yet public	a) 15/01/2003	a) 03/06/2003
AUSTRIA	a) 01/02/1995 b) 31/03/1998 c) 01/07/1998	a) 01/07/1999 b) 15/11/2000 c) 01/07/2004	a) 18-21/12/2001	a) 16/05/2002 Published on 07/11/2002**	a) 04/02/2004	
AZERBAIJAN	b) Accession 26/06/2000 c) 01/10/2000	a) 01/10/2001 b) 04/06/2002 c) 01/10/2006	a) 30/03-04/04/2003	a) 22/05/2003 Published on 26/01/2004**	a) 13/07/2004	
BELGIUM	a) 31/07/2001					
BOSNIA AND HERZEGOVINA	b) Accession 24/02/2000 c) 01/06/2000	a) 01/06/2001 b) 20/02/2004 c) 01/06/2006	a) 23-27/02/2004	a) 27/05/2004 Published on 11/05/2005	a) 11/05/2005	a) 05-06/12/2005

¹ Advisory Committee on the Framework Convention for the Protection of National Minorities

² Committee of Ministers

MEMBER STATES	a) Date of signature b) Date of ratification c) Date of entry into force	a) 1 st report due b) 1 st report received c) 2 nd report due d) 2 nd report received	a) 1 st ACFC country visit b) 2 nd ACFC country visit	a) 1 st ACFC opinion adopted on b) 2 nd ACFC opinion adopted on	a) 1 st CM Resolution adopted b) 2 nd CM Resolution adopted	a) 1 st Follow-up Seminar b) 2 nd Follow-up Seminar
BULGARIA	a) 09/10/1997 b) 07/05/1999 c) 01/09/1999	a) 01/09/2000 b) 09/04/2003 c) 01/09/2005	a) 10-13/11/2003	a) 27/05/2004 Published on 05/04/2006	a) 05/04/2006	
CROATIA	a) 06/11/1996 b) 11/10/1997 c) 01/02/1998	a) 01/02/1999 b) 16/03/1999 c) 01/02/2004 d) 13/04/2004	a) 23-26/10/2000 b) 06-10/09/2004	a) 06/04/2001 Published on 06/02/2002 b) 01/10/2004 Published on 13/04/2005**	a) 06/02/2002 b) 28/09/2005	a) 21/03/2002 b) 15-16/09/2005
CYPRUS	a) 01/02/1995 b) 04/06/1996 c) 01/02/1998	a) 01/02/1999 b) 01/03/1999 c) 01/02/2004	a) 06-08/11/2000	a) 06/04/2001 Published on 21/02/2002	a) 21/02/2002	a) 28/01/2004
CZECH REPUBLIC	a) 28/04/1995 b) 18/12/1997 c) 01/04/1998	a) 01/04/1999 b) 01/04/1999 c) 01/04/2004 d) 02/07/2004	a) 16-18/10/2000 b) 29/11-02/12/2004	a) 06/04/2001 Published on 25/01/2002** b) 24/02/2005 Published on 26/10/2005**	a) 06/02/2002 b) 15/03/2006	a) 01/12/2003
DENMARK	a) 01/02/1995 b) 22/09/1997 c) 01/02/1998	a) 01/02/1999 b) 06/05/1999 c) 01/02/2004 d) 14/05/2004	a) 22-24/05/2000 b) 01-04/11/2004	a) 22/09/2000 Published on 31/10/2001 b) 09/12/2004 Published on 11/05/2005**	a) 31/10/2001 b) 14/12/2005	
ESTONIA	a) 02/02/1995 b) 06/01/1997 c) 01/02/1998	a) 01/02/1999 b) 22/12/1999 c) 01/02/2004 d) 16/07/2004	a) 28/05-01/06/2001 b) 30/11-02/12/2004	a) 14/09/2001 Published 12/04/2002** b) 24/02/2005 Published on 22/07/2005**	a) 13/06/2002 b) 15/02/2006	a) 26/09/2002

MEMBER STATES	a) Date of signature b) Date of ratification c) Date of entry into force	a) 1 st report due b) 1 st report received c) 2 nd report due d) 2 nd report received	a) 1 st ACFC country visit b) 2 nd ACFC country visit	a) 1 st ACFC opinion adopted on b) 2 nd ACFC opinion adopted on	a) 1 st CM Resolution adopted b) 2 nd CM Resolution adopted	a) 1 st Follow-up Seminar b) 2 nd Follow-up Seminar
FINLAND	a) 01/02/1995 b) 03/10/1997 c) 01/02/1998	a) 01/02/1999 b) 16/02/1999 c) 01/02/2004 d) 10/12/2004	a) 23-25/08/1999 b) 27-30/09/2005	a) 22/09/2000 Published on 06/07/2001** b) 02/03/2006 Published on 20/04/2006**	a) 31/10/2001	a) 01/02/2002
FRANCE						
GEORGIA	a) 21/01/2000 b) 22/12/2005 c) 01/04/2006	a) 01/04/2007				
GERMANY	a) 11/05/1995 b) 10/09/1997 c) 01/02/1998	a) 01/02/1999 b) 24/02/2000 c) 01/02/2004 d) 13/04/2005	a) 26-29/06/2001 b) 10-13/01/2006	a) 01/03/2002 Published on 12/09/2002** b) 01/03/2006 Not yet public	a) 15/01/2003	a) 25-26/06/2003
GREECE	a) 22/09/1997					
HUNGARY	a) 01/02/1995 b) 25/09/1995 c) 01/02/1998	a) 01/02/1999 b) 21/05/1999 c) 01/02/2004 d) 07/05/2004	a) 29/11-01/12/1999 b) 20-24/09/2004	a) 22/09/2000 Published on 14/09/2001** b) 09/12/2004 Published on 14/12/2005	a) 21/11/2001 b) 14/12/2005	a) 02-03/12/2002
ICELAND	a) 01/02/1995					
IRELAND	a) 01/02/1995 b) 07/05/1999 c) 01/09/1999	a) 01/09/2000 b) 13/11/2001 c) 01/09/2005 d) 03/01/2006	a) 17-21/03/2003 b) 29-31/05/2006	a) 22/05/2003 Published on 05/05/2004 [b) Adoption foreseen in October 2006]	a) 05/05/2004	a) 28/02/2005

MEMBER STATES	a) Date of signature b) Date of ratification c) Date of entry into force	a) 1 st report due b) 1 st report received c) 2 nd report due d) 2 nd report received	a) 1 st ACFC country visit b) 2 nd ACFC country visit	a) 1 st ACFC opinion adopted on b) 2 nd ACFC opinion adopted on	a) 1 st CM Resolution adopted b) 2 nd CM Resolution adopted	a) 1 st Follow-up Seminar b) 2 nd Follow-up Seminar
ITALY	a) 01/02/1995 b) 03/11/1997 c) 01/03/1998	a) 01/03/1999 b) 03/05/1999 c) 01/03/2004 d) 14/05/2004	a) 11-13/12/2000 b) 10-14/01/2005	a) 14/09/2001 Published on 03/07/2002 b) 24/02/2005 Published on 25/10/2005**	a) 03/07/2002 b) 14/06/2006	a) 16/03/2004
LATVIA	a) 11/05/1995 b) 06/06/2005 c) 01/10/2005	a) 01/10/2006				
LIECHTENSTEIN	a) 01/02/1995 b) 18/11/1997 c) 01/03/1998	a) 01/03/1999 b) 03/03/1999 c) 01/03/2004 d) 25/03/2004	a) - b) -	a) 30/11/2000 Published on 04/09/2001** b) 01/10/2004 Published on 07/12/2005**	a) 27/11/2001 b) 07/12/2005	
LITHUANIA	a) 01/02/1995 b) 23/03/2000 c) 01/07/2000	a) 01/07/2001 b) 31/10/2001 c) 01/07/2006	a) 25-29/11/2002	a) 21/02/2003 Published on 25/09/2003**	a) 10/12/2003	a) 18/10/2004
LUXEMBOURG	a) 20/07/1995					
MALTA	a) 11/05/1995 b) 10/02/1998 c) 01/06/1998	a) 01/06/1999 b) 27/07/1999 c) 01/06/2004 d) 01/12/2004	a) - b) -	a) 30/11/2000 Published on 27/11/2001 b) 22/11/2005 Published on 03/05/2006**	a) 27/11/2001	
MOLDOVA	a) 13/07/1995 b) 20/11/1996 c) 01/02/1998	a) 01/02/1999 b) 29/06/2000 c) 01/02/2004 d) 14/05/2004	a) 31/10-5/11/2001 b) 12-15/10/2004	a) 01/03/2002 Published on 15/01/2003 b) 09/12/2004 Published on 24/05/2005**	a) 15/01/2003 b) 07/12/2005	a) 25-26/09/2003 b) 30/05/2006
MONACO						

MEMBER STATES	a) Date of signature b) Date of ratification c) Date of entry into force	a) 1 st report due b) 1 st report received c) 2 nd report due d) 2 nd report received	a) 1 st ACFC country visit b) 2 nd ACFC country visit	a) 1 st ACFC opinion adopted on b) 2 nd ACFC opinion adopted on	a) 1 st CM Resolution adopted b) 2 nd CM Resolution adopted	a) 1 st Follow-up Seminar b) 2 nd Follow-up Seminar
NETHERLANDS	a) 01/02/1995 b) 16/02/2005 c) 01/06/2005	a) 01/06/2006				
NORWAY	a) 01/02/1995 b) 17/03/1999 c) 01/07/1999	a) 01/07/2000 b) 02/03/2001 c) 01/07/2005 d) 19/10/2005	a) 22-26/04/2002 b) 14-16/03/2006	a) 12/09/2002 Published on 13/02/2003** [b) Adoption foreseen in October 2006]	a) 08/04/2003	a) 14/05/2004
POLAND	a) 01/02/1995 b) 20/12/2000 c) 01/04/2001	a) 01/04/2002 b) 10/07/2002 c) 01/04/2007	a) 13-17/04/2003	a) 27/11/2003 Published 30/09/2004	a) 30/09/2004	a) 26/09/2005
PORTUGAL	a) 01/02/1995 b) 07/05/2002 c) 01/09/2002	a) 01/09/2003 b) 23/12/2004 c) 01/09/2008		[a) Adoption foreseen in October 2006]		
ROMANIA	a) 01/02/1995 b) 11/05/1995 c) 01/02/1998	a) 01/02/1999 b) 24/06/1999 c) 01/02/2004 d) 06/06/2005	a) 19-21/06/2000 b) 03-07/10/2005	a) 06/04/2001 Published on 10/01/2002** b) 24/11/2005 Published on 23/02/2006**	a) 13/03/2002	a) 28-29/10/2002
RUSSIAN FEDERATION	a) 28/02/1996 b) 21/08/1998 c) 01/12/1998	a) 01/12/1999 b) 08/03/2000 c) 01/12/2004 d) 26/04/2005	a) 11-15/02/2002 b) 10-19/03/2006	a) 13/09/2002 Published on 10/07/2003 b) 11/05/2006 Not yet public	a) 10/07/2003	a) 24/03/2004
SAN MARINO	a) 11/05/1995 b) 05/12/1996 c) 01/02/1998	a) 01/02/1999 b) 03/02/1999 c) 01/02/2004 d) 23/08/2004		a) 30/11/2000 Published on 27/11/2001 b) 02/03/2006 Not yet public	a) 27/11/2001	

