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**SECRETARIAT OF THE FRAMEWORK CONVENTION FOR THE  
PROTECTION OF NATIONAL MINORITIES**

**COMPILATION OF OPINIONS OF THE ADVISORY COMMITTEE  
RELATING TO ARTICLE 4 OF THE FRAMEWORK CONVENTION**

**FIRST CYCLE**

**“Article 4**

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

Note: this document was produced as a working document only and does not contain footnotes. For publication purposes, please refer to the original opinions.

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## 1. ALBANIA

The Advisory Committee notes that the Albanian Constitution establishes the fundamental principle of equality before the law (Article 18) and guarantees freedom from discrimination on the basis of, *inter alia*, race, religion, ethnicity, language, social status or ancestry. These provisions coupled with provisions under criminal law, civil law and administrative law, provide important elements for a body of legislation aimed at combating discrimination. The Advisory Committee, however, notes that there remains scope for extending this legislative framework further. For example, as suggested by the European Commission against Racism and Intolerance (ECRI) in its Second report on Albania, the possibility exists of defining racially motivated offences as specific offences and explicitly providing for racial motivation to be taken into account as an aggravating factor by the courts.

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

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

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

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

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

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

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

### **In respect of Article 4**

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

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

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

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

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

## **2. ARMENIA**

The Advisory Committee notes that the Armenian Constitution provides that all citizens shall be equal before the law and enjoy equal protection by the law, without discrimination, as well as guarantees relating to the defence of their rights. Armenian criminal law contains provisions prohibiting any discrimination by public authorities or private entities, and also lays down sanctions for any violation of equality carried out on racial or ethnic grounds. The Advisory Committee notes that provision is made for possible remedies for victims of discrimination. As regards protection against discrimination in different societal settings (including employment, provision of services and housing) provided by civil and administrative law, the Advisory Committee invites the Armenian authorities to examine the situation in the context of the current revision of the Armenian legislation with a view to filling any gaps that may remain in this field.

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

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

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

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

The Advisory Committee is aware that, in the absence of reliable data, it is very difficult for the Armenian authorities to devise and to implement measures which guarantee the full and effective equality of persons belonging to national minorities and for the international monitoring bodies to ensure that Armenia is fulfilling its obligations under the Framework Convention. The Advisory Committee is aware that significant demographic changes have occurred in Armenia during the past ten years and it takes note, in this context, that a new census was held in October 2001, the first population census since the country's independence. According to the estimates provided by various sources, hundreds of thousands of people have left Armenia since the previous census, held in 1989, among them Armenians but also a high number of Azeri, Russians, as well as persons belonging to other national minorities.

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

### **In respect of Article 4**

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

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

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

## **3. AUSTRIA**

The Advisory Committee notes that the principles of equality and non-discrimination are guaranteed in particular by Article 7, paragraph 1 of the Federal Constitution and by Article 1, paragraph 1 of the Federal Constitutional Law implementing the International Convention on the Elimination of All Forms of Racial Discrimination. Furthermore, the Austrian criminal Code punishes insult, denigration and incitement to public agitation or acts of hostility against a church or a group distinguished by the fact that it belongs to a church, a religious community, a race, a nation, an ethnic group or a State. There are also specific provisions on racial discrimination in civil law and labour law. In its second report on Austria ECRI however noted that civil and administrative law provisions in Austria did not suffice to effectively combat discrimination in a number of important areas, such as employment and housing. In this context, the Advisory Committee welcomes the fact that in their reply to its questionnaire the Austrian authorities report that transposing Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin is currently one of their concerns, and notes that the introduction of anti-discrimination legislation is being examined. The Advisory Committee expresses the hope that the work under way will give rise to a major public debate on the elimination of all forms of discrimination – both by public authorities and private entities – will be successfully completed in the near future and that it will lead to the adoption of further measures to combat discrimination.

The Advisory Committee notes that the State Report reveals discrepancies – sometimes large ones – between the official (1991 census) statistics on the number of persons belonging to national minorities in Austria and the estimations of the national minorities themselves. The Advisory Committee is concerned that such large discrepancies can seriously hamper the ability of the state to target, implement and monitor measures to ensure the full and effective equality of persons belonging to national minorities. At the time of the adoption of the current opinion, the results of the 2001 national census had not been published. The Advisory Committee shares the view expressed by the Austrian authorities in the State Report that the answers to the census question on the language spoken in everyday life are only one of several indicators of the number of persons

belonging to a national minority. It would therefore not be appropriate to rely exclusively on the results of the 2001 census, particularly concerning the threshold required for topographical indications in minority languages (see related comments under Article 11). The Advisory Committee is therefore of the opinion that, on condition that the principles identified in Committee of Ministers Recommendation (97) 18 concerning the protection of personal data collected and processed for statistical purposes are respected, the Government should try to identify further ways and means of obtaining reliable statistical data on national minorities broken down by age, gender, or geographical differentials. Without such data it is very difficult for the Austrian authorities to operate effectively and for the international monitoring bodies to ascertain whether Austria meets its obligations under the Framework Convention.

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

#### **In respect of Article 4**

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

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

## **4. AZERBAIJAN**

The Advisory Committee notes that there are general provisions reflecting the principle of anti-discrimination in the Constitution, the Criminal Code as well as in various acts in the field of civil and administrative law. While welcoming these norms, the Advisory Committee notes that there are no detailed and comprehensive civil and/or administrative law provisions pertaining to ethnic discrimination in certain key fields as was pointed out by the European Commission against Racism and Intolerance (ECRI) in its second report on Azerbaijan. The Advisory Committee is of the opinion that it would be desirable to develop such legislation in order to protect, in a comprehensive manner, individuals from discrimination by both public authorities and private entities.



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

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

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

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

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

As regards other national minorities, the Advisory Committee has been informed, for example, about housing and other problems faced by persons belonging to the Budukha national minority. However, in the absence of clear data, it is difficult to estimate whether persons belonging to national minorities are in general disproportionately affected by socio-economic difficulties in Azerbaijan. The Advisory Committee therefore encourages the authorities to collect additional data in this sphere, while paying particular attention to the situation of women belonging to national minorities.

The Advisory Committee welcomes the research that is being conducted by the UNHCR regarding allegations that individuals in mixed Armenian-Azerbaijani families face particular registration and other difficulties in their contacts with the authorities. The Advisory Committee considers that such difficulties are likely to have a negative impact on the effective equality of the persons concerned and that any shortcomings in this sphere should therefore be addressed.

#### **In respect of Article 4**

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

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

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

## **5. BOSNIA AND HERZEGOVINA**

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

A Commission on Human Rights was established in accordance with Annex 6 of the GFAP and consisted of two parts, namely the Office of the Ombudsman and the Human Rights Chamber. These institutions were tasked to examine alleged or apparent violations of human rights, as well as alleged or apparent discrimination by public authorities. The Human Rights Chamber could be seized either by the Ombudsman on behalf of an applicant, or by an authority, or from a person, a group of persons or by an NGO claiming to be a victim of a human rights violation. Three

Ombudsman institutions now exist in Bosnia and Herzegovina, one at the State level and one in each Entity. Each of these institutions is composed of 3 Ombudspersons (one Bosniac, one Croat and one Serb). The oldest Ombudsman institution (in the Federation), which has been in existence for more than 10 years, has in particular proved instrumental in the fight against discrimination, including for persons belonging to national minorities as well as those belonging to constituent peoples in a minority situation.

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

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

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

In addition to obstacles faced by persons belonging to national minorities in the access to certain posts, the Advisory Committee notes that a number of persons belonging to each of the constituent peoples are also legally barred from accessing such posts. It is for instance impossible for a Serb residing on the territory of the Federation or for a Croat or a Bosniac residing on the territory of the Republika Srpska to be elected in the tripartite Presidency of Bosnia and Herzegovina given the wording of Article V of the Constitution. Similarly, a Serb from the Federation or a Croat or a

Bosniac from the Republika Srpska will not be eligible to the House of Peoples of Bosnia and Herzegovina given the wording of Article IV of the Constitution.

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

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

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

While stressing the importance of having adequate legislation in place to protect persons belonging to national minorities from discrimination, the Advisory Committee is particularly concerned about problems related to the implementation of such legislation in practice. In this context, a range of information from both non-governmental and international sources, as well as from the Ombudsman institutions, mention the persistence of deeply-rooted discrimination in a number of areas. Discrimination is essentially targeted at persons who do not belong to the constituent group which is in a numerical majority at the Entity level or, for the Federation, at Cantonal level. The Roma are particularly more vulnerable in this respect.

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

As a particularly vulnerable group, the Roma are in the most difficult situation and exposed to widespread discrimination. This includes Roma who have been displaced, who have been repatriated from abroad or who came as refugees from Kosovo. According to the authorities, the Roma are the largest national minority and at least 20,000 of them live in the country. Other estimates suggest that Roma might be more numerous, ranging from 30,000 to 50,000 or even more.

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

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

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

impossible to obtain a birth certificate. The Advisory Committee considers that the lack of personal documents creates a range of undue obstacles in the realisation of their basic human rights by many Roma and therefore urges the local authorities to step up their efforts to systematically register all their residents, irrespective of the legal status of the Roma settlements.

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

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

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

The Advisory Committee considers that the alarming situation of the Roma in Bosnia and Herzegovina necessitates, in consultation with Roma associations and other NGOs already active in this field, the development of a range of measures aimed at improving their overall socio-economic situation, notably in the field of employment, housing and health care. In this context, the Advisory Committee wishes to refer to the recently adopted Action Plan on the educational needs of Roma as a possible source of inspiration for the development of such measures, which have to be taken in close coordination with all the ministries involved (see related comments under Article 12 below). The Advisory Committee however takes the view that as long as the competent authorities do not accept the need to take special measures for disadvantaged groups such as the Roma, no real progress can be achieved, especially as concerns health care and social welfare.