MEMBER STATES	a) Date of signature b) Date of ratification c) Date of entry into force	a) 1 st report due b) 1 st report received c) 2 nd report due d) 2 nd report received	a) 1 st ACFC country visit b) 2 nd ACFC country visit	a) 1 st ACFC opinion adopted on b) 2 nd ACFC opinion adopted on	a) 1 st CM Resolution adopted b) 2 nd CM Resolution adopted	a) 1 st Follow-up Seminar b) 2 nd Follow-up Seminar
SERBIA	b) Accession 11/05/2001 c) 01/09/2001	a) 01/09/2002 b) 16/10/2002 c) 01/09/2007	a) 27/09-03/10/2003	a) 27/11/2003 Published on 02/03/2004**	a) 17/11/2004	a) 10/10/2005
SLOVAK REPUBLIC	a) 01/02/1995 b) 14/09/1995 c) 01/02/1998	a) 01/02/1999 b) 04/05/1999 c) 01/02/2004 d) 03/01/2005	a) 28/02-02/03/2000 b) 04-06/04/2005	a) 22/09/2000 Published on 06/07/2001** b) 26/05/2005 Published on 21/06/2006	a) 21/11/2001 b) 21/06/2006	a) 08/07/2003
SLOVENIA	a) 01/02/1995 b) 25/03/1998 c) 01/07/1998	a) 01/07/1999 b) 29/11/2000 c) 01/07/2004 d) 06/07/2004	a) 10-14/01/2002 b) 04-08/04/2005	a) 12/09/2002 Published on 14/03/2005** b) 26/05/2005 Published on 01/12/2005**	a) 28/09/2005 b) 14/06/2006	
SPAIN	a) 01/02/1995 b) 01/09/1995 c) 01/02/1998	a) 01/02/1999 b) 19/12/2000 c) 01/02/2004 d) 10/04/2006		a) 27/11/2003 Published on 30/09/2004	a) 30/09/2004	
SWEDEN	a) 01/02/1995 b) 09/02/2000 c) 01/06/2000	a) 01/06/2001 b) 08/06/2001 c) 01/06/2006 d) 13/07/2006	a) 25-29/11/2002	a) 20/02/2003 Published on 25/08/2003**	a) 10/12/2003	a) 25/04/2005
SWITZERLAND	a) 01/02/1995 b) 21/10/1998 c) 01/02/1999	a) 01/02/2000 b) 16/05/2001 c) 01/02/2005	a) 11-13/11/2002	a) 20/02/2003 Published on 21/08/2003**	a) 10/12/2003	

MEMBER STATES	a) Date of signature b) Date of ratification c) Date of entry into force	a) 1st report due b) 1st report received c) 2nd report due d) 2nd report received	a) 1st ACFC country visit b) 2nd ACFC country visit	a) 1st ACFC opinion adopted on b) 2nd ACFC opinion adopted on	a) 1st CM Resolution adopted b) 2nd CM Resolution adopted	a) 1st Follow-up Seminar b) 2nd Follow-up Seminar
“THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA”	a) 25/07/1996 b) 10/04/1997 c) 01/02/1998	a) 01/02/1999 b) 23/09/2003 c) 01/02/2004 d) 16/06/2006	a) 08-12/12/2003	a) 27/05/2004 Published on 02/02/2005**	a) 15/06/2005	a) 03/10/2005
TURKEY						
UKRAINE	a) 15/09/1995 b) 26/01/1998 c) 01/05/1998	a) 01/05/1999 b) 02/11/1999 c) 01/05/2004 d) 08/06/2006	a) 04-06/12/2001	a) 01/03/2002 Published on 27/11/2002**	a) 05/02/2003	a) 16-17/09/2003
UNITED KINGDOM	a) 01/02/1995 b) 15/01/1998 c) 01/05/1998	a) 01/05/1999 b) 26/07/1999 c) 01/05/2004	a) 04-08/06/2001	a) 30/11/2001 Published on 22/05/2002**	a) 13/06/2002	

NON MEMBER STATES	a) Date of signature b) Date of ratification c) Date of entry into force	a) 1st report due b) 1st report received c) 2nd report due d) 2nd report received	a) 1st ACFC country visit b) 2nd ACFC country visit	a) 1st ACFC opinion adopted on b) 2nd ACFC opinion adopted on	a) 1st CM Resolution adopted b) 2nd CM Resolution adopted	a) 1st Follow-up Seminar b) 2nd Follow-up Seminar
MONTENEGRO	b) Accession 06/06/2006 c) 06/06/2006	a) 06/06/2007				

	a) 43 signatures /accessions b) 39 ratifications	b) 35 state reports received d) 23 state reports received	a) 30 visits b) 16 visits	a) 34 opinions adopted, of which 34 public b) 17 opinions adopted, of which 13 public	a) 34 resolutions adopted b) 10 resolutions adopted	a) 23 follow-up seminars b) 2 follow-up seminars
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* The dates above refer to the submission of reports in one of the official languages of the Council of Europe. This is without prejudice to a possible earlier submission in the original language.

** Date on which the Council of Europe received the country's communication relating to the publication of the opinion before the adoption of the Committee of Ministers Conclusions and Recommendations

Appendix III

COMMENTARY ON EDUCATION UNDER THE FRAMEWORK CONVENTION FOR THE PROTECTION OF NATIONAL MINORITIES

Summary

The Commentary is structured in three parts:

Part I Introduction - The most important part of the Introduction is section 1.4 which discusses the relevance of Articles 4, 5 and 6 of the Framework Convention in the field of minority education. The Commentary recognises thus that the Framework Convention is of relevance not only in guaranteeing the right of persons belonging to minorities to good quality, free primary education as well as general and equal access to secondary education (*right to education*) but also in setting standards on how such education should be shaped in terms of content as well as form (*rights in education*) in order to facilitate the development of the abilities and personality of the child, guarantee child safety and accommodate the linguistic, religious, philosophical aspirations of pupils and their parents.

The provisions of the Framework Convention concerning education are also to be kept in mind in all planning and action in the area of intercultural education, which has the ambition to facilitate mutual understanding, contacts and interaction among different groups living within a society.³ The effects of the multiple aims of education on minority and intercultural education as well as the importance of the strong links between the Framework Convention and other human rights instruments are also discussed in the introduction.

Part II - The main part of the Commentary is devoted to Articles 12-14 of the Framework Convention. Here, the Commentary follows the structure of the provisions, so that with regard to Article 12, equal access to education comes as third issue, even though it has already been touched upon in relation to Article 4 which guarantees equality before the law and prohibits discrimination in general. The issues covered show that the relevant provisions have been given a substantive normative content that offers considerable guidance to State Parties and decision makers. Footnotes made in the Commentary with reference to specific State Reports or Advisory Committee Opinions are not exhaustive accounts of all cases where a certain issue has appeared. They function as selective illustrations of the points made. This Part concludes with guiding principles developed within different international institutions concerning the planning and implementation of educational efforts intended for persons belonging to national minorities.

Part III offers the Advisory Committee's *list of core considerations influencing minority and intercultural education* that State Parties can use as a reference point in the planning, implementation and evaluation of educational policies and legislation of relevance for persons belonging to national minorities. This section gives a summary of the main issues raised in the Commentary.

The **Appendix** consists of an *Inventory of Education Issues addressed by the Advisory Committee in its first cycle Opinions*. In practice, the Advisory Committee started its overview in the field of minority education by developing this Inventory. It is included as an appendix since it may prove to be a useful tool as a checklist of aspects that need to be considered in discussions on minority and in intercultural education. It can also be a useful tool for non-governmental organisations that plan to write alternative reports in the field of minority education. Readers will find that the Commentary follows in principle the structure developed in the Inventory.

³ On the concept of 'multicultural' and 'intercultural' education, see below under section 2.1 on Article 12.

Part I Introduction

1.1 Purpose of the Commentary

Education is today considered as a goal in its own right as well as a forceful tool for transmitting knowledge, attitudes and values. No other issue is given such space in the Framework Convention (FCNM), with three specific provisions (out of sixteen operative provisions in its Section II), Articles 12-14, as well as explicit references to education in general provisions concerning equality and intercultural dialogue (Article 6).

In recent years, the Advisory Committee on the Framework Convention for the Protection of National Minorities (hereinafter ‘the Advisory Committee’) has repeatedly discussed the need to summarize its experience and views on specific thematic issues. Important input in this debate was given at the Conference to mark the 5th Anniversary of the Entry into Force of the Framework Convention in 2003.⁴ The three themes discussed were participation, media and education. Out of these three themes, the Advisory Committee decided to start by an in depth analysis of its experience in the field of education.

The present Commentary aims to cover five distinct but interrelated issues:

- It summarizes the experience of the Advisory Committee in working with and for education rights (mainly Articles 12-14 of the Framework Convention) and with the role of education in promoting a spirit of tolerance and intercultural dialogue as envisaged in Article 6 (1) of the Framework Convention. The present Commentary focuses mainly on Articles 12 and 14 since these two provisions form the core of the monitoring activities of the Advisory Committee in the field of education during the First Monitoring Cycle;
- It underlines the wealth of information existing in State Reports and the broad spectrum of solutions used in different contexts. Such State practice from many different countries around Europe offers a comprehensive image of the implementation of the Framework Convention and allows for further elaboration of the various specific issues raised in this Commentary;
- It identifies issues which require more attention in the future both in the work of the Advisory Committee, in the implementation of the Framework Convention and the reporting by State Parties as well as in the activities of other actors, including non-governmental organisations and academics;
- It makes an effort to situate the work and the views of the Advisory Committee within a broader international discourse;
- It highlights some of the tensions the Advisory Committee has encountered in the field of minority and intercultural education and choices that need to be made consciously by all actors involved, including State Parties and their governments, minorities, parents and students/pupils.

The Commentary draws upon the Opinions of the Advisory Committee on specific countries as well as on State Reports submitted to the Advisory Committee and other sources, in order to substantiate the conclusions which are incorporated under each section of the Commentary.

It is the hope of the Advisory Committee that the Commentary will give practical guidance to State Parties to the Framework Convention and to other actors involved in education related activities. Those actors include educators, pupils or students and their parents⁵, minorities and their organisations, central, local and regional authorities. It should, however, be made clear from the very outset that, in view of the

⁴ The report of the Conference was published in 2004 by the Council of Europe “Filling the Frame: Five years of monitoring the Framework Convention for the Protection of National Minorities” ISBN 92-871-5472-2.

⁵ The Commentary covers not only the education of children but also of older persons (young students, adults etc.)

multiple aims of education and the multitude of factual situations, there are no ‘one-size-fits-all-solutions’ in this field.

The purpose of the present Commentary is not to give an exhaustive analysis of all aspects of minority and intercultural education covered by the Framework Convention. The purpose is to summarise the experience of the Advisory Committee at the first cycle of monitoring and to emphasize some of the most crucial issues the Advisory Committee has encountered in its work. The second monitoring cycle may well include other issues which have not been prominent during the first cycle.⁶

Focus in the Commentary is put on the role of the Framework Convention in the task of balancing, on the one hand, the maintenance and development of the culture and the essential elements of the identity of persons belonging to national minorities and, on the other hand, their free integration and participation in the societies where they live. The Advisory Committee hopes that the present Commentary can be used as a tool in the design and implementation of relevant educational policies in State Parties and also as an additional element in the constructive dialogue it has developed during the first cycle of monitoring with State Parties.

1.2 The Framework Convention as an integral part of International Human Rights Instruments

The protection of national minorities and of the rights and freedoms of persons belonging to those minorities forms an integral part of the international protection of human rights as provided in Article 1 of the Framework Convention:

‘The protection of national minorities and of the rights and freedoms of persons belonging to those minorities forms an integral part of the international protection of human rights, and as such falls within the scope of international co-operation.’

It follows that the *right to education* and the *rights in education* for minorities, as guaranteed by the Framework Convention, are an integral part of education rights as entrenched in a number of specific provisions in international instruments, including the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women, the UNESCO Convention against Discrimination in Education, the European Convention of Human Rights and Fundamental Freedoms and the Revised European Social Charter.

A number of different rights are covered in these provisions, including:

- the principle of a free and compulsory primary education;
- equal access to education and equal opportunities within the educational system;
- the liberty of parents to choose the kind of education that shall be given to their children according to their own religious, moral or philosophical convictions;
- the right of individuals and legal entities to establish and direct their own educational institution;
- the right to language education for migrant workers and their families.

Much guidance in matters concerning the education rights of national minorities can also be found in the OSCE Hague Recommendations Regarding the Education Rights of National Minorities. With regard to issues of minority languages in education, additional guidance is found in the European Charter for Regional or Minority Languages.

⁶ For this reason the Commentary refers only to materials from the first monitoring cycle.

The Framework Convention ensures rights to ‘persons belonging to national minorities’. It is clear that these ‘persons’ can be men or women, children or adults. Indeed, the provisions of the Convention do not only refer to formal school activities, but refer to education and education systems in broader terms. In recent years, the Advisory Committee has been increasingly sensitive to the varying implications of rights for persons belonging to different national minorities, or groups within minority groups, for men and women, for citizens and non-citizens.⁷

However, the Framework Convention not only deals with the rights of minorities to education and specifically to a certain type of education. It is of equal importance for the promotion of awareness and knowledge amongst the majority population concerning the language, culture and traditions of minorities.⁸ Further, Article 14 (3) provides that the educational rights of persons belonging to national minorities to be taught the minority language or receive instruction in this language should not prejudice the learning and teaching of the official language of the State.

As already mentioned, the right to education is a right in itself but it is also instrumental as a precondition for the full enjoyment of many other rights, such as the right to participation, expression, association, etc. For that reason the importance of the place of the Framework Convention in the nexus of human rights provisions is crucial as a guarantee of the full spectrum of human rights of persons belonging to national minorities.

Planning and activity in the field of education needs to take into account the work done in those various fora, including the Treaty Monitoring Bodies of the United Nations (UN), the UN Special Rapporteur on the Right to Education, the European Court of Human Rights and bodies of the Council of Europe (such as the Committee of Experts monitoring the European Charter for Regional or Minority Languages, the Directorate of School, Out-of-School and Higher Education and its Language Policy Division). Rights *to* and *in* education need also to be situated within the broader context of States’ commitments regarding human rights education, and in particular of the on-going World Programme for Human Rights Education⁹.

1.3 Aims of Education

The aims of education in diverse societies allow us to look at education within the Framework Convention as having multiple and occasionally contradictory aims which need to be reconciled and balanced. There are many different stakeholders in education: those educated, the educators, parents, minority groups, local, regional and central authorities. Their needs and aspirations may vary and need to be constantly assessed and accommodated to the extent possible. The Convention on the Rights of the Child has placed in a paramount position the needs and wishes of the child, a dimension which was

⁷ For instance the Slovak Republic included in its State Report ACFC/SR(99)8 information on special educational efforts for Roma women. In its State Report ACFC/SR(99)13, the United Kingdom noted that the ‘Government is concerned about the disproportionate number of ethnic minority pupils, particularly African-Caribbean boys, who are ... excluded from ... schools’. The Advisory Committee noted in its Opinion on the United Kingdom ACFC/INF/OP/I(2002)006 with regard to access to higher education that ‘while certain ethnic groups are well represented ..., other groups, such as Bangladeshi women and African and African Caribbean men remain seriously under represented’ (paragraph 85).

⁸ See the Advisory Committee Opinion on Cyprus ACFC/INF/OP/I(2002)4, paragraph 30. In other opinions, the need of education of persons belonging to specific professional groups is highlighted. This is the case in the Advisory Committee Opinion on Albania ACFC/INF/OP/I(2003)004 where the Advisory Committee stresses the need for education among professional groups such as law enforcement officers, the judiciary and the media on the situation and needs of Roma and Egyptian communities in order to encourage tolerance (paragraph 94).

⁹ For an update and summary of these efforts see: UN General Assembly, Revised draft plan of action for the first phase (2005-2007) of the World Programme for Human Rights Education, A/59/525/Rev.1 (2 March 2005).

lacking in earlier documents. This is of great importance in the field of education where other international documents have earlier given preference to the interests and options of parents or educators at the expense of the views of the child.

The aims of education are extensively outlined in Article 29 of the Convention on the Rights of the Child. It provides:

- ‘1. State Parties agree that the education of the child shall be directed to:
- (a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;
 - (b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;
 - (c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;
 - (d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;
 - (e) The development of respect for the natural environment [...]

Some of these aims, such as the development of the linguistic capabilities of a child, are understood as primarily instrumental. In these cases education is seen as a tool for the achievement of other goals (e.g. finding employment, or participating in decision-making).

Other aims of education are perceived as primordial in that they are felt as important *per se* even if there is no other rational or economic justification for this. This is the case with the development of respect for the child's identity.

At the present time, our understanding of the child as an individual with independent needs and capabilities has reshaped our priorities among the needs of different actors involved in education. All education programmes need therefore to take into account both types of aims, but should do this while trying to ensure the best interest of the child as provided in the UN Convention on the Rights of the Child.¹⁰ Indeed, the distinction between instrumental and primordial aims is to some extent artificial. Respect for a child's linguistic identity is, for instance, a precondition for additive bilingualism and plurilingualism, i.e. one which develops and strengthens the cognitive and emotional capabilities of the child, and the different languages reinforce each other and the linguistic identity is then both instrumental and a goal in itself at the same time.

It is worth mentioning that *very few States address the issue of the aims of education in their Reports*. Some States do address the principles of education and educational curricula under Article 6 of the Framework Convention.¹¹ The Advisory Committee discussed the aims of minority education also when noting that Sorbian minority schools had existed for over a hundred years and had not only “an educational function but also contribute to the expression of Sorbian identity in the areas traditionally inhabited by this minority”.¹²

¹⁰ See further Committee on the Rights of the Child, General Comment No. 1, The Aims of Education (2003).

¹¹ See e.g. State Report of Estonia ACFC/SR(99)16, paragraphs 30-31, discussing the aims of the Estonian Education Act and also the State Report of Switzerland ACFC/SR(2001)2, paragraph 153, on the importance of education for intercultural contact and promotion of tolerance.

¹² See Advisory Committee Opinion on Germany ACFC/INF/OP/I(2002)008, paragraph 59.

1.4 Importance of Articles 4 - 6 of the Framework Convention

Parents want their children to have a good quality education ensuring them equality of access and treatment and enabling children to develop their capabilities and personalities, to become full members in the societies in which they live and to live decent lives. All States have an interest in and an obligation to encouraging and facilitating such efforts and in ensuring social cohesion in their territory.

In addition to the specific provisions (Articles 12-14) guaranteeing the right to education and rights in education, Article 6 of the Framework Convention identifies education as an area of specific importance with regard to the necessity of a spirit of tolerance and intercultural dialogue:

‘1. The Parties shall encourage a spirit of tolerance and intercultural dialogue and take effective measures to promote mutual respect and understanding and co-operation among all persons living on their territory, irrespective of those persons' ethnic, cultural, linguistic or religious identity, in particular in the fields of education, culture and the media.

2. The Parties undertake 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.’

Articles 4, 5 and 6 form a continuum of core obligations of States.