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

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

#### **In respect of Article 4**

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

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

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

The Advisory Committee *finds* that access to employment gives rise to discrimination in the Entities and especially in the Republika Srpska. It *finds* that discrimination also occurs in the return process of refugees and displaced persons particularly at the local level, both in the Federation and in the Republika Srpska. The Advisory Committee *considers* that the authorities, especially at the Entity level, should tackle the widespread discrimination faced by those not belonging to the dominant constituent people more vigorously and to strengthen their action aimed at encouraging reconciliation.

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

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

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

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

## **6. BULGARIA**

The Advisory Committee notes that the principles of equality and non-discrimination are guaranteed in Bulgaria by provisions in the Constitution (Article 6.2) and in the legislation. Provisions against discrimination also appear in the Penal Code and the Code of Criminal Procedure. Conversely, Bulgarian criminal law does not contemplate aggravating circumstances for crimes committed with a racial or ethnic motive. The Advisory Committee further notes that despite the existence of judicial remedies open to victims of discrimination, the anti-discrimination provisions are seldom applied in practice, and the cases referred to the courts do not reflect the real number of discriminatory acts (see also the observations on the subject in ECRI's 3<sup>rd</sup> Report on Bulgaria, CRI(2004)2).

The Advisory Committee is pleased to note that after a lengthy legislative process not lacking in difficulties, Bulgaria adopted a law on protection against discrimination in September 2003 as part of the measures for transposing European Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin. The Advisory Committee notes that this law, which took effect on 1 January 2004, institutes a Commission for Protection against Discrimination as an independent body responsible for receiving and examining complaints, formulating rules and imposing penalties in cases of discrimination. The Advisory Committee encourages the authorities to take all the requisite measures to enforce the law effectively, including the setting up of the aforesaid commission, as soon as possible, and the allocation of the technical, financial and human resources needed for it to function properly. In this context, it is essential to provide for specific informational and awareness-raising measures concerning the commission's role and functions, aimed at the population and all interested sectors (notably the judiciary, the police and the media).



The Advisory Committee likewise welcomes the enactment of the law instituting the Office of the Ombudsman in May 2003, and expresses the hope that the office will make it possible to provide additional guarantees of enjoyment of human rights by all persons, including those belonging to minorities.

The Advisory Committee notes the persistence in Bulgarian society of discriminatory attitudes and behaviour towards persons belonging to more vulnerable groups, particularly Roma. The Advisory Committee is deeply concerned over the high degree of discrimination against Roma in many areas ranging from employment to admission to welfare provision and public services, education and housing, restoration of property, etc. It is even more disturbing that attitudes of this kind, which also affect persons belonging to other groups (ethnic Turks and Pomaks among them) are reported to be taken both by private entities and by certain public authorities (see also the observations relating to Article 6 below).

In this context, the Advisory Committee wishes to express its concern at the information, received from various sources, of discrimination in the administration of justice against Muslims and Roma. The information provided by these sources indicates a disproportionate presence of persons belonging to these groups in prisons. Furthermore, there are complaints that persons belonging to these groups have undergone physical abuse during pre-trial detention and have not benefited from adequate legal assistance. The Advisory Committee urges the authorities to examine these allegations and to take, where appropriate, the necessary measures to address any shortcomings found.

While noting that the fight against discrimination has made some progress at the local level, for instance through the co-operation of the municipalities with non-governmental organisations, the Advisory Committee strongly encourages the authorities to establish all the necessary conditions for effective application of the new anti-discrimination legislation and for enabling victims of discrimination to avail themselves of the existing remedies.

As regards the practical application of the principle of full and effective equality, the State Report draws attention to the fact that persons belonging to certain groups, Roma in particular but also Turks and other groups in the regions worst affected by the current economic difficulties, are more vulnerable and more prone to inequality, for reasons, *inter alia*, linked with their more insecure social and economic status and with their low standard of education and training. Materially, this state of affairs is illustrated by the considerable gap in most respects between these people, Roma especially, and the population at large.

The Advisory Committee is concerned to note that unemployment affects a large number of Roma, with reported percentages which according to various sources range from 70% to 90%. It notes in addition that most Roma live in precarious accommodation - in many cases illegally occupied - located in ghettos on the outskirts of localities, often without suitable access to basic amenities (water and electricity supply and transport). According to different sources, approximately 40,000 people are living in the Roma ghetto of Stopilino, lying in the suburban area of Plovdiv. Cases of forced eviction followed by rehousing under sub-standard conditions are also widely reported. This situation goes far to account for the difficulties over access to social welfare (contingent on job-holding), an alarming health situation, and the multiple problems encountered as regards education.

In this respect, particular note is taken of the persisting phenomena of isolation affecting Roma pupils, and of the unwarranted streaming of a proportion of them into "special" schools. Also notable are the high rates of illiteracy, absenteeism and drop-out rates, as well as school achievement well below that of the majority (see also the observations relating to Article 12 below). Such disparities are also recorded in other important sectors such as access to the media and participation in public affairs (see also the observations relating to Articles 9, 12, 14 and 15 below).

However, the Advisory Committee singles out some positive trends in the last few years, particularly following the Government's adoption in April 1999 of the "Framework Programme for equitable integration of Roma in Bulgarian society" (hereinafter referred to as the Outline Programme), aiming to improve the situation of Roma and align their standard of living to that of the population at large. In this context, the Government has endeavoured to attract international resources for upgrading infrastructures so as to improve the living conditions of disadvantaged groups, while at the local level efforts are noted as regards legalisation of illegally built houses, and the construction of flats intended to house Roma.

In the field of health, developments to be welcomed are the introduction of free social insurance cover for young people up to 18 years of age, the opening of new medical care facilities with suitable medical equipment in the Roma-populated areas, the free vaccination and immunisation programmes, action to raise public awareness, training of medical staff and "Roma assistants", etc.

While welcoming these measures, the Advisory Committee notes that for a variety of reasons (poor co-ordination between institutions, lack of adequate resources, insufficient consultation and involvement of those concerned, etc.), the "Framework Programme" launched in 1999 did not meet expectations. In October 2003, the Government adopted a short-term Plan of Action (2003-2004) designed to speed up the actual implementation of the Outline Programme's main strategies by means of sector-specific measures. Moreover, in February 2004 a new Roma integration programme was launched (with international financial support). The Advisory Committee urges the authorities to provide the necessary institutional and financial support and to ensure the participation of the interested parties in order to give these plans and programmes every chance of succeeding. The Advisory Committee considers it essential that adequate monitoring of the relevant programmes and projects is carried out and that appropriate use, in the best interest of the Roma, is made of the funds available. On this point, the Advisory Committee wishes to draw the attention of the authorities to the guidelines laid down by Committee of Ministers' Recommendation No. (2001) 17 on improving the economic and employment situation of Roma/Gypsies and Travellers in Europe.

The Advisory Committee recalls another issue which could have implications for Bulgaria's efforts to apply the principle of full and effective equality, and this concerns the importance of having reliable demographic and socio-economic indicators. In the absence of such data, it is also extremely difficult for supporting policies and programmes to be implemented, and for monitoring bodies to ascertain whether Bulgaria meets its obligations under the Framework Convention (see also the observations relating to Article 3 above). The Advisory Committee considers that the Government should accordingly endeavour to determine the most suitable methods for enlarging on the census results to obtain reliable demographic data classified by age, gender and geographical distribution, while abiding by the principles set out in Committee of Ministers' Recommendation No. (97) 18 concerning the protection of personal data collected and processed for statistical purposes.

### **In respect of Article 4**

The Advisory Committee *finds* that the anti-discrimination provisions contained in Bulgarian legislation are but seldom applied in practice, and that the relevant case-law of the courts does not reflect the true number of acts involving discrimination and racism. The Advisory Committee *considers* that the authorities should endeavour to ensure the effective application of the existing legislation, particularly the recent law against discrimination, and take additional measures to supply information and raise awareness in this field.

The Advisory Committee *finds* that outward signs of discrimination against Roma, but also Turks and Pomaks are recorded in various areas, and *considers* that more resolute measures are needed to counter this phenomenon.

The Advisory Committee *finds* the persistence of considerable socio-economic gaps between the Roma and the population at large. It *finds* in addition that the measures taken under the Framework Programme launched by the Government in 1999 to narrow the gaps have proved unsuccessful in the main. The Advisory Committee *considers* that more determined efforts should be made by the Government to improve these persons' living conditions and promote their integration.

## **7. CROATIA**

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

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

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

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

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

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

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

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

The Advisory Committee notes that, largely as a result of massive population movements, there are wide discrepancies between the official statistics of the Government and the actual number of persons belonging to national minorities in Croatia. The Advisory Committee is concerned that such wide discrepancies in figures can seriously hamper the ability of the state to target, implement and

monitor measures to ensure the full and effective equality of persons belonging to national minorities. Croatia should seek to identify ways and means of obtaining reliable data. While the results of the census of April 2001 may be of assistance in this respect, they do not necessarily satisfy the continuous need for up-to-date data, especially since the demographic picture of Croatia may be subject to considerable changes in the coming years in particular as a result of return of forced migrants and permanent settlement of refugees from other parts of ex-Yugoslavia.

#### **In respect of Article 4**

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

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

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

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

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

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

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

## **8. CYPRUS**

The Advisory Committee notes that in Cyprus there is legislation in force prohibiting discrimination by public authorities, as well as providing for remedies in cases where individuals are discriminated against. However, the Advisory Committee notes that a comprehensive set of legal provisions outlawing such acts by private entities in societal settings, such as education and housing, still needs

to be developed along with effective remedies, particularly those allowing the individual to obtain compensation for damages. It is further noted that no body exists which has the authority to address the full range of individual complaints which may arise concerning discrimination. Consideration could therefore be given to the extension of the powers of the Ombudsman, whose duties include investigating complaints lodged by individuals claiming that the authorities have violated their individual rights. A similar extension could be envisaged as concerns the National Institution for the Protection of Human Rights, whose general mandate is to keep under surveillance the respect of human rights in Cyprus.