In the field of education, Article 4 guarantees equal access to education and prohibits discrimination. It also explains that State Parties undertake to adopt, where necessary, positive measures to promote full and effective equality for persons belonging to national minorities. This cannot be sufficiently emphasized. The Framework Convention presupposes that States actively pursue the goals embodied in the Convention. A passive attitude may amount to a violation of the obligations provided for under the Convention. Examples of this are the absence of legislation guaranteeing rights to and in education for persons belonging to national minorities, or minority policies that are of an ad hoc and unsystematic character.¹³ Such - appropriate and necessary - measures introduced in order to promote the full and effective equality of persons belonging to minorities are not considered as such to be acts of discrimination of the majority or of other groups (Article 4.3). Equal access to education is also regulated under Article 12(3).

Article 5 elaborates on the necessity of promoting adequate conditions for maintaining and developing the culture and the essential elements of the identity of persons belonging to national minorities. Articles 12-14 are further explanation of what this means in the field of education.

The importance of Articles 4 and 5 lies, as already mentioned, in that they make clear that an active and coherent educational policy is necessary in order to implement the provisions in the Framework Convention.

In addition to the requirement of clear and coherent legislative and institutional guarantees, the existence of basic data in the field of education is a precondition for any active educational policy. In order to implement these provisions (especially Article 5, 12 and 14), all State Parties need to have adequate data on the different groups living within their countries as well as their needs and aspirations in the field of

¹³See for instance the Opinion on Italy ACFC/INF/OP/I(2002)007, paragraph 58, where the Advisory Committee notes that teaching of minority languages should be part of co-ordinated programmes rather than only experimental isolated efforts. In the Opinion on Sweden ACFC/INF/OP/I(2003)006, paragraph 60, the Advisory Committee criticized the absence of legislative guarantees for bilingual education for others than the Sami, in spite of the existence of a clear demand in this regard.

education. The Advisory Committee has been sensitive to the differing needs of different individuals and groups within a single minority group. Concentrated groups and individuals living in urban environments may have different needs and expectations than dispersed minorities or rural populations. For this reason, Article 15 guaranteeing the right of effective participation of persons belonging to minorities needs to be kept in mind, when designing and implementing educational policies, in order to ensure the expression of the multiplicity of needs and wishes of different segments of minority groups.

The Advisory Committee has consistently underlined the need to respect the principle of free self-identification of persons belonging to national minorities and the existence of adequate guarantees in the treatment of demographic, ethnic and other personal data in accordance with Article 3 of the Framework Convention. At the same time it is important that, through a combination of quantitative and qualitative tools, States make needs assessments in the field of education in consultation with those concerned¹⁴. The importance of national baseline data increases as the field of education gets more and more decentralized. The absence of such basic data cannot be used as an excuse for not acting e.g. in the field of minority education.

The Advisory Committee has often noted the absence of gender disaggregated information in the State Reports and as a consequence also in many of the Opinions of the Advisory Committee. In some cases this is the result of absence of basic data on education and on minorities as a whole (in some countries due to legal impediments on the collection of data). In other countries such data exists but does not reflect the positions and achievements of girls and boys, men and women in the educational system. Differences between men and women in the educational sphere often result in difference in the access and status in employment and should be monitored vigorously. Negative stereotypes concerning gender roles - among majorities as well as minorities - must be exposed and debated publicly and concerted efforts must be made to eradicate them in accordance with the obligations of State Parties under the Convention on the Elimination of All Forms of Discrimination against Women (Article 5).¹⁵

Article 6 of the Framework Convention requires that State Parties encourage tolerance, dialogue and mutual understanding among different groups living within the State. In the field of education, this poses demands both as regards the content of education and the choice of form, educators, structures and institutions of education. The link between Article 6 and Article 12 is strong in that both provisions support the core ethos of the Framework Convention as one of intercultural dialogue, integration of minorities in the wider society and social cohesion. State Parties need to review regularly the curricula and textbooks of subjects such as history, religion and literature, but such reviews should also cover the entire curriculum in order to ensure that the diversity of cultures and identities is reflected and that tolerance and intercultural communication are promoted.

With regard to the teaching of history, the Advisory Committee recalls the long lasting efforts of the Council of Europe in this field. These efforts focus on eliminating stereotypes and prejudices in history textbooks and on the potentials of critical thinking through history. While the introduction of elements of intercultural knowledge and dialogue in curricula as well as the need to review curricula, especially in the field of history and religion, have often been included in the Opinions of the Advisory Committee, it must

¹⁴ Also academics and NGOs may be able to assist in the collection and evaluation of such data. See for instance the report 'The Right to Education of Persons Belonging to National Minorities in Voivodina', Voivodina Center for Human Rights, Novi Sad, 2005.

¹⁵ See also Article 10 of the Convention on the Elimination of All Forms of Discrimination against Women, which deals specifically with equal rights in the field of education, including access to the same curricula, the same examinations, teaching staff with qualifications of the same standard and school premises and equipment of the same quality.

be noted that the Advisory Committee has not had the occasion to pronounce extensively on the issue of religious education or education offered by religious institutions.¹⁶

In international law the established principle requires, on the one hand, that parents may choose the kind of education that shall be given to their children according to their own religious, moral or philosophical convictions (see Article 26, paragraph 3 of the Universal Declaration of Human Rights and Article 2 of Protocol 1 of the European Convention on Human Rights) and on the other, that information and knowledge must be conveyed in an objective, critical and pluralistic manner.¹⁷ In this respect one may also recall the elaborate provisions concerning religion in education in the Vienna Document of the OSCE (1989) including the right of everyone to give and receive religious education in the language of his choice (paragraph 16). All these international documents encourage understanding and dialogue among groups and the suppression of absolutism, intolerance and hatred.

Articles 7 and 8 in the Framework Convention guarantee, for persons belonging to national minorities, the freedom of religion as well as the right to manifest religion and establish religious institutions, organisations and associations. This last mentioned right is also found in the right to education in Article 2 of Additional Protocol I to the European Convention for the Protection of Human Rights and Fundamental Freedoms.¹⁸ Pursuant to Article 17 of the European Convention of Human Rights, on the prohibition of abuse of rights, religious teaching or education, or indeed any other kind of education, should not lead to the violation of the rights of others (whether they are of the same or different religious beliefs). In addition to the school subjects discussed above, all school subjects, including mathematics, gymnastics, music and arts will also need to be reviewed and adapted from a multicultural and intercultural perspective.

¹⁶ In the State Report of Bulgaria ACFC/SR(2003)001, there is a self-critical evaluation on the lack of sufficient inclusion of intercultural elements in Bulgarian curricula, but also information of the efforts of a non-governmental organisation (The Interethnic Initiative on Human Rights Foundation) to address this need in the field of education. The State Report of Switzerland ACFC/SR(2001)2 accounts for efforts of the Swiss Broadcasting Company – SSR through series of broadcasts on different religions in order to encourage intercultural understanding. This shows as well the role of media, and in particular television, as educational tools. The Advisory Committee Opinion on Armenia ACFC/INF/OP/I(2003)001 notes (under Article 12) that culture, history, religion and the traditions of persons belonging to national minorities are only taught in special Sunday classes and ‘not as part of the general teaching curriculum’.

¹⁷ Case of Kjeldsen, Busk Madsen and Pedersen v. Denmark, ECHR, Ser. A, No. 23, 1976, paragraph 50, and Hartikainen v. Finland, Communication No. 40/1978. In this last mentioned case the Human Rights Committee found that compulsory religious education (or history of religion and ethics) is in conformity with the International Covenant on Civil and Political Rights, Article 18(4) only if such instruction is given in a neutral and objective way and respects the convictions of parents and guardians, including when those do not believe in any religion.

¹⁸ Article 2 of the additional Protocol states that ‘No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions’. The European Court of Human Rights has had the opportunity to pronounce on this provision on several occasions.

Part II Specific Provisions of the Framework Convention concerning Education

2.1 Article 12 of the Framework Convention

‘12(1). The Parties shall, where appropriate, take measures in the fields of education and research to foster knowledge of the culture, history, language and religion of their national minorities and of the majority.

12(2). In this context the Parties shall *inter alia* provide adequate opportunities for teacher training and access to textbooks, and facilitate contacts among students and teachers of different communities.

12(3). The Parties undertake to promote equal opportunities for access to education at all levels for persons belonging to national minorities.’

2.1.1 Explanatory Report

‘Paragraph 71. This article seeks to promote knowledge of the culture, history, language and religion of both national minorities and the majority population in an intercultural perspective (see Article 6, paragraph 1). The aim is to create a climate of tolerance and dialogue, as referred to in the preamble to the framework convention and in Appendix II of the Vienna Declaration of the Heads of State and Government. The list in the second paragraph is not exhaustive whilst the words "access to textbooks" are understood as including the publication of textbooks and their purchase in other countries. The obligation to promote equal opportunities for access to education at all levels for persons belonging to national minorities reflects a concern expressed in the Vienna Declaration.’

2.1.2 Main Issues

Most of the information provided by States as well as most of the comments of the Advisory Committee in the field of education are placed under Article 12. In addition to issues pertaining to the scope of education (in time, place and in content), three core issues are raised in State Reports and in the Opinions of the Advisory Committee. They follow the structure of Article 12:

- a) Promotion of a multicultural and intercultural perspective of education;
- b) Teacher training, access to textbooks and multicultural contacts;
- c) Equal opportunities for access to education.

The scope of education

States report on the basis of a *wide understanding of education*. This has also been the approach pursued by the Advisory Committee. The scope of the notion of education covers not only the basic compulsory school system, but also pre-schools, higher education, research, vocational education, adult education, education of professional groups (including the legal profession, police, journalists, government officials and politicians) and educational activities outside regular school hours (such as so-called Sunday schools and summer camps). For instance, in its Comments on the Opinion of the Advisory Committee, the Government of Moldova reported:

The Law "About education" has no term of "the Sunday school", yet in its preamble there is the general definition of the educational system that includes "the network of educational institutions of

different types and forms of ownership...". It allows considering "the Sunday school" as a public teaching and educational institution acting according to Article 34 in the network of additional (out-of-school) institution.

In the Resolution ResCMN(2003)4 adopted by the Committee of Ministers on the implementation of the Framework Convention by Moldova on 15 January 2003, the Committee of Ministers noted:

In the field of education, it is essential to consult representatives of the various national minorities, with a view to providing a balanced response to their specific needs and ensuring their equitable access to the resources available. Special attention should be paid to numerically smaller minorities and to those that are not in a position to enjoy the support of a kin-state.

With regard to the importance of *pre-school education*, the Advisory Committee noted, in the Opinion on Slovakia, that "a key to reaching this aim is to secure that the education system reflects and also fully takes into account the language and culture of the minority concerned [...] Such an approach would also help to increase mutual understanding between Roma parents and schools. In this connection, experiences gained by minorities at pre-school level are often of central importance. Considering that the proportion of Roma children attending kindergartens has dropped drastically in recent years in Slovakia, the Advisory Committee welcomes the initiatives aimed at improving opportunities for Roma in kindergartens and expresses the hope that they will have a positive impact on the relevant practice at local level".¹⁹ The issue of pre-school education is also explicitly addressed in the Explanatory Report the Framework Convention in respect of Article 14(2) (see below).

While there is relatively rich information with regard to *primary education* in the Reports of most State Parties (including also pre-school education) there is much less detail as regards access of minorities to *higher education* and of availability of higher education in minority languages, history, culture etc.²⁰ States report on various institutions conducting minority-related research, but give few accounts of the level of involvement of minorities themselves in such research and education. While primary education must be free-of-charge and compulsory, the exact extent of obligations of State Parties with regard to higher education have not been spelled out in international legal documents beyond the principle of equal access as found in Article 12(3) of the Framework Convention.²¹

The importance of *adult education* is highlighted in many State Reports and States seem to be aware of its role.²² The role of modern technology in education and its specific advantages and potential disadvantages for persons belonging to national minorities have not been fully assessed in many State Parties. In its report, Norway stated that "internet-based instruction will, in the near future, enable schools to provide

¹⁹ See the Advisory Committee Opinion on Slovakia ACFC/INF/OP/I(2001) 001, paragraph 40.

²⁰ See for instance State Reports of Croatia ACFC/SR(2003)001 and Lithuania ACFC/SR(2001)7 and Opinions on Albania ACFC/INF/OP/I(2003)004, Estonia ACFC/INF/OP/I(2002)005, and the United Kingdom ACFC/INF/OP/I(2002)006.

²¹ In its Opinion on Romania ACFC/INF/OP/I(2002)001, the Advisory Committee welcomed the existence of multicultural institutions of higher education allowing for the use of different languages in university teaching. It also noted that the Babes-Bolyai University now offers instruction in Romanian, Hungarian and German and urged the Romanian authorities to pursue its dialogue with the groups concerned.

²² See for instance the State Report of Estonia ACFC/SR(99)16 reporting on the budget of language training of adults and children and on legislation for adult education. Rich information on adult education can be found in the State Reports of Germany ACFC/SR(2000)1, Italy ACFC/SR(1999)007 and Sweden ACFC/SR(2001)3. It is to be noted that already during the preparatory work for the Framework Convention, the issue of adult education was emphasized, CDCC-BU(94) Rev. 7 (1994).

instruction in Finnish at upper secondary level without necessitating amendments to provisions regarding the right to instruction'.²³

Promotion of multicultural and intercultural elements in education

Article 12(1) makes clear that State obligations concern not only education available for minorities but also that of majorities. The wording of Article 12(1) is close to that of Article 4(4) in the UN Declaration on the Rights of Persons belonging to National or Ethnic, Religious or Linguistic Minorities (1992). According to the Commentary to the Declaration, *multicultural education* involves educational policies and practices which meet the separate educational needs of groups in society belonging to different cultural traditions, while *intercultural education* involves educational policies and practices whereby persons belonging to different cultures, whether in a majority or minority position, learn to interact constructively with each other.²⁴

With regard to the *multicultural* element of education, State Parties make occasionally critical self-assessments of their implementation of Article 12. For instance, Germany reported that 'knowledge of the culture and language of these minorities in Germany is passed on to a much greater extent in the respective traditional settlement area than in other parts of the national territory'.²⁵ Crucial fields of action for State Parties are that of *school curriculum* and the provision and revision of *textbooks* with multicultural and intercultural content and form. Measures should not be limited to the geographical areas where national minorities live.²⁶

In its first State Report²⁷, the Czech Republic identified some of the school disciplines needing specific attention:

'Education of the majority population about the culture, history, language and religion of national minorities has traditionally been neglected. In spite of a certain progress made during the last ten years, Czech instruction books remain largely textbooks of the Czech ethnic nation, its history, its culture, its fight for ethnic autonomy and later state sovereignty, always in contrary to the German element. It is as though the Czech Lands have not traditionally been the home of various ethnic, cultural and religious communities, especially the German and Jewish national minorities, and also the perpetually disregarded Romanies.'

In order to guarantee the *intercultural* element in education, which includes intercultural dialogue (Article 6 and 12), dissemination of knowledge of minority cultures (Article 12) and the learning of the majority language by persons belonging to minorities (Article 14), State Parties must make assessments of different possibilities for the structuring of teaching. As mentioned earlier this requires as a first step the collection of baseline data on the needs and aspirations of different groups and individuals.

State Parties regularly report on *different methods and structures accommodating minority education and, specifically, minority language education*. The examples below are drawn mainly from cases where language is perceived as the crucial element of education. Others concern primarily the longstanding disadvantages Roma pupils face also in the field of education.

²³ The State Report of Norway ACFC/SR(2001)1.

²⁴ A. Eide, Commentary to the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, E/CN.4/Sub.2/AC.5/2001/2 (2001), paragraphs 64-70.

²⁵ The State Report of Germany ACFC/SR(2000)1, under Article 12. See also State Report of Bulgaria ACFC/SR(2003)001.

²⁶ The Advisory Committee Opinion on Austria ACFC/INF/OP/I(2002)009, paragraph 56.

²⁷ State Report of the Czech Republic ACFC/SR(99)6, under Article 12.

The effective implementation of the basic principles of tolerance and intercultural dialogue, of dissemination of knowledge to minorities as well as majorities, of equal access to education, and of free and compulsory education requires also that many other elements of identity, such as religion, geographical location, gender, are taken into account.

The core task is to organise the education system in a way which allows for interaction between persons from various groups in order to encourage mutual understanding and tolerance, while at the same time ensuring the successful maintenance and development of the elements of the identities of members belonging to various groups. How can the structures and content of education ensure the balance between the two aims outlined above in order to achieve ‘integration in diversity’?

The first methods discussed below apply to linguistic minorities for which language teaching and training is a key issue. In practice, a great part of the information in State Reports, and as a consequence also in the Opinions of the Advisory Committee, relates to the role and position of language in education. Among the most common methods and structures reported in primary education with regard to the role and position of language are:

1. Schools where the minority language is dominant and where the majority language is taught only as a subject;
2. Schools where the minority language is dominant and some more or less limited teaching for specific subjects takes place through the medium of majority language (e.g. in addition to language also some other subjects such as history, religion and sometimes geography);
3. Schools where the majority language is dominant and where only some classes are taught in minority language and/or through the medium of minority language;
4. While all the above types can be described as *bilingual schools*, the term should preferably be saved for schools trying to keep both languages (minority and majority) at a similar level of importance, spread across curricula and different classes, and where classes are to the extent possible composed of pupils and teachers from different groups.

Some countries, such as Austria, Hungary and Poland, have provided in their Reports extensive information on different types of schools and education, the number of schools, pupils, and in some cases teachers as well as on the regional coverage of such institutions.²⁸ In general, the information available to the Advisory Committee through the first cycle State Reports indicates that the third method dominates (majority schools with few minority-oriented classes or subjects). The fourth method (bilingual schools) is still much less applied in spite of the spirit of bilingualism and even plurilingualism permeating the Framework Convention.

The principle position of the Advisory Committee has been that all aspects and elements of education should ensure ‘a climate of tolerance and dialogue’.²⁹ Such dialogue is hardly possible if persons belonging to different groups never meet even when they live in the same city, village or region. Nor can tolerance be promoted if majorities and minorities know nothing about the everyday experiences and about the elements of identities of each other. This is even more evident in some of the separate, or even segregated, methods of education discussed below.

Other reported structures address the needs and situation of specific groups which for various reasons are not accommodated, or can - for various real or perceived reasons - not be accommodated, in the ordinary

²⁸ The State Reports of Austria ACFC/SR(2000)3, Hungary ACFC/SR(99)10 and Poland ACFC/SR(2002)2.

²⁹ See above on Article 6 and the wording in the Explanatory Report, paragraph 71.

educational system. Some of these structures are legitimate, while others are unacceptable, especially if they impose segregated education and have discriminatory effects, as is often the case for the Roma.

1. So-called “special classes” or even “special schools” (which are sometimes meant for mentally disabled pupils but have often been used disproportionately for Roma children due to an erroneously generalised perception of their inability to follow instruction in the ‘regular’ school system);
2. “Supportive” or “additional” or “remedial” classes in order to permit the integration of minority pupils (often Roma) to other “integrated” classes later on;
3. Sunday-schools (which in a few States, such as Moldova, are seen as an integral part of the public educational system, while in other countries fall completely outside this framework).

The Advisory Committee has expressed its appreciation of supportive pre-school classes if they are aimed at enabling Roma pupils or others concerned to follow the regular curriculum, but, at the same time, the Committee has indicated that there is a dangerous grey zone between the first two methods described above (segregating special classes and supportive/remedial classes).

In the Opinion on Sweden, the Advisory Committee said that it had received reports according to which in some Swedish municipalities the measures taken with respect to Roma pupils have led to the establishment of specific classes for Roma, often with support from a number of Roma parents. The Advisory Committee considered that ‘even when such initiatives are designed as a way to provide additional support for the pupils concerned, specific classes devoted to one national minority as such (rather than, for example, to the teaching in/of their language and of their culture) risk placing the children concerned at a disadvantage and harming the implementation of Article 12 and the principle of intercultural dialogue contained in Article 6 of the Framework Convention’. Finally, the Advisory Committee urged the authorities to analyse the local situations and take measures, in consultation with the persons concerned, ‘with a view to enabling and encouraging Roma children to stay in the regular classes’.³⁰

In other cases, however, a separate teaching, in whole or in part may be more appropriate, or even the only possible solution. Thus in the Opinion on Cyprus, the Advisory Committee noted that “the leaders of the Maronite community repeatedly requested their own schools and housing areas or villages. The Advisory Committee therefore welcomes the recent decision taken by the Government to establish an elementary school for the Maronites”. The Advisory Committee expressed the wish that the authorities in Cyprus will adopt further measures aimed at preserving and developing the culture and the identity of the Maronites.