The Advisory Committee is not persuaded by the governmental submission made during its visit that, as there appear to be no such cases of discrimination, a comprehensive set of legal provisions in this field would be superfluous. Although the Advisory Committee certainly shares the hope that there are no such cases, it considers that this can only be really ascertained once such legislation has been enacted and considers therefore that the Cyprus Government should review its anti-discrimination legislation in order to ensure that all acts of discrimination are outlawed and that effective remedies are available to all persons who suffer from discrimination, both by public authorities and private entities. The Advisory Committee further considers that, as legal provisions on non-discrimination may not themselves constitute a source of unjustified distinctions, such legislation and enforcement structures and procedures should protect all persons from discrimination on such grounds as language, culture, ethnicity or religion.

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

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

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

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

### **In respect of Article 4**

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

The Committee of Ministers *concludes* that the impossibility for a Greek Cypriot and a Turkish Cypriot to conclude a civil marriage together in Cyprus, and for Turkish Cypriots resident in Government controlled areas to cast a vote in parliamentary and presidential elections, is not compatible with Article 4 paragraph 1 of the Framework Convention. The Committee of Ministers *recommends* that the Government remedy these two problems, at least in part and in a provisional or transitional way.

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

## **9. CZECH REPUBLIC**

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

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

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

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

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

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

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

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

#### **In respect of Article 4**

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



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

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

## 10. DENMARK

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

### In respect of Article 4

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

## 11. ESTONIA

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

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

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

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

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

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

#### **In respect of Article 4**

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

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

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

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

## 12. FINLAND

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

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

## 13. GEORGIA

### Non-discrimination legislation

The Advisory Committee notes that a number of legislative safeguards exist against discrimination, particularly any discrimination based on ethnic or religious affiliation. Article 14 of the Georgian Constitution guarantees the equality of all citizens before the law, while the Criminal Code prohibits discrimination (Article 142), and particularly racial discrimination (Article 142-1). Anti-discrimination provisions also exist in the legislation on civil and administrative matters, particularly in the Labour Code and the Law on general education (2005). The Advisory Committee nevertheless takes the view that the Georgian authorities should incorporate in existing legislation a prohibition of discrimination - particularly that based on ethnic origin - in other fields, including access to housing, social protection and public goods and services. The authorities should also review the existing laws and consider elaborating comprehensive anti-discrimination legislation.

The Advisory Committee notes that case-law relating to the anti-discrimination legislation is very limited and includes no cases connected with individuals' ethnic or national affiliation. During their discussions with the Advisory Committee, the authorities emphasised that the absence of complaints about cases of discrimination based on ethnic affiliation is linked to the fact that this problem is virtually non-existent in Georgia. Other sources emphasised the fact that persons belonging to national minorities are very often unaware of their rights, because of a general lack of information as well as a lack of knowledge of the Georgian language, in which legislation is written. Furthermore, the sources of information available to the Advisory Committee refer to a widespread lack of confidence in the judicial system, particularly among persons belonging to

national minorities, who are not inclined to go to the courts if their rights are violated. The anti-discrimination provisions of the Criminal Code also seem to be rarely used by the prosecution or the courts.

The Advisory Committee urges the authorities to ensure that persons belonging to national minorities have access to full information about their rights, where possible in their own language, as well as access to courts and other institutions if they consider that their rights have been violated. The Advisory Committee takes the view that action to raise awareness of discrimination and the relevant legislation among the judiciary, public officials and the police should also be enhanced.

The Advisory Committee is pleased to note that the Office of the Public Defender (Mediator) is much used when human rights violations occur and has, over the past few years, developed a range of human rights protection activities. The Advisory Committee particularly welcomes this institution's special focus on the situation of persons belonging to national minorities. A specific department of the Office deals with issues relating to national minorities, and the Office has established several consultative councils, including one which deals with national minorities and one with religions (see comments on Articles 6 and 15 below).

The Advisory Committee also welcomes the opening, in December 2008, of a regional Office of the Public Defender in Kvemo-Kartli, and hopes that the planned office in Samtskhe-Javakheti will be established shortly. These local representations in regions where substantial numbers of persons belonging to national minorities live should make these persons' access to the Office of the Public Defender easier, and raise their awareness of their rights. It does appear that, hitherto, few cases of human rights violations and discrimination on grounds of ethnic affiliation have been brought to the Public Defender's attention, although the Committee was informed by several of the parties to whom it spoke of the existence of such cases. In practice, during its visit, the Advisory Committee was told by persons belonging to national minorities of the existence of direct or indirect discrimination, particularly in respect of access to education (see the comments under Articles 12 and 14, particularly those on access to higher education), socio-economic life and public affairs (see the comments in paragraphs 47 and 48 below and in respect of Article 15).

The Advisory Committee therefore calls on the Georgian authorities to step up their efforts to combat discrimination. It expects sufficient human and financial resources to be given to the Public Defender's regional offices to enable them to do their work efficiently. The Advisory Committee also calls on the Georgian authorities to continue to support the Office of the Public Defender, so that it can continue to work efficiently and completely independently.

The Georgian authorities have informed the Advisory Committee that they have no plan to introduce positive measures to promote the equality of persons belonging to national minorities. The Advisory Committee points out in this context that the introduction of specific compensatory, temporary measures frequently proves essential to the remedying of inequalities and to ensuring that persons belonging to national minorities can fully enjoy their fundamental rights. Such measures shall, as indicated in article 4.3 of the Framework Convention, not be considered discriminatory.

The Advisory Committee therefore calls on the authorities to consider, in the light of Article 4 of the Framework Convention, the possibility of devising positive measures to promote full and effective equality for persons belonging to national minorities. It would also be important to inform the majority population of these positive measures, explaining their essential role in combating discrimination.

Furthermore, the Advisory Committee emphasises that, in order to prepare effective anti-discrimination measures, it is vital to have available reliable and up-to-date data about the socio-economic situation and education of persons belonging to national minorities. The Advisory Committee notes that the Georgian authorities have a certain amount of data available, mostly from the 2002 population census (also see comments under Article 3). It nevertheless notes the existence of significant gaps in this sphere, and regrets the absence of any collection of data broken down according to ethnic origin, for instance through labour force or household surveys, or through sociological surveys and studies. Consequently, the Advisory Committee calls on the authorities to collect more information about the situation of these persons, while ensuring that the international safeguards relating to the protection of personal data are complied with.

### **Discriminatory effects of the application of legislation on the official language**

A number of legislative provisions in various fields relate to the use of the official language, which, in pursuance of Article 8 of the Constitution, is Georgian. Thus Georgian is the language used in public services (together with Abkhaz in Abkhazia), and, in pursuance of the Law on the public service, inadequate knowledge of this language may be a ground for dismissal. The 1999 Code of Administrative Procedure also confers on Georgian the status of the language of administrative procedures, to the exclusion of any other language (except Abkhaz in Abkhazia). The 2005 Organic Law on local authorities establishes Georgian as the working language of local authorities. The 1997 Law on the courts makes the same provision for the judicial sphere as a whole, while persons with no knowledge of Georgian may benefit from the assistance of an interpreter. Other provisions cover the field of education (see comments in respect of Articles 12 to 14 below).

The Advisory Committee has been informed about a trend towards stricter implementation of the legislation on the official language in recent years, including in those regions where substantial numbers of persons live who belong to national minorities and speak little or no Georgian. It ensues from this shift to the exclusive use of the Georgian language that a good number of such persons may be disadvantaged in terms of access to public employment, of political representation (see comments under Article 15 below) and in the judicial sphere. Information has reached the Advisory Committee to the effect that persons belonging to national minorities can be at a disadvantage in the judicial field as the interpretation supplied is in many cases of poor quality (see also remarks in respect of Article 11 hereafter).

Similarly, the Advisory Committee has received reports that linguistic requirements applied to various occupations (mainly through language tests) seem to have resulted in employees from national minorities being replaced by persons belonging to the majority who, in some cases, do not have sufficient command of minority languages. These linguistic requirements constitute an additional obstacle to access to certain occupations for persons belonging to minorities. Frequently, they also give rise to uncertainty as to the retention of these persons in their employment. Furthermore, the replacement in employment of persons belonging to minorities by those belonging to the majority can result in misunderstandings and problems of communication between persons belonging to national minorities and new employees, thus creating problems of access to certain public goods and services for persons belonging to these minorities. In this respect, the Advisory Committee refers to its Thematic Commentary on the effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs, pointing out, *inter alia*, that “access to basic social benefits and to certain public services should not be hampered by undue language or residency requirements”.

The Advisory Committee therefore urges the Georgian authorities to take all requisite steps to ensure that implementation of the existing legislative provisions on the use of the official language does not give rise to direct or indirect discrimination against persons belonging to national minorities who have insufficient command of this language, especially in regions where they live in substantial numbers. Furthermore, the Advisory Committee calls on the authorities to step up their efforts to assist the persons concerned in acquiring an adequate level of command of the Georgian language (also see comments under Article 14), and to take any other supporting measures enabling them to have access, on an equal footing with the majority, to employment, education and health care.

### **Absence of identity documents**

The Advisory Committee is concerned by the fact that some persons belonging to certain national minorities have no identity documents, not having been registered at birth and not appearing on civil status registers. It is reported that these persons' situation is not regularised, partly through lack of information about the administrative procedures in force, and partly because these persons are said to be sometimes obliged to pay for the services of intermediaries in order to pursue procedures which are now free of charge. This problem particularly affects persons belonging to the Azeri minority, but also affects the Avar and Roma communities. Consequently, the persons concerned have no access to certain basic social benefits, and many of them still have no Georgian passport.

In this context, the Advisory Committee welcomes the action plan being implemented by the authorities to resolve these difficulties, particularly through information campaigns in several languages. It calls on them to continue and step up these efforts and to take all necessary measures to assist the persons concerned to regularise their situation, especially those who live in isolated regions. Progress in implementing the action plan should be monitored and evaluated.