Such forms of education, however, do not obviate the need for promotion of intercultural dialogue and contact - within and outside educational environments - as prescribed in Articles 6, 12 (1) and 14 (3) of the Convention.³¹

The choice of school structures, teaching methods and educational content should be guided by a broad assessment taking into considerations, *inter alia*:

- The aims of education in a specific region and cultural and political context. In particular in countries that have experienced conflict or are experiencing interethnic tension or aggressive nationalism, the need to ensure contact, dialogue and integration is a compelling priority;

³⁰ See further under Section 2.1.2 the discussion on equal opportunities for access to education, including access to education for Roma.

³¹ See similarly on education for Sorbians in the Advisory Committee Opinion on Germany ACFC/INF/OP/I(2002)008.

- The collection and availability of gender sensitive data concerning the number, needs, demands and expectations and preferences of minority pupils and teachers;
- The level of language proficiency of children in the minority language as well as in the majority language. In some cases the language proficiency of minority students in their native language is not sufficiently high to enable them to follow education solely in the minority languages. It was noted in some State Reports that the role of the educational system in preserving and developing minority cultures has increased in recent years because parents are unable to pass over to their children the language and traditions of the minority;
- The demographic profile of a certain location or region. Is it possible to have shared schools or classes or streams of study while accommodating specific needs e.g. in teaching of languages? Is it possible to have bilingual schools? Are separate schools the only available method?
- The availability of appropriate textbooks produced in the country concerned or, if appropriate, in kin-states;
- Financial and other resources.

Some States provide details about the funding of minority education. The State Report of Poland indicates that local authorities running schools for national minorities receive additional (as compared to non-minority education) state subsidies (20% supplement per pupil in larger schools and 50% in smaller schools).³² In Hungary, a local government operating minority educational institutions receives extra subsidies.³³ The State Reports received so far provide no information on the participation of minorities in budgetary decision making with regard to education at central, local or school level. The choice of a particular method and structure for the needs of a particular groups and situation generally is often not discussed or reflected upon in State Reports.

Teacher training, access to textbooks and multicultural contacts

The training of teachers and access to textbooks of good quality are essential preconditions for ensuring good quality education for all pupils and students. Only some countries report under Article 12 on indicators of *quality of education* such as the pupil/teacher ratio or the maximum number of pupils in a classroom.³⁴ In its Opinion on Hungary, the Advisory Committee points out that “in its contacts with national minority self-governments, it has learned that there is still, for a number of minorities, a shortage of available textbooks in the minority language and/or a shortage of qualified teachers. In such circumstances, it is difficult to offer an education in bi-lingual schools and native language schools, which is of the *same quality* as that offered in Hungarian”.³⁵

The Advisory Committee has observed that many State Parties refer to the lack of teachers as an excuse for not offering minority or bilingual education. In its Opinion on Norway, the Advisory Committee called (under Article 12) for increased efforts and allocation of adequate resources in order to address to lack of qualified teachers who can teach in Finnish. In the Opinion on Sweden, the Advisory Committee called on the authorities to review legal provisions which conditioned the obligation to provide minority language teaching upon the availability of teachers.³⁶

The term ‘adequate’ in Article 12(2) – as well as in other similar clauses of the Framework Convention – accentuates once more the need for State Parties to collect baseline data and make needs’ assessments. It should also be noted that bilingual and multilingual societies and schools require teachers with

³² State Report of Poland ACFC/SR(2002)2.

³³ State Report of Hungary ACFC/SR(99)10.

³⁴ See e.g. State Reports of Albania ACFC/SR(2001)5 and Germany ACFC/SR(2000)1 (with regard to Roma).

³⁵ Advisory Committee Opinion on Hungary ACFC/INF/OP/I(2001)004, paragraph 39.

³⁶ Advisory Committee Opinions on Norway ACFC/INF/OP/I(2003)003 and Sweden ACFC/INF/OP/I(2003)006.

appropriate bilingual, multilingual and intercultural training. Teachers must therefore be recruited actively from both majority and minority groups and be given training equipping them to work in multilingual and intercultural environments. This is particularly important for teachers specialized in the teaching of history and religion.

Kin-state support in the field of education consists usually of scholarship schemes, reduction of fees for the use of educational facilities, support to teaching in the kin-language, training for teachers in the kin-language, access to higher education and recognition of diplomas.

The Advisory Committee finds useful the guidelines developed by the European Commission for Democracy through Law, of the Council of Europe, better known as the Venice Commission, in its *Report on the Preferential Treatment of National Minorities by the Kin-State* (2001).³⁷ The Venice Commission reminds that kin-state support must respect the principle of friendly neighbourly relations as provided in Article 2 of the Framework Convention. Indeed, Article 18 of the Framework Convention encourages the development of bilateral and multilateral agreements between neighbouring countries as well as transfrontier co-operation in general. Such co-operation can enhance positive developments for both minorities and majorities. The Venice Commission notes also that international law does not accept the exercise of State powers outside the national borders, unless there is specific permission to the contrary. Most importantly from the point of view of persons belonging to national minorities, the Venice Commission observes that differential treatment, including through support by kin-states, may constitute discrimination if it is not objectively and reasonably justified and is proportionate to the aim pursued.

The Advisory Committee has dealt with kin-state issues in the field of education under Article 12 of the Framework Convention. Article 4 is also relevant when kin-state support creates differential treatment that may amount to discrimination which enhances the vulnerability of groups with no kin-states. The Advisory Committee has indeed emphasized in several opinions that over-dependence upon kin-state support may place some groups in a disadvantaged position, such as the Yezidis and Assyrians in Armenia and that “the authorities should ensure that all the national minorities, particularly those that are numerically smaller or do not enjoy the support of a kin-state, benefit equitably from the special government programmes for national minorities”.³⁸

If used prudently, kin-state support can be an asset both for the minority concerned, other minority groups as well as for the majority population. When discussing kin-state support in the field of textbooks and other teaching materials supplied by kin-states, it needs to be taken into account that such materials may in some cases not reflect adequately and correctly the experiences and aspirations of minorities concerned since they are produced in and by the kin-state by persons who do not live in the country of the minority at issue.

Equal opportunities for access to education

a) Legal and institutional framework of education

Rights *to*, and *in* education, need to be institutionalized and safeguarded in clear and coherent legal acts. State Parties must also dedicate the financial resources necessary for the implementation of adopted legislation at national, regional and local level. This is not always the case especially as education budgets

³⁷ CDL-INF (2001)19.

³⁸ Advisory Committee Opinion on Armenia ACFC/INF/OP/I(2003)001, paragraph 63; Advisory Committee Opinion on Moldova ACFC/INF/OP/I(2003)002, paragraph 116. See also concerns raised under Article 18 in the Advisory Committee Opinion on Poland ACFC/INF/OP/I(2004)005.

in many countries in Europe have faced cuts in recent years. Sometimes there are *contradictions* between educational legal acts on minority education and other legal acts devoted to (such as state language laws).

Minority languages are in some cases officially treated as “foreign languages” placed in the same position as foreign languages with no historical or cultural link to the country concerned. The Advisory Committee has emphasized that minority languages should be recognised and treated as part of the linguistic and cultural wealth of a State.³⁹

In other cases the *complexity of laws and decrees* in this field is such that those concerned (heads of schools, responsible authorities, teachers, parents and pupils) are unaware of the actual rules, rights and duties, e.g. with regard to threshold requirements for the retention or abolition of a class, or a school. Legal certainty and clarity are preconditions for coherent implementation of the provisions of the Framework Convention, especially since the Framework Convention requires the concretization and contextualization at national, regional and local levels. The issue of complexity of the legal framework is linked to the current trend for decentralization of education, with responsibility delegated to local authorities and further to heads of schools. In order to be able to participate meaningfully in decisions affecting them, teachers, parents and pupils should be aware of who decides on different matters and on the basis of which legal provisions. This also includes decisions on funding of minority education.

Another aspect related to the legal framework, is that of *the means of supervision and subsequently of enforcement of legal provisions concerning education*. Since many State Parties have provisions on the right to education in their constitutions as well as in a number of other pieces of legislation, it is remarkable that there is hardly any information in State Reports on the judicial or other means to enforce such provisions, at national as well as at local level, nor about court practice in the field of education. One of the exceptions is the information provided in the State Report of Austria concerning a Constitutional Court Decision on primary education for the Slovene minority.⁴⁰

b) Access to education for Roma

The equal access of Roma children to good quality education and their integration in the societies is a persistent problem in many States Parties to the Framework Convention.

Segregated education, often of lower standard than that offered to other students, is one of the most extreme examples of the precarious position of Roma parents and pupils. The Advisory Committee has repeatedly criticized practices of segregation of Roma students and welcomed efforts to end such practices.⁴¹ Other problems encountered are the bullying of Roma children by other children or, even by teachers, inappropriate and culturally biased tests used in the educational systems, the lack of recognition of the Romani language in schools, low income and lack of school meals for Roma. The Advisory Committee has observed differences in the treatment of girls and boys. The Advisory Committee has welcomed efforts to tackle such problems, for instance through offering of school meals, introduction of

³⁹ Advisory Committee Opinion on Poland ACFC/INF/OP/I(2004)005, paragraphs 68-69.

⁴⁰ State Report of Austria ACFC/SR(2000)3. The Decision of the Constitutional Court of 15 December 1989 (Collection VfSlg. 12.245/1989) on the primary school system held that section 10 paragraph 2 of the Minority Schools Act for Carinthia was unconstitutional and, consequently, quashed a phrase in section 11 of that law as well as section 1 paragraph 1 of the pertinent Carinthian implementing law for not being in conformity with the Constitution. It was the understanding of the Constitutional Court that Article 7 (2) of the State Treaty of Vienna was directly applicable. The subjective (public) right of Austrian citizens belonging to the Slovene minority to receive elementary tuition in the Slovenian language, accordingly, applies in the entire Carinthian territory and not just in the "autochthonous Slovenian" region in Southern Carinthia.