### **Protection by law-enforcement agencies**

The Advisory Committee takes note with concern of allegations of inadequate protection of persons belonging to the Azeri minority by law enforcement agencies in the areas bordering Armenia (in Kvemo-Kartli). Credible reports that these persons have been victims of acts of violence, land and other property seizures and thefts of cattle have been brought to the attention of the Advisory Committee. Cases of alleged disappearances have also been reported. Such acts were said to have been carried out by persons from the other side of the border, in a region where borders are not always precisely delimited. The parties to whom the Advisory Committee spoke emphasised the lack of reaction by Georgian law-enforcement agencies in such cases, placing the persons concerned in a situation of insecurity and vulnerability. The Advisory Committee expresses its concern about this situation and calls on the Georgian authorities to review these complaints with all due attention, so as to be able to take the necessary action including, if applicable in the international co-operation context (also see comments under Article 18).

### **Concerning Article 4**

The Advisory Committee *finds* that persons belonging to national minorities have a poor knowledge of their rights and avail themselves little of the courts when these are infringed. It therefore *considers* that the authorities should take steps in order that persons belonging to national minorities have access to full information on their rights and have access to courts and other institutions if they consider that their rights have been violated.

The Advisory Committee *finds* that the Office of the Public Defender performs a significant role in the protection of minorities, including at regional level, and affords a means of appeal in the event of discrimination with which persons belonging to national minorities may be confronted. It accordingly *considers* that the Georgian authorities should intensify their efforts in combating discrimination, *inter alia* through positive measures to promote the effective equality of persons belonging to national minorities, and should continue to support the Public Defender's work.

The Advisory Committee *finds* that the implementation of the various laws on the use of the Georgian language in the public sphere disadvantages persons belonging to national minorities who do not have a sufficient command of that language. It therefore *considers* that the authorities should ensure that the implementation of the relevant legislative provisions does not result in direct or indirect discrimination against persons belonging to national minorities.

The Advisory Committee *finds* that persons belonging to certain national minorities lack identity documents, and *considers* that the authorities should continue and step up their efforts to help these people regularise their situation without further delay.

## 14. GERMANY

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

The Advisory Committee notes that in Germany official statistical data on the ethnic and linguistic breakdown of the population have not been collected since the second world war. It notes that there is a broad consensus in the country against the keeping of ethnic data. This is the result of the misuse of ethnic data during the Nazi period that facilitated the Holocaust. When it comes to estimating the number of members of a national minority the German authorities can base their estimations on various factors, such as the number of persons who are members of organisations representing minorities, or the number of pupils attending schools for minorities. In the absence of reliable statistics on national minorities and in spite of the fact that the figures used by the Government are not particularly challenged by the national minorities themselves, it can sometimes

be difficult for the German authorities to monitor and take effective measures and for international monitoring bodies to ensure that Germany is honouring its commitments under the Framework Convention. The Advisory Committee therefore considers that the Government should seek means of obtaining more reliable statistics on national minorities. If, in view of the historical context and the particularly sensitive nature of this information for persons belonging to national minorities, exhaustive statistical data pertaining to national minorities cannot be collected, other methods should be used, with the co-operation of the national minorities, such as estimates based on *ad hoc* studies, special surveys, polls or any other scientifically sound method (see also comments under Article 15). This data should be broken down by age, gender and location.

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

#### **In respect of Article 4**

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

## **15. HUNGARY**

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



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

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

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

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

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

#### **In respect of Article 4**

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

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

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

## **16. IRELAND**

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

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

The Advisory Committee acknowledges the importance and impact of this legislation and these institutions. In the light of experience to-date in implementing this legislation, certain proposals could be made to enhance further the effectiveness of this legislation and these institutions. In this regard the Advisory Committee understands that there have been calls for the creation of a positive

duty on the public sector to promote equality and an extension on the prohibition on discrimination covering the functions of the public sector in the exercise of its powers and its duties.

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

In terms of the procedural requirements under the current equality legislation, the Advisory Committee is aware of certain criticisms relating to the levels of compensation that can be awarded by the Equality Tribunal, as well as certain criticisms concerning the time limits relating to presentation of complaints to the Equality Tribunal. The Advisory Committee is also aware that the Equality Authority has called for its role and powers to evolve to allow it to review the compatibility of legislation with equality legislation, to take class actions where appropriate and to intervene as a third party in proceedings relating to the promotion of equality or the elimination of discrimination. The Advisory Committee considers that these matters merit further consideration by the Government, but that care should be taken to avoid, where relevant, detrimental overlap of competencies with other structures.

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

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

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

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

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

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

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

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

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

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

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

The Advisory Committee welcomes that a Traveller Health National Strategy (2002-2005) has been adopted by the Department of Health and Children and that it has identified many of the key issues and problems that need to be addressed as well as the concrete steps to be carried out in order to begin tackling the problems. The Advisory Committee notes that in the implementation of this

strategy, particular attention should be given to ensuring the active participation of Travellers and Traveller organisations in the implementation structures set up. Furthermore adequate training should be given to health staff who come into contact with Travellers and that this training should include awareness raising about intercultural and anti-discrimination practices and Traveller perspectives on health and illness.

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

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

#### **In respect of Article 4**

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

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

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

The Advisory Committee *considers* that in the field of economic livelihood the Government should examine how to promote further both traditional and new economic activities of Travellers. The Advisory Committee also *considers* that the Government should examine taking a range of measures to promote Traveller employment, such as setting of targets to include Travellers in

recruitment strategies, facilitating access of Travellers to mainstream training provisions, changing the medical card criteria for Travellers in long-term employment, improving access to childcare facilities, etc.

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

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

## **17. ITALY**

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

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

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

For years the Roma have been isolated from the rest of the population by being assembled in camps where living conditions and standards of hygiene are very harsh. Numerous concurring reports suggest that problems of overcrowding persist: in several camps some huts have neither running water nor electricity and proper drainage is often lacking. While some Italian Roma do undeniably continue to lead an itinerant or semi-itinerant life, the fact remains that many of them aspire to live under housing conditions fully comparable to those enjoyed by the rest of the population. Far from effectively aiding integration of the Roma, the practice of placing them in camps is liable to aggravate the socio-economic inequalities affecting them, to heighten the risk of discriminatory acts, and to strengthen negative stereotypes concerning them (see comments relating to Article 6). Considering the seriousness of the situation, the Advisory Committee feels that the government should envisage a comprehensive and coherent strategy at national level, no longer to be centred on the model of separation in camps.

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

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

#### **In respect of Article 4**

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

## 18. KOSOVO<sup>1</sup>

### Article 4

#### Anti-discrimination legislation and remedies

The Advisory Committee notes with satisfaction that the authorities in Kosovo have introduced progressive anti-discrimination legislation, in particular through the Anti-Discrimination Law adopted by the Assembly of Kosovo and promulgated by the SRSG on 20 August 2004 (UNMIK Regulation No. 2004/32). The said law provides far-reaching guarantees against both direct and indirect discrimination in both public and private spheres. The law does not introduce any new specific structures to combat ethnic discrimination, but entrusts the Ombudsperson and courts with the task of receiving, respectively, discrimination complaints and claims in accordance with the existing legislation.

The Advisory Committee, while stressing the importance of having such legislation in place to protect persons belonging to national minorities from discrimination, is particularly concerned about problems related to the implementation of such legislation in practice and about the persistence of *de facto* discrimination of persons belonging to minority communities in Kosovo. Such problems appear particularly prevalent in relation to Serbs and Roma, but persons belonging to other minority communities also report certain problems in this regard.

Despite the above-mentioned problems, the Anti-Discrimination Law has rarely been invoked by persons belonging to minorities before the judiciary. This state of affairs may partly be due to a lack of awareness, but it also seems to be linked to the significant problems that negatively affect access to justice in Kosovo, including, *inter alia*, shortcomings in the availability of legal aid and heavy backlogs. While many of the problems have implications also for persons belonging to the majority community, their effects are often particularly serious for IDPs and others persons belonging to minority communities. Furthermore, the number of persons belonging to minority communities who work in judicial structures, including as judges and as staff, is disproportionately low. This makes it difficult to build confidence in the judicial system among minority communities. The Advisory Committee welcomes the fact that such problems affecting the judiciary are openly recognised by the authorities, including in the UNMIK Report, and a number of important initiatives have been launched to address them, although it appears that their implementation has faced various obstacles and has produced only limited tangible results.

In such circumstances, the Ombudsperson's Office is often the most accessible option for alleged victims of discrimination, and this Office has indeed become an essential and trusted institution for persons belonging to minority communities, not only in respect of discrimination cases, but also as regards the implementation of their rights more generally. One important element of the work of the Ombudsperson has been his capacity to raise issues also with international authorities who are often in a position to take measures to address the identified shortcomings.

Against this background, the Advisory Committee considers that it is premature, at this stage, to implement the planned transfer of the Ombudsperson institution, currently under international leadership, into an entirely local institution. The Advisory Committee is of the opinion that such a

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<sup>1</sup> All reference to Kosovo, whether to the territory, institutions or population, in this text shall be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo.



transfer should not take place before it can be assessed with confidence that the Ombudsperson can function effectively as a fully local institution, without eroding the trust it has built to date amongst minority communities.

### **Freedom of movement**

Freedom of movement is not explicitly guaranteed in the Framework Convention, but this principle is implied in the guarantees contained in Article 4 of the Framework Convention, as indicated in the Explanatory Report of the Framework Convention. The importance of freedom of movement is rightly highlighted in the Kosovo Standards Implementation Plan of 6 July 2004, which contains several important undertakings in this regard. This is an area where persons belonging to minority communities continue to face particularly serious problems, stemming from experiences of discrimination, inter-ethnic hostility and other factors. There have been some local improvements in this respect in certain areas, but the overall situation remains disconcerting, involving a large number of persons unable to return to their homes as well as serious obstacles in terms of access to various services, ranging from health services to courts and public transportation.

While some commentators have argued that the problems related to freedom of movement are mainly self-imposed and fuelled by misinformation exaggerating the gravity of the problems, the Advisory Committee does not share this view. The recent experiences of the individuals concerned, including the violent events of March 2004, have understandably made it difficult, if not impossible, for many to trust that the progress achieved in terms of improving inter-ethnic relations reflects a lasting trend. Confidence in the sustainability of progress is also harmed by the regular cases of harassment and other incidents directed against certain minority communities as well as by the perception that there is a high degree of impunity surrounding ethnically motivated crime (see also comments under Article 6). Authorities should recognize their responsibility to take more proactive measures. At the same time, the Advisory Committee agrees that the media both in Kosovo and elsewhere in the region have a particularly sensitive role to play in reporting in this sphere.

### **The return process and full and effective equality**

The Advisory Committee finds that full and effective equality for persons belonging to minority communities is still far from being achieved in Kosovo in many fields. There is a need to pursue further positive measures for example in the field of employment, drawing, *inter alia*, on the experiences that have been gained in the implementation of the campaign to employ persons belonging to minority communities, initiated by the Kosovo Government in January 2005. Even though the Advisory Committee is aware that the overall economic situation in Kosovo is very difficult and the unemployment rate is disconcertingly high also amongst Albanians, persons belonging to minority communities, including Gorani, Roma, Ashkali, Egyptians and Serb IDPs are often in a particularly difficult situation in this regard (see also related comments under Article 15).

The Advisory Committee recalls that this issue is also linked to the return process, as return requires not only security but employment opportunities as well. Bearing in mind that it has been largely the rural population that has considered returning, it is important that effective repossession of and access to their agricultural land is secured. As regards the return process more generally, the Advisory Committee appreciates the fact that it is considered a priority issue by the authorities and that it is a key element of the standard implementation plan. At the same time, the Advisory Committee finds it important that the freedom of choice of residence of the persons concerned is also taken into account in this process, and that the design and implementation of the assistance measures are flexible enough to accommodate the fact that not all persons concerned find it

advisable to return to their exact place of original residence, for both objective and subjective reasons, ranging from security concerns to limited employment prospects.

Despite various efforts to facilitate the return process, the Advisory Committee is concerned that one issue that has not received adequate attention in this context is the situation of the Ashkali and persons belonging to other minority communities who have been forcibly returned to Kosovo from Western Europe and who have no access to the assistance schemes made available to persons who have returned voluntarily. While it is beyond the scope of the present Opinion to comment on the advisability of implementing such forced returns to Kosovo in the current circumstances, the Advisory Committee regrets that neither UNMIK nor the PISG have introduced systematic assistance or other measures to facilitate the integration of individuals that have been forcibly returned (see also comments under paragraph 17 above on the problems caused by the lack of clarity as regards the allocation of responsibilities). Yet, these persons are often in a dire need of such support, assistance and guidance, bearing in mind that a number of them have resided abroad for years and have no strong links to the municipalities to which they have been returned. Certain initiatives to improve the situation have been proposed, including by the International Organisation for Migration (IOM), but there appears to be no adequate financial support to address this important issue that is directly linked to the full and effective equality of the persons concerned.

### **Roma**

The Advisory Committee finds that Roma are in a particularly difficult situation in Kosovo, to the extent that a more strategic approach to deal with their problems would be warranted. Their serious economic and social problems in such fields as housing, education and employment are aggravated by the discrimination they encounter as well as by the anti-Roma sentiment that is often detected in the majority community, limiting freedom of movement and affecting also their exercise of other rights. Roma and their property have also been targeted in the inter-ethnic violence before and during the events of March 2004, and currently their access to property is in many cases seriously hampered by the lack of adequate documentation.

The Advisory Committee welcomes the fact that, after years of inaction, the problems of Roma have recently received increased attention from international circles and local authorities. This is the case in particular as regards the alarming situation in Roma camps in the Serb-controlled northern Mitrovicë/Mitrovica and Zvečan/Zvečan. Many of the Roma have lived in these camps for years following the destruction of the Mahalla (*i.e.* a traditional settlement) of some 8,000 Roma, Ashkali and Egyptians in 1999 on the south bank of the Ibar river in Mitrovicë/Mitrovica. In addition to living in generally sub-standard housing conditions, the residents of these camps, located near the Trepça lead mines and their waste dumps, are exposed, according to the World Health Organisation (WHO), to extraordinary high lead levels. The situation, which constitutes a serious health risk in particular for children and pregnant women, is not compatible with the principles contained in Article 4 of the Framework Convention and merits urgent attention and targeted measures.

The serious delays in handling the issue - which is only now, following wide-spread international attention, considered a high priority by UNMIK and other authorities in Kosovo - have harmed the present efforts to take decisive action and made it difficult to gain the trust and support of the Roma concerned as regards the envisaged measures. The current plan of the Kosovo authorities is to relocate Roma to a temporary site up until new houses have been built in the original site of the Mahalla on the south bank of the Ibar river in Mitrovicë/Mitrovica. Roma leaders within the camps concerned have objected to the temporary relocation plans, expressing concern that this temporary site may become a permanent one. Such concerns are intensified by the limited financial support made available by donors and the lack of a realistic timetable for the building of the Mahalla.

The Advisory Committee finds it imperative that the undue politicisation of this essentially humanitarian and human rights problem is avoided and that the well-being and health of the Roma at issue is kept as the primary consideration by all concerned. Finally, the Advisory Committee stresses that the authorities must be vigilant in ensuring that the current process of reopening a number of mines in Kosovo is coupled with comprehensive environmental standards that are strictly enforced so as to ensure that minority communities and others are not exposed to similar problems in the future.

## 19. LATVIA

### Protection against discrimination

Article 91 of the Latvian Constitution guarantees the equality of all residents of Latvia before the law and the courts and the implementation of human rights without any kind of discrimination. In 2004 a clear ban on discrimination, notably on grounds of race, skin colour, religious beliefs or ethnic origin, was added to the Labour Code. The amendments made to the Law on Social Security in 2005 extend the prohibition of discrimination on grounds of race or ethnic origin to this field.

It can, however, be noted that Latvia does not have a general law on protection against discrimination, since the country's anti-discrimination legislation is fragmentary, consisting of provisions scattered among various legal instruments, and that in some areas, such as the provision of public goods and services, the guarantees against discrimination are incomplete. The Advisory Committee also notes that, by the end of 2007, Latvia had not yet completely transposed into national law Directive 2000/43/EC of 29 June 2000 on protection against discrimination, although, in recent years, a number of changes have been made to the law so as to reinforce such protection.

At the institutional level, the Advisory Committee notes the establishment of the Ombudsman with its Office, which since 2007 has replaced the former National Human Rights Office (NHRO). The Ombudsman is responsible, *inter alia*, for promoting protection of the rights and legitimate interests of individuals, the respect for the principles of equal treatment and the prevention and respect of all forms of discrimination and also has an advisory and awareness-raising role with regard to human rights. An anti-discrimination department has been set up within the Office. The Advisory Committee notes that, out of 345 written and oral complaints on alleged discrimination received in 2007 by the Office of the Ombudsman, 53 were on the grounds of race or ethnicity (13 written, 40 oral), 20 on the grounds of language (17 written, 3 oral) and 12 on the grounds of religion (11 written, 1 oral). The number of complaints of this kind registered in the first half of 2008 remained high.

The Advisory Committee welcomes the creation of this institution and trusts that it will play an active and effective role in protecting persons belonging to national minorities against ethnic discrimination. In particular, the Advisory Committee encourages the Ombudsman to pay due attention in his work to all issues of interest for persons belonging to national minorities or affiliating themselves with a national minority, including language and citizenship-related issues. It encourages the parliament to take the appropriate steps to provide the Office of the Ombudsman with all the financial and human resources necessary to the fulfilment of its tasks.

Discrimination on ethnic basis appears not to be a frequent occurrence in Latvia. As a rule, where discrimination is reported, it seems to be linked not to the victims' ethnic origin but to their Latvian language proficiency. However, some sources consider that acts of discrimination are fairly

widespread, more often than not in employment matters, but that the cases are little known and are not recognised as discrimination, particularly where they are linked to the victims' proficiency in Latvian. Opinions differ in Latvia as to whether a difference in treatment, due to failure to comply with the language requirements established on the basis of the State Language Law, constitutes discrimination. The Advisory Committee is of the view that this difference in treatment comprises elements of discrimination, though indirect, since it affects in particular persons belonging to one or more specific ethnic groups (see also paragraphs 163-166 below on this subject). Nonetheless, the commonly held view is that Roma are the group most exposed to discrimination, and cases concerning them continue to be reported in fields such as employment, education and access to services (see also observations under Article 15 below).

Although the authorities seem to assume that, in principle, belonging to a national minority has no impact on a person's economic, social or cultural situation, the information received by the Advisory Committee indicates that persons belonging to national minorities encounter greater difficulties than members of the majority in obtaining access to jobs and certain services. Surveys carried out at the instigation of the NHRO in 2006 show for example that within the non-Latvian population the percentage of respondents asserting that they have experienced discrimination is higher (13%) than among the majority (9%). Although these results represent a significant improvement compared with the outcome of similar surveys performed in the past (2000), the above figures reflect a different perception of discrimination among persons belonging to minorities. In addition, the available statistics on unemployment levels within the various communities show that, despite a gradual convergence of the indicators, the percentage of unemployed persons is higher among the national minorities. Regional disparities can also be noted, and unemployment is highest in the region of Latgale (9.5% in March 2008), which is inhabited by a substantial number of persons belonging to national minorities.

The Advisory Committee regards this situation as a matter of concern in the light of the principles of non-discrimination and equality. It wishes to remind the Latvian authorities that, as stipulated in the law on national minorities, Latvia guarantees all of its permanent residents, whatever their ethnic origin, the right to work and to be paid for working and prohibits any form of restriction of this right for reasons linked to an individual's ethnic origin.