⁴¹ See e.g. Advisory Committee Opinions on Austria ACFC/INF/OP/I(2002)009, the Czech Republic ACFC/INF/OP/I(2002)2, Hungary ACFC/INF/OP/I(2001)4 and Croatia ACFC/INF/OP/I(2002)003.

public transportation, training of Roma school assistants and teachers. In its Opinion on Romania, the Advisory Committee was pleased that measures taken had included the appointment of Roma mediators and school inspectors and the reservation of quotas reserved for Roma students in higher education.⁴²

Summary of points on Article 12 (3)

Ensuring the access of all persons belonging to national minorities to good quality education means that States need to act resolutely in the following three areas:

- Ensuring that all children (including Roma) are duly enrolled in schools and that difficulties encountered by displaced persons or persons belonging to nomadic or semi-nomadic groups are addressed in constructive and active ways. The existence of education or some levels of education exclusively in the official language may be blocking the access to education for children belonging to national minorities or other groups (e.g. recent immigrants and refugees).
- Ensuring and monitoring school attendance by all pupils, including those belonging to national minorities. Shortcomings in the availability of pre-school education, school facilities, in physical access to schools and transportation, or in ensuring safety of children in school, as well as parents socio-economic problems, lack of confidence in the educational system may all result in reluctance of parents to send their children to pre-schools and schools and a lack of willingness by children to attend classes;
- Monitoring school attainments, including absenteeism and drop-out rates, literacy, completion of studies, grades, gender disparities, access to higher educational levels and subsequently access to employment. In some cases, preparatory classes and class or individual assistants/mediators/advisors may be necessary for pupils from disadvantaged environments. Adult education is a necessary complement to the basic education system.
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2.2 Article 13 of the Framework Convention

‘13(1) Within the framework of their education systems, the Parties shall recognise that persons belonging to a national minority have the right to set up and to manage their own private educational and training establishments.

13(2) The exercise of this right shall not entail any financial obligation for the Parties. ‘

2.2.1 Explanatory report

‘72. The Parties’ obligation to recognise the right of persons belonging to national minorities to set up and manage their own private educational and training establishments is subject to the requirements of their educational system, particularly the regulations relating to compulsory schooling. The establishments covered by this paragraph may be subject to the same forms of supervision as other establishments, particularly with regard to teaching standards. Once the required standards are met, it is important that any qualifications awarded are officially recognised. The relevant national legislation must be based on objective criteria and conform to the principle of non-discrimination.

73. The exercise of the right referred to in paragraph 1 does not entail any financial obligation for the Party concerned, but neither does it exclude the possibility of such a contribution.’

⁴² Advisory Committee Opinion on Romania ACFC/INF/OP/I(2002)001, paragraph 57. See also above the section concerning ‘the scope of education’ including reference to the Advisory Committee Opinion on Slovakia ACFC/INF/OP/I(2001)1.

2.2.2 Main Issues

In most of its Opinions, the Advisory Committee has considered that the implementation of Article 13 does not give rise to any specific observations. In many cases this results from the fact that the national minorities concerned do not have the financial means to establish their own educational institutions.

The Explanatory Report provides that all educational establishments, public as well as private, are subject to the requirements of each State's educational system. States Parties can therefore implement the Framework Convention by incorporating the education provisions of the Framework Convention as elements of their own educational systems.

More extensive comments were provided by the Advisory Committee in a few cases, including the Opinions on Austria, Germany and Switzerland. With regard to Austria, the Advisory Committee discussed the public funding of Czech and Slovak bilingual education in the Komensky School in Vienna and recommended more subsidies to private schools offering education to Hungarians and Croats. With regard to the Komensky School the Advisory Committee said:

‘The Advisory Committee welcomes the fact that the Austrian authorities cover the costs of the teaching staff at the Komensky school on a contractual basis, although the Private School Act does not place them under any obligation to do so. Nonetheless, the Czech and Slovak minorities have drawn the Advisory Committee's attention to the growing difficulties that they have in covering the ordinary operating costs of the school on their own. The Advisory Committee therefore urges the Austrian authorities to continue their discussions with the representatives of the Czech and Slovak minorities to identify funding solutions that will help to secure the school's long-term future. Because of the school's historical significance and its role in conveying these languages and cultures, the Czech and Slovak minorities regard its preservation and development as a priority.’⁴³

In the case of Switzerland, the Advisory Committee recommended a review of the impact of restrictions on the establishment of private schools in minority languages in certain cantons on the basis of the principle of territoriality, e.g. in Bern. The Advisory Committee considered that:

‘... such limitations are problematic from the point of view of Article 13 of the Framework Convention insofar as they seem to prevent the establishment of private schools providing instruction in a minority language outside its area of traditional establishment. While noting that the Federal authorities have indicated to it that they had no knowledge of cases where the setting up of private schools of a minority language has been refused, the Advisory Committee urges the competent authorities to ensure that the legal provisions of the cantons concerned do not constitute a barrier to satisfying any needs in this respect, in particular for Italian-speakers living in large cities such as Bern.’⁴⁴

State Parties must ensure that the implementation of the principle of territoriality does not violate the principle of non-discrimination between minority groups or different sub-groups within minority groups.

Issues of quality and supervision of private minority education have not been raised in any opinions of the Advisory Committee.

⁴³ Advisory Committee Opinion on Austria ACFC/INF/OP/I(2002)009, paragraph 59.

⁴⁴ Advisory Committee Opinion on Switzerland ACFC/INF/OP/I(2003)007, paragraph 66.

2.3 Article 14 of the Framework Convention

'14 (1) The Parties undertake to recognise that every person belonging to a national minority has the right to learn his or her minority language.

14 (2) In areas inhabited by persons belonging to national minorities traditionally or in substantial numbers, if there is sufficient demand, the Parties shall endeavour to ensure, as far as possible and within the framework of their education systems, that persons belonging to those minorities have adequate opportunities for being taught the minority language or for receiving instruction in this language.

14 (3) Paragraph 2 of this article shall be implemented without prejudice to the learning of the official language or the teaching in this language.'

2.3.1 Explanatory report

'Paragraph 1

74. The obligation to recognise the right of every person belonging to a national minority to learn his or her minority language concerns one of the principal means by which such individuals can assert and preserve their identity. There can be no exceptions to this. Without prejudice to the principles mentioned in paragraph 2, this paragraph does not imply positive action, notably of a financial nature, on the part of the State.

Paragraph 2

75. This provision concerns teaching of and instruction in a minority language. In recognition of the possible financial, administrative and technical difficulties associated with instruction of or in minority languages, this provision has been worded very flexibly, leaving Parties a wide measure of discretion. The obligation to endeavour to ensure instruction of or in minority languages is subject to several conditions; in particular, there must be "sufficient demand" from persons belonging to the relevant national minorities. The wording "as far as possible" indicates that such instruction is dependent on the available resources of the Party concerned.

76. The text deliberately refrains from defining "sufficient demand", a flexible form of wording which allows Parties to take account of their countries' own particular circumstances. Parties have a choice of means and arrangements in ensuring such instruction, taking their particular educational system into account.

77. The alternatives referred to in this paragraph – "opportunities for being taught the minority language or for receiving instruction in this language" – are not mutually exclusive. Even though Article 14, paragraph 2, imposes no obligation upon States to do both, its wording does not prevent the State Parties from implementing the teaching of the minority language as well as the instruction in the minority language. Bilingual instruction may be one of the means of achieving the objective of this provision. The obligation arising from this paragraph could be extended to pre-school education.

Paragraph 3

78. The opportunities for being taught the minority language or for receiving instruction in this language are without prejudice to the learning of the official language or the teaching in this language. Indeed, knowledge of the official language is a factor of social cohesion and integration.

79. It is for States where there is more than one official language to settle the particular questions which the implementation of this provision shall entail.’

2.3.2 Main Issues

The structure of Article 14

It is significant that Article 14 (1) of the Framework Convention refers explicitly to “*the right*” to learn one’s minority language. Article 14 (1) is passive in character in referring to “the ‘right to *learn*’ as opposed to the active form in Article 14 (2) ‘being taught’ and ‘receiving instruction’”. State Parties must then first of all recognise this right in their legal and educational systems, even if this does not automatically entail an economic responsibility for the provision of such education in all circumstances. In some cases, the Advisory Committee has criticized the absence of provisions recognizing a right to be educated in the Roma language in spite of similar provisions existing for many other minority languages.⁴⁵

Article 14 (2) is qualified by a number of clauses, including through phrases such as “in areas inhabited ... traditionally or in substantial numbers”, “if there is sufficient demand”, “as far as possible”, “within the framework of their education systems”, “adequate opportunities”. The right under Article 14 (2) consists of two elements (instruction *of* or *in* the minority language) which have been seen by the Advisory Committee as *alternatives which are not mutually exclusive*.⁴⁶ Even though Article 14 (2), imposes no obligation upon States to do both, its wording does not prevent the State Parties from implementing the teaching of the minority language as well as the instruction in the minority language. Bilingual instruction may be one of the means of achieving the objective of this provision. The Explanatory Report reminds us that the provision is relevant also to pre-school education.

Notwithstanding the clauses in Article 14 (2) allowing for considerable flexibility for State Parties, the Advisory Committee is of the view that State Parties must actively pursue needs’ assessments and involve minorities in the design and implementation of measures to ensure the implementation of Article 14, including the right unequivocally guaranteed under Article 14 (1).

The languages protected

The notion of ‘minority language’ is not as clear as it appears at first sight. It may mean:

- a) the language which is considered as the traditional and historical language of a minority group;
- b) the language which is used in practice by a minority group (e.g. Russian among persons belonging to the Roma minority in several countries of the former Soviet Union);
- c) the language which is used by a majority within a minority group or which is used most of the time by a minority (or a combination of both);
- d) the language which simply differs from the language of the majority.

The notion of ‘mother tongue’ which is sometimes used in legislation and in State Reports is equally unclear as it may mean:

- a) the language transmitted by the mother (with all the gender biases this brings regarding the transmission of cultures and identities);

⁴⁵ Advisory Committee Opinions on Slovakia ACFC/INF/OP/I(2001)001 and Romania ACFC/INF/OP/I(2002)001.

⁴⁶ Advisory Committee Opinions on Sweden ACFC/INF/OP/I(2003)006 and Norway ACFC/INF/OP/I(2003)003.

- b) the language one learned first;
- c) the language one knows best;
- d) the language one uses most freely;
- e) the language with which one is identified by him or herself or by others as a ‘native speaker’.