The Advisory Committee is convinced that, in the specific context of Latvia, while the persons concerned must take active steps to meet the specific requirements of the jobs to which they aspire, these guarantees also entail an effort by the authorities to adopt a more balanced approach. In particular, the authorities should opt for a more flexible interpretation of the language requirements applicable to occupations, so as, firstly, to foster a gradual, albeit more effective, implementation of the linguistic legislation in force and, secondly, to facilitate access to employment for all members of the population (see for details observations under Article 15 below).

The Advisory Committee welcomes the measures taken by the Government in recent years to promote and support better social and economic integration of the Roma. It notes that the national programme "Roma in Latvia, 2007-2009", which was adopted in October 2006 and aims to improve the situation of the Roma in the fields of education and employment and to reduce prejudice within society in respect of this community, met with a positive response from the Roma and their organisations. Among the projects implemented in this context in 2007, mention can be made in particular of the activities in the field of education, which are mainly carried out by NGOs: training of teachers working with Roma pupils and training of Roma educational assistants, training seminars for Roma women and activities to heighten awareness of Roma identity and Roma issues within the general population and the central and local public administrations.

The Advisory Committee has nonetheless been informed that only a very small part of the funding foreseen for this programme has been allocated and the financial resources have been devoted almost entirely to projects run by NGOs, with, in the end, fairly limited participation by the authorities. In addition, although employment is one of the programme's priorities, it has received little attention from the authorities concerned, and no specific activity was undertaken in this field in 2007. The Committee notes that the Roma continue to be affected by negative stereotyping and discrimination, particularly in the field of employment, but also in access to services and in education.

More generally, the Advisory Committee considers that the Latvian authorities should attempt to arrive at a better assessment of the socio-economic situation of the national minorities by means of studies, enquiries and surveys or any other scientifically valid method and by disaggregating the resulting data by age, sex and geographical area. If necessary, they should take specific steps to ensure the full and effective equality of persons belonging to these minorities in the socio-economic field.

Furthermore, the legislation to combat discrimination should be supplemented, and more resolute steps should be taken to reinforce its implementation in practice. It is also important that trends in this area should be effectively monitored through the systematic collection of data on reported cases of discrimination, their handling by the relevant bodies and, where applicable, the measures and sanctions applied. There is also a need for more determined efforts to heighten public awareness of the principles of equality and non-discrimination and of the remedies available in these matters. Such measures should also be taken by the authorities, in addition to the efforts made by civil society actors in this field, with regard to employers, public services, the media and, in a targeted manner, the police and justice system personnel.

In this connection, the Advisory Committee notes that Latvia's case-law regarding discrimination is very limited. Although positive developments have been noted in this respect, the available remedies for securing observance of the principles of non-discrimination and equal treatment, whether the courts or the human rights protection body, are seldom used by victims of discrimination. The Advisory Committee is deeply concerned about the fact that, in September 2006, the former National Human Rights Office was fined by the State Language Centre's inspectors for having distributed public information brochures in Russian and English. It also notes that the information materials produced by such bodies can be supplied in a language other than Latvian only at the express request of the individual concerned. Such restrictive measures go against an effective fight against discrimination and must be re-examined.

In this context the Advisory Committee notes with interest that a Latvian court (the court of Jelgava in 2006) delivered a first judgment giving a finding of discrimination on ethnic grounds and awarded compensation to the victim, a Roma woman who had been refused employment. The Advisory Committee deems it particularly important that the Latvian courts pay all due attention to the ethnic or racist motives of offences brought before them, and that public awareness of such cases and the relevant judgements should be promoted.

#### **Application of the protection of the Framework Convention to “non-citizens” identifying themselves with a national minority**

While acknowledging that the number of cases of alleged discrimination is limited in Latvia, the Advisory Committee underlines that many of the concerns expressed in this Opinion with regard to other articles, particularly the use of minority languages under Articles 10 and 11 and participation

in public life under Article 15, are also linked to the application of Article 4 of the Framework Convention. It also notes the potentially discriminatory effect, against individuals affiliating themselves with national minorities, of the “non-citizenship” institution, as it results from in Latvia’s Declaration *vis-à-vis* the personal scope of application of the Framework Convention (see the comments under Article 3 above).

The Advisory Committee notes in this respect that over 370,000 persons identifying themselves with a national minority still do not hold Latvian citizenship – or any other citizenship either - even though they were born and have been living in Latvia for decades. By virtue of their legal status as “non-citizens”, such individuals are excluded from the application of certain key provisions of this Convention under exceptions relating to them in Latvian legislation. The Advisory Committee first of all notes their exclusion from the right to participate in public affairs by voting and/or standing in local, parliamentary and European elections, and also by occupying civil service posts, a right which the Advisory Committee deems essential for the protection of persons belonging to minorities, given that it is necessary for exercising many other rights included in the Framework Convention.

Given Latvia’s historical, and political background, the Advisory Committee is of the opinion that the citizenship criterion, which was introduced to define the scope of the rights granted to persons belonging to national minorities, raises more problems than in other national situations and could therefore be replaced by other criteria, such as permanent and legal residence in the country (see also the comments under Article 15 below).

The Advisory Committee is particularly concerned about the above situation, which it considers inconsistent with the principles set out in Article 4 of the Framework Convention. It notes that, while the Declaration by Latvia explicitly extends the protection of the Framework Convention to its “non-citizens” under domestic legislation, these “non-citizens” are excluded from some major rights granted under the Framework Convention to persons belonging to national minorities. The Advisory Committee must stress that, as evidenced by Article 1 of the Convention, the rights and freedoms which it protects are human rights and form an integral part of the international human rights protection system. It recalls in this connection that, as required under Article 2 of the Convention, Contracting States undertake to apply its provisions “in good faith, in a spirit of understanding and tolerance and in conformity with the principles of good neighbourliness, friendly relations and co-operation between States”.

In view of the particularly large number of “non-citizens” and their longstanding links with Latvia, the authorities are encouraged to opt for a more open attitude in interpreting and applying legislation on national minorities *vis-à-vis* “non-citizens”. The Advisory Committee considers it essential to ensure full compliance with the principles of non-discrimination and equality in this regard. In particular, they should not be excluded from rights which would enable them to participate effectively in the life of society. It might therefore be useful to revise the legislation, policies and practices pertaining to “non-citizens” electoral rights at the local level and to these persons’ access to civil service-related posts and occupations (see also comments under Article 15 below).

### **Language requirements for naturalisation**

According to most of the persons with whom the Advisory Committee had discussions, the retention of the test to assess the command of the Latvian language for access to citizenship and the language requirements imposed in this context still represent a major obstacle for very many non-Latvians. Official statistics show that the percentage of persons failing the above-mentioned test has increased significantly in recent years.

It is not for the Advisory Committee to pronounce on the level of language requirements imposed in this context. It does, however, note that opinions diverge on this subject and that the representatives of the national minorities in particular consider these requirements excessive. It has also been informed that more recent measures relating to the practical conditions under which the language tests are held alongside the unwelcoming attitude of some politicians have had the effect of intimidating test candidates and deterring persons who may benefit from naturalisation.

According to further information supplied by the Naturalisation Board, the tests in question have gradually improved since their introduction in 1995, the latest (third) model having been developed in co-operation with international experts on the basis of existing international standards in this field, including those of the Association of Language Testers in Europe (ALTE). The authorities' aim is to ensure that applicants for citizenship are able, as a precondition for their integration in Latvian society, to communicate satisfactorily in Latvian in common everyday situations. The Advisory Committee was also informed that the procedure for and the content of the Latvian language tests had recently been audited by an auditor appointed by the Association of Language Testers in Europe. It is hoped that the results of this audit, which should be communicated in the near future, will enable the competent authorities to optimise the Latvian system for verifying command of the state language.

The Advisory Committee welcomes this information. It considers it essential to ensure the conformity of the tests with existing international standards in this field, while taking into account the specific situation in Latvia (see above, paragraphs 20 and 50). Furthermore, it urges the authorities to ensure that all the conditions are fulfilled to give candidates for citizenship, during the actual testing, the requisite confidence to prove their knowledge of the language and their desire to integrate in Latvian society. In this connection, it is also essential that the Government continues to pay the attention due to the supply and accessibility of appropriate Latvian language courses and take active measures to create a climate of goodwill and strong encouragement for naturalisation (see also observations under Article 14 below).

#### **In respect of Article 4**

The Advisory Committee *finds* that the anti-discrimination legislation does not fully cover all relevant areas and *considers* that the authorities should take the necessary steps to complete it. The Advisory Committee *finds* it positive that the Office of the Ombudsman was established. It *considers* it essential that the authorities provide all the resources required for its effective operation and that the Ombudsman pays all due attention in its activities to minority-related issues. It also *considers* that the authorities should make increased efforts to monitor the implementation of the legislation in force, including through gathering data on reported cases of discrimination.

The Advisory Committee *finds* that the difficulties in obtaining access to employment faced by persons living on a permanent basis in Latvia and who do not have a sufficient command of Latvian are a matter of concern, in the light of the principles of non-discrimination and equality. This also appears to be a major obstacle to these persons' effective participation in social and economic life. The Advisory Committee *considers* it essential, in order to facilitate access to employment for all, to avoid any excessively broad interpretation of the State language Law provisions regarding the occupations concerned by the compulsory use of the Latvian language, and opt for a more flexible application of these requirements.

The Advisory Committee *finds* that there is a need for a better assessment of the economic and social situation of persons belonging to national minorities. In particular, it *considers* that the difficulties and manifestations of discrimination faced by the Roma in sectors such as employment, education and access to public services require resolute measures from the authorities.

The Advisory Committee *finds* that, from the point of view of the non-discrimination principle, the exclusion of Latvia's "non-citizens" from the application of certain key provisions of this Convention, by virtue of Latvia's Declaration upon ratification and as a result of exceptions relating to them in the Latvian legislation, is problematic. The Advisory Committee *considers* that, in view of the particularly large number of "non-citizens" and their long-standing links with Latvia, the citizenship criterion raises more problems than in other countries. The authorities should, therefore, consider other criteria, such as permanent and legal residence in the country, to define the scope of the rights provided to persons identifying themselves with a national minority. It *considers* that it would be useful to revise the relevant legislation, policies and practices in order to facilitate these persons' access to rights which would enable them to preserve and develop their identity and participate fully in public life, including with active and passive electoral rights at the local level.

The Advisory Committee *finds* that, in spite of the efforts made by the authorities to accelerate the naturalisation process, the Latvian language proficiency requirements imposed in the context of the naturalisation procedure are perceived as a major obstacle to the access to Latvian citizenship. The Advisory Committee *considers* that the authorities should examine the situation, including the practical conditions under which the language tests are held, and take all necessary steps to ensure that candidates for citizenship can effectively prove their knowledge of the Latvian language during the testing as well as their genuine desire to integrate in Latvian society. In addition, more resolute efforts are required to improve the accessibility and quality of Latvian language courses and to create, in society, a climate more favourable to naturalisation.

## **20. LIECHTENSTEIN**

Based on the information currently at its disposal, the Advisory Committee considers that implementation of these articles does not give rise to any specific observations.

## **21. LITHUANIA**

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



The Advisory Committee notes the existence in Lithuania of three institutions having the functions of an Ombudsman (the Office of the Parliamentary Ombudsman, the Office of the Equal Opportunities Ombudsman and the Office of the Ombudsman for Children's Rights). However, discrimination and issues connected with the protection of national minorities are not specifically covered in the terms of reference of these three institutions. The Advisory Committee welcomes the fact that the Parliamentary Ombudsman has already considered these questions, especially in relation to the situation of the Roma. Since the possible extension of the terms of reference of the Parliamentary Ombudsman as well as the possibility of merging the three offices are currently being discussed, the Advisory Committee expresses the hope that the solutions that are identified, whatever they may be, will lead to a strengthening of the role, effectiveness and visibility of those bodies, including by incorporating in their responsibilities the prevention and monitoring of discriminatory acts relating to the ethnic origin of persons.

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

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

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

The Advisory Committee notes with concern the socio-economic difficulties that the Roma face and welcomes the efforts recently undertaken to address this issue in the framework of the long-term programme for the integration of the Roma (2000-2004) adopted by the Government. The Advisory Committee however considers that further steps are required in order to reduce the gap in the standard of living between the Roma and the rest of the population. More resolute action is necessary in order to improve the situation of these persons with regard to education, housing conditions, access to health care and to social benefits and also their access to the labour market. More also needs to be done to regularise the identity documents of these persons. In all these areas, special attention must be paid to the situation of Roma women. The Advisory Committee

emphasises that all these measures must, in order to be effective, be applied consistently by all the responsible authorities as well as accompanied by adequate resources and systematic monitoring of their application. The Advisory Committee also considers that special attention should be paid to the ongoing involvement of the Roma in the implementation of the abovementioned programme, in the spirit of Committee of Ministers' Recommendation No. (2001) 17 on improving the economic and employment situation of Roma/Gypsies and Travellers in Europe.

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

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

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

## **In respect of Article 4**

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

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

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

## **22. MALTA**

Based on the information currently at its disposal, the Advisory Committee considers that implementation of these articles does not give rise to any specific observations.

## **23. MOLDOVA**

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

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

The Advisory Committee welcomes the efforts made in the legislation to foster equality and combat discrimination. It notes that judicial remedies are open to victims of unequal treatment and discrimination, but regrets that difficulties are encountered in practice. One example, according to

the Government, concerns the lack of financial resources for the translation of relevant documents into minority languages during judicial proceedings (see also comments under Article 10 below).

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

With regard to practice concerning implementation of anti-discrimination legislation, the Advisory Committee notes that only a limited number of cases of discrimination have been brought to its attention and that very limited information is available from official sources. The Advisory Committee considers it disconcerting that the authorities are not in a position to provide information on the number and nature of such cases. In such circumstances, it is impossible for the Advisory Committee to evaluate the effectiveness of the anti-discrimination mechanisms and to examine to what extent the principles contained in Article 4 of the Framework Convention are being implemented. The Advisory Committee therefore believes that it is imperative that monitoring of developments in this field be intensified.

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

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

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

The Advisory Committee wishes to draw attention to another question likely to affect Moldovan policy on the protection of national minorities, namely the discrepancies between official government statistics and the estimates made by certain national minorities, particularly the Roma, of the number of persons belonging to the minorities concerned and their situation. The Advisory Committee considers that the lack of reliable statistical data can seriously hamper the ability of the state to target, implement and monitor measures to ensure the full and effective equality of persons belonging to national minorities, and make it more difficult for the international monitoring bodies to ascertain whether Moldova meets its obligations under the Framework Convention. The Advisory Committee therefore suggests that, on condition that the principles identified in the Committee of Ministers' Recommendation No. (97) 18 concerning the protection of personal data collected and processed for statistical purposes are respected, the Government try to identify, in view of the next census, the most appropriate ways and means of obtaining reliable statistical data. This data should be broken down by age, gender and location (see also related comments under Article 3 above).

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

#### **In respect of Article 4**

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

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

## **24. MONTENEGRO**

### **Positive measures**

The Advisory Committee notes with satisfaction that the new Constitution includes a general clause on the prohibition of both direct and indirect discrimination (Article 8 of the Constitution). This clause explicitly provides for the introduction of positive measures by specifying that "regulations and introduction of special measures aimed at creating the conditions for the exercise of national, gender and overall equality (...) shall not be considered as discrimination". The Advisory Committee considers therefore that the introduction of such a clause in the Constitution - which is fully in line with Article 4 of the Framework Convention - is a most welcome development. It provides a clear and solid basis for the adoption of positive measures, the lack of which had previously led the Constitutional Court to invalidate the special voting rights introduced by the 2006 Minority Law (see related comments under Article 15 below).

The Advisory Committee would like to draw the attention of the authorities to Article 159 of the Criminal Code which provides for sentencing of persons who grant privileges or exemptions based on national affiliation or affiliation to an ethnic group. This provision includes increased sentencing for persons who act in an official capacity. As it stands, and if interpreted as applicable to positive measures, this Article poses serious issues of compatibility with the Framework Convention. Although this provision has reportedly never been used in practice, the Advisory Committee calls on the authorities to ensure legal consistency and bring the situation fully in line with the principles of Article 4 of the Framework Convention.

### **Non-discrimination legislation**

At the legislative level, there exist some provisions on non-discrimination. These are scattered in various pieces of legislation on labour, employment and health care and education but they do not appear to cover areas like housing and access to services. The Advisory Committee notes with concern that some of these non-discrimination provisions only refer to citizens. The Advisory Committee considers that such restrictions are problematic as they introduce a potential difference of treatment between citizens and others which is not legitimate in the area concerned (see also comments under Article 3 above). The Advisory Committee asks the authorities to review the situation. It also invites the authorities to ensure that non-discrimination provisions apply to all relevant fields and to fill in the existing gaps in the protection against discrimination where needed.

The Advisory Committee notes that it is the intention of the authorities to adopt a specific law on non-discrimination. It strongly encourages the authorities to develop such a law and complete this work promptly so as to respect the commitments made upon Montenegro's accession to the Council of Europe.

The Advisory Committee notes with concern that so far, the judicial system has not addressed problems of discrimination. Indeed, it appears that no relevant cases of discrimination have been examined by Montenegrin courts. The Advisory Committee notes that there may be a myriad of factors explaining this state of affairs including the lack of awareness of persons belonging to a national minority on their rights and the lack of confidence that they may have in addressing the courts and their lack of means to do so in the absence of a free legal aid system, insufficient training on non-discrimination among the judiciary and the difficulties to prove discrimination. The Advisory Committee calls on the authorities to examine the situation and take all measures in terms of legislation and policy to establish the necessary conditions for the implementation of non-discrimination provisions. The Advisory Committee hopes that the planned adoption of a specific law on non-discrimination (see above) will be instrumental in addressing the existing legal obstacles and invites the authorities to pay due attention to the European Commission Against Racism and Intolerance (ECRI) General Policy Recommendation N°7 on National Legislation to Combat Racism and Racial Discrimination in the drafting process.

### **Role of the Protector of Human Rights**

The setting up of the Protector of Human Rights and Freedoms (hereafter: the Protector) is relatively recent in Montenegro. This institution was established in 2003 by law (see Law on Protector of Human Rights and Freedoms N° 41/03) and is now formally included in the new Constitution. The Advisory Committee is aware that the Office of the Protector is still in the process of establishing itself in the Montenegrin institutional landscape: organisational, staffing and general capacity issues still need to be addressed for the fulfilment of its tasks. There appears to be little knowledge about the institution among the general population and this limited awareness is

particularly true amongst national minorities. This may explain why very few complaints have been submitted by persons belonging to national minorities so far.

The Advisory Committee considers that the Protector has a potentially important role in identifying and combating discrimination in Montenegro. It notes that the Protector has taken some first steps in this respect and finds it is essential that it is to be given the means to operate effectively with all guarantees of independence. Additionally, the Protector in its 2006 Report presented to the Parliament suggested that its outreach could be extended to the North and the South of the country. The Advisory Committee finds that such a proposal could facilitate access of persons belonging to national minorities to its services and invites the authorities to duly consider it.

### **Situation of the Roma**

The Advisory Committee finds that one particular challenge regarding the implementation of Article 4 of the Framework Convention in Montenegro is to ensure that Roma enjoy full and effective equality with the rest of the population. According to figures provided by non-governmental sources, the majority of Roma still live in substandard housing conditions and a large number of them live in informal settlements, where basic utilities are often not available. Illiteracy rates are reported to be as high as 63%, even higher among women. Unemployment is reported to reach 82% among the community. 52% of the Roma, Ashkali and Egyptians are living under the poverty rate as compared to 12,2% of the national average. While these figures are only estimates (see also below comments on the issue of statistical data), they give good indications of the extent of the problems faced by the Roma. Such a situation is not in line with the principles of Article 4 of the Framework Convention and needs to be addressed urgently.