It should also be noted that the word ‘mother tongue’ does not appear at all in Article 14 and it can therefore be argued that, following the principle of self-identification enshrined in Article 3 of the Framework Convention, persons belonging to national minorities and minorities as groups may freely identify themselves on the basis of the language they perceive as being ‘their’ language.

Languages form a continuum and the exact borders (linguistic and geographic) of languages are and will remain flexible and changing. Human beings are capable of mastering several languages. Human beings can also know and use various languages at different levels and within different domains. In our times of globalization and enhanced interaction it is in any case evident that multilingualism gives strong functional, cognitive and emotional assets. The Framework Convention itself presupposes the encouragement and support for bilingualism (through a combined implementation of Articles 12 (1) and 14). For those reasons continuous consultation with the persons and groups concerned (pupils, parents, teachers, minority representatives, authorities at central and local levels) is essential in the design of successful language education programmes. This flows also from the right to participation of persons belonging to national minorities as guaranteed under Article 15 of the Framework Convention.

The importance of teaching of and through the medium of the Romani language is increasingly discussed in State Reports and in the Opinions of the Advisory Committee as a necessary element of the efforts to ensure access to education for the Roma. In the Opinion on Romania the Advisory Committee mentioned that there was in practice no instruction in the Roma language in spite of the considerable size of the Roma community living in this country. The Advisory Committee called for measures to ensure adequate opportunities to be taught the Roma language.⁴⁷

The Council of Europe and its Language Policy Division possess enormous competence on the necessary preconditions and different modalities of successful language education programmes, including bilingual and multilingual education.⁴⁸ Many European States have also undertaken specific obligations under the European Charter for Regional or Minority Languages.

The scope of obligations

In its Opinions, the Advisory Committee has encouraged governments to take a “*proactive approach*” even when the expressed demand appears low (Opinion on the United Kingdom). It has also expressed satisfaction at low *numerical thresholds* for the creation of classes (in e.g. Ukraine 5 pupils in rural areas and 8-10 pupils in non-rural areas; in Sweden 1 pupil for some languages and 5 pupils for others but conditioned upon the availability of teachers, something which was criticized by the Advisory Committee; Austria reported a minimum of 7 pupils for a class (accompanied with detailed provisions) and a maximum number of 20 pupils per class). The Advisory Committee has conversely found that a

⁴⁷ Advisory Committee Opinion on Romania ACFC/INF/OP/I(2001)1.

⁴⁸ See for instance the report written by Pádraig Ó Riagáin and Georges Lüdi, “Bilingual Education: Some Policy Issues”, Language Policy Division, DG IV, Directorate of School, Out-of-School and Higher Education, Council of Europe, 2003. It includes as an appendix a useful Checklist for decision makers in the context of policies for bilingual education.

threshold of 20 pupils for a class in a Sorbian-language school “is very high from the point of Article 14 of the Framework Convention”.⁴⁹

States should not introduce further qualifications to the rights enshrined in Article 14, than those contained in the Framework Convention. In its Opinion on Norway the Advisory Committee found:

‘The existing regulations envisage bilingual basic education, as a maximum, for minorities other than Sami and Kven-Finnish (in the designated regions) only until they have acquired a sufficiently good knowledge of Norwegian to be able to follow the ordinary teaching programme. Bearing in mind that the guarantees of Article 14 are not conditioned upon lack of knowledge of the state language, the Advisory Committee considers that the authorities should examine to what extent there is demand amongst the national minorities, and in the regions not covered by the said guarantees, to receive instruction in or of their language and, depending on the results, improve the current legal and practical situation if necessary.’⁵⁰

When developing and implementing the concrete modalities for language education, State Parties must reflect and decide upon:

- the scope and volume of the teaching of or in minority languages (including on the levels of education and numbers of hours; public school system or informal/private teaching);
- the optional or compulsory nature of teaching;
- the continuity of teaching of/or in minority language, through the various levels of the educational system.

Much guidance in such endeavours can be found in the *Hague Recommendations Regarding the Education Rights of National Minorities* of the OSCE (1996) which is a comprehensive text in this field containing information on some crucial aspects of minority education.⁵¹ The Hague Recommendations follow the spirit of the Framework Convention and the aims of education as described in the Convention on the Rights of the Child in adopting the basic assumption of the need to balance the goal of the preservation and development of minority identity and language with that of integration of minorities in the societies where they live as well as dialogue between different individuals and groups. As discussed earlier, the Advisory Committee has followed the same line of thought in its own work.

The Framework Convention adds to all this the explicit importance of promoting in the field of education the mutual respect, understanding and cooperation among all persons living within a state (Article 6) as well as the need to foster knowledge of the culture, history, language and religion of the different groups and targeting both minorities and majorities (Article 12).

The Hague Recommendations offer valuable assistance on the issue of decentralization and participation. Finally, when analyzing the shifting needs at various levels of education (primary, secondary, tertiary and vocational), the Hague Recommendations include specific recommendations with regard to the extent of the use of the minority language in the teaching of the curricula. In sum, the model supports a strong emphasis on minority language teaching at lower levels of education with a gradual increase of teaching through the medium of the majority language in higher levels of education.

⁴⁹ Advisory Committee Opinions on Austria ACFC/INF/OP/I(2002)009, Ukraine ACFC/INF/OP/I(2002)010, the United Kingdom ACFC/INF/OP/I(2002)6, and Germany ACFC/INF/OP/I(2002)008, paragraphs 59-60.

⁵⁰ Advisory Committee Opinion on Norway ACFC/INF/OP/I(2003)003, paragraph 59.

⁵¹ The full text of the Hague Recommendations and the Explanatory Note can be found in different languages at: <http://www.osce.org/hcnm/documents.html?lsi=true&limit=10&grp=45>

A number of other tools and documents are already available within and outside the Council of Europe and can be adapted to the specific needs of each country, region and minority as well as majority groups.⁵² A particularly useful tool is the so-called “*Four-A scheme*” developed within the United Nations.⁵³ The scheme offers some basic quality criteria from a human rights perspective.

Planning and evaluation of all education, including minority education, can be guided by reflection on this scheme. While the first two A-factors are of equal relevance to all children and students, the Advisory Committee finds that the notions of acceptability and adaptability are of particular relevance for persons belonging to national minorities.⁵⁴ According to the *Four-A-scheme*, education in all its forms and at all levels shall exhibit the following interrelated and essential features:

Availability: Functioning educational institutions and programmes have to be available in sufficient quantity. The availability of trained teachers and teaching materials, issues of buildings, sanitation facilities for both sexes, safe drinking water are among the most crucial elements under this criterion. The Framework Convention includes different levels of obligations for States with regard to availability in the different levels of education.

Accessibility has three overlapping dimensions: non-discrimination, physical accessibility (appropriate geographic location, transportation, modern technology) and economic accessibility. Primary education must be ‘free to all’ under human rights instruments.⁵⁵ In Europe, Article 17 (2) of the Revised European Social Charter requires State Parties to provide children and young persons with ‘a free *primary* and *secondary* education’.

Acceptability: the form and substance of education, including curricula and teaching methods, have to be acceptable (e.g. relevant, culturally appropriate and of good quality) to students and parents. Acceptability is thus relevant for the whole physical and social environment of education. While this criterion is of particular importance for national minorities, it does not exempt them automatically from the objectives and standards defined in the educational system of the State.

Adaptability: education has to be flexible so as to adapt to the needs of changing societies and communities and to respond to the needs of students within their diverse social and cultural settings. This must be kept in mind as both minorities and majorities are developing entities as are persons belonging to them. Minority and majority identities need to be constantly discussed and reassessed as they are not frozen. Nor are languages and religion frozen phenomena and this has also been the view of the Advisory Committee in its work.

⁵² For more elaborate tools on the specifics of language education and plurilingualism, consult the work of the Language Policy Division of the Council of Europe, which has published *inter alia* the *Guide for the Development of Language Education Policies in Europe – From Linguistic Diversity to Plurilingual Education*, 2003 (in a main as well as an executive version, both available at www.coe.int/lang)

⁵³ *General Comment 13 (1999) on the Right to Education* of the Committee on Economic, Social and Cultural Rights, and *Preliminary Report of the UN Special Rapporteur on Education* E/CN.4/1999/49.

⁵⁴ See also Duncan Wilson, in “Filling the Frame: Five years of monitoring the Framework Convention for the Protection of National Minorities” ISBN 92-871-5472-2.

⁵⁵ General Comment 11 (1999) on Plans of Action for Primary Education of the Committee on Economic, Social and Cultural Rights elaborates on the notions of ‘compulsory’ and ‘free-of-charge’ education.

Part III Core considerations influencing minority and intercultural education

On the basis of the above experience of the Advisory Committee, it is possible to offer a short checklist of core considerations that need to be taken into account when discussing educational policies concerning minorities and intercultural education. In summing up, the Advisory Committee concludes that all minority educational policies need to address the following core questions:

Why? Which are the precise goals of educational policies?

As already indicated, the Framework Convention requires not only the protection of minority cultures and languages, but also the dissemination and development of intercultural contacts and dialogue, the encouragement of a spirit of tolerance in all educational efforts and even an ethos of bilingualism and plurilingualism with regard to languages. Different situations and different groups may need to be treated differently in order to ensure effective equality and access to good quality education for all persons.

Who? Who are the involved and concerned actors?

State Parties need to have access to adequate basic information concerning the situation of different minority groups, their needs and aspirations. Differences in geographic concentration, historical status and experience, kin-state support, level of organisation, gender disparities require different responses from the State and local and regional authorities. The particularly disadvantaged position of the Roma and Travellers needs to be taken into account in all countries that have ratified the Framework Convention.

Many other actors influence the availability and quality of education. Decision-makers at central and local level, teachers and school heads are among the most important. Parents and those receiving education (pupils or adults) are other crucial actors. The wishes of those groups and persons need to be heard and the right of effective participation as enshrined in Article 15 of the Framework Convention should be kept in mind in all decision-making processes, including in the field of education.

How? What tools are available and feasible?

The form and content of education needs to be adapted to the aims discussed above. The introduction of multicultural and intercultural elements in all curricula is one step. Different types of schools and classes is another method to address the varying needs. Training of bilingual and plurilingual teachers with expertise in working in multicultural environments is another important step. These aspects are not exhaustive, but they are crucial in offering access to good quality education to all persons living in a country in a way which supports a climate of tolerance and intercultural dialogue.

The Appendix to the Commentary on Education is available upon request