The Advisory Committee welcomes the fact that the authorities have paid increased attention to the situation of Roma in recent years. In particular, the adoption in 2005 of the Decade for Roma Action Plan as part of Montenegro's effort to join this regional initiative did represent a breakthrough since it was the first general policy document devoted specifically to the situation of the Roma. While some positive initiatives have been noted, for example, in terms of employment of Roma, the Action plan is often criticised for being too generally worded, lacking domestic ownership, adequate and sustainable funding, implementation and monitoring capacity, including assessment tools. In addition, it has failed to incorporate a gender dimension which in the Advisory Committee's view is essential in order to ensure that the particularly vulnerable situation of Roma women is given proper attention.

In this context, the Advisory Committee is pleased to note that the long-delayed Strategy for the Improvement of the Position of Roma Population (hereafter: National Strategy on Roma) was finally endorsed by the Government on 8 November 2007 (see also Article 15). This Strategy, which is conceived as a comprehensive and operational tool to integrate Roma in all aspects of social life, was prepared under the auspices of the Ministry of Human and Minority Rights. Roma representatives were involved in the elaboration of the Strategy and their views have been, for some, well reflected in the Strategy, an approach which the Advisory Committee finds laudable. Considering that so far Roma projects have been mostly dependent on external donors, the Advisory Committee finds it promising that the Montenegrin authorities have incorporated as part of the Strategy, the setting up of a financial structure which is to receive 0,2% of the State's annual budget for its implementation. The Advisory Committee notes with satisfaction that that funds have already been earmarked for 2008. It expects that this renewed commitment to Roma integration will bring about concrete changes for the Roma population. It calls on the authorities to use this new policy tool to fill in the gaps identified in the Decade Action Plan, including by introducing the

gender equality dimension in the measures targeting the Roma in all fields, and especially in education (see Article 12 below).

### **Identity documents**

The Advisory Committee notes with deep concern that a large percentage of Roma still do not possess personal identity documents. This is a problem which had already been highlighted in the context of the Advisory Committee's first Opinion on the then Serbia and Montenegro. The situation is even more complicated when it comes to the Roma, Egyptians and Ashkali who fled Kosovo since these persons need to retrieve information from the civil registries which are located either in Serbia or Kosovo, when these still exist. This lack of personal documents has led them to be denied access to social rights: problems have been reported in access to education, health, housing and other social rights. In the field of housing, this population is more vulnerable to evictions since it has been living in illegal settlements as was for example the case in 2005, of the eviction of the Egyptian community living on Riverside in Berane. Assistance projects are being carried out to help Roma obtain personal documents: these are mostly carried out by NGOs with the support from the international community. While some positive changes have been reported in some instances (for example, a fee exemption has been granted to obtain documents), progress is regrettably slow. The Advisory Committee asks the authorities to redouble efforts to provide assistance to accessing personal documents by the Roma and develop appropriate measures for those whose documents are not currently available or do not exist.

### **Collection of ethnic data**

Reliable statistics on Roma will be needed for the Roma strategy to be effective. More generally, the Advisory Committee finds that there is a general lack of data that is disaggregated by ethnicity, sex and geographical location. While some independent studies or targeted surveys - usually financed by international organisations - exist, they are *ad hoc* and only provide for a limited account of the reality. The Advisory Committee understands that the Statistical Office of Montenegro (MONSTAT) launched a survey on the Montenegrin labour force at the end of 2007. It welcomes the fact that in contrast to the other surveys on housing and employment, the abovementioned survey included a question on ethnic affiliation. Some other initiatives are or have been taken but there is no co-ordinated approach amongst the main stakeholders in this field as to how to deal with ethnic data.

The Advisory Committee finds that the lack of comprehensive ethnic data significantly complicates the task of the Government to design, implement and monitor its policies targeting national minorities. In this connection, it is essential that the Government of Montenegro step up its efforts to obtain reliable statistical data on the socio-economic position of national minorities in all relevant fields and to this end, develop adequate methods of ethnic data collection while fully respecting the principle of self-identification and providing adequate guarantees for data protection (see below).

The current legislation of Montenegro does not provide adequate guarantees for the protection of personal data. The Advisory Committee notes that the authorities intend to review their legislation in this field. It considers that the authorities should urgently complete their planned revision of the Law on Data Protection in order for any personal data collection to fulfil the principles of Committee of Ministers' Recommendation (97) 18 concerning the protection of personal data collected and processed for statistical purposes as well as international standards on the protection of personal data.



## In respect of Article 4

The Advisory Committee *finds* that the possibility to introduce positive measures is now included in the new Constitution of Montenegro and *considers* that legislation should now be harmonised accordingly.

The Advisory Committee *finds* that some non-discrimination provisions refer only to citizens and that they do not cover all relevant areas and *considers* that the authorities should take the opportunity of their on-going work on non-discrimination legislation to review the situation regarding the scope of application of this provision and ensure that all fields are covered.

The Advisory Committee *finds* that there is insufficient knowledge on the institution of the Protector of Human Rights in Montenegro as well as its potential role in the field of national minority protection and *considers* it important that this institution is made more accessible to persons belonging to national minorities and is provided the means to operate effectively with all guarantees for the independence of its work.

The Advisory Committee *finds* that the situation of Roma in a number of fields, notably in the fields of housing and education, is not in line with the principles contained in Article 4 of the Framework Convention. The Advisory Committee *considers* that their situation merits to be addressed urgently in the context of the recently-adopted Strategy on Roma.

The Advisory Committee *finds* that a large percentage of Roma still do not possess personal identity documents and *considers* that the authorities should redouble efforts to provide assistance to accessing identity documents by the Roma.

The Advisory Committee *finds* that in Montenegro there is a general lack of data that is disaggregated by ethnicity, sex and geographical location and *considers* that the authorities should identify further ways and means of obtaining reliable statistical data.

The Advisory Committee *finds* that Montenegro lacks adequate legal guarantees for the protection of personal data and *considers* that the authorities should urgently revise their legislation on data protection to bring it in line with European standards.

## 25. NETHERLANDS

### Anti-discrimination legislative and institutional framework

The Advisory Committee notes that the Netherlands has a well developed legislative and institutional framework to combat discrimination. The principle of equality is guaranteed in Article 1 of the Dutch Constitution which provides for the equal treatment of persons in equal circumstances and prohibits discrimination on the grounds of religion, belief, political opinion, race, sex or any other grounds. The Equal Treatment Act (*Algemene Wet Gelijke Behandeling*, AWGB) adopted in 2004 to transpose the European Council Directive 2000/43/EC of 29 June 2000 implementing the Principle of Equal Treatment between Persons irrespective of Racial or Ethnic Origin provides protection against discrimination in a large number of fields (employment, provision of goods and services, social security and healthcare).

The Advisory Committee welcomes this comprehensive approach to the issue of combatting discrimination. It further notes that the authorities are planning to amend the Labour Act in order to introduce an obligation for employers to develop anti-discrimination plans, which would be a

welcome development. More generally, the Advisory Committee encourages the authorities to periodically review the relevance and impact of its legislative framework. In this connection, the Advisory Committee refers to the recommendations contained in ECRI's Third Report to include law enforcement bodies within the scope of the AWGB.

The Advisory Committee notes that the Equal Treatment Commission is the independent national specialised body tasked with the promotion and monitoring of compliance with the AWGB. The Commission work currently focuses on employment, education and the provision of goods and services. The Commission has been increasingly involved in promoting awareness about the existing possibilities to combat discrimination.

The Advisory Committee welcomes the fact that in addition to the national level non-discrimination institution, the Netherlands has developed a most valuable system of monitoring and reporting discrimination at local level. Anti-discrimination bureaus have been established in a number of municipalities, most of them being financed by the municipalities themselves, others by the province and the central government. These bureaus are competent for providing assistance on discrimination and registering complaints as well as advising on policy and providing information to the general public. They can also refer cases of alleged discrimination to the Equal Treatment Commission.

The Advisory Committee notes that such bureaus have been established in a number of municipalities, mainly in large cities, on the basis of voluntary agreements with the Government but that they have not reached a nationwide coverage as yet. In this context, the Advisory Committee welcomes the adoption of a Bill on Municipal Anti-Discrimination Services which will oblige the municipal authorities to set up an anti-discrimination service. This statutory obligation, once it is in force, should provide a comprehensive network of anti-discrimination at local level. The Advisory Committee notes that municipal authorities are free to decide on the form the service should take. It also notes that regular review of the budget allocation to these bureaus has been foreseen. It expects that the funding arrangements will adequately meet the existing needs. It also invites the authorities to ensure that the creation of additional structures will not have a negative impact on the funding of other existing structures, and in particular those bringing together expertise on discrimination and providing advice and information on discrimination and racism at national level, like "Art. 1", the national association against discrimination.

#### **In respect of Article 4**

The Advisory Committee *finds* that the Netherlands has a well developed legal and institutional framework to combat discrimination. It *considers* that the authorities should pursue their efforts in this field, including by ensuring that adequate funds are made available for the various anti-discrimination bodies set up to function effectively.

## **26. NORWAY**

The Advisory Committee notes the normative guarantees against discrimination contained in the 1902 Penal Code and in the 1977 Act relating to Worker Protection and Working Environment (as amended on 4 May 2001) and that some additional protection was put in place through the incorporation of specific human rights treaties by the 1999 Human Rights Act. However, the Advisory Committee notes with concern that the scope of these guarantees is very limited and that there are no detailed and comprehensive civil and/or administrative law provisions pertaining to a number of pertinent fields, such as housing.

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

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

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

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

It is also essential that there are adequate structures in place to monitor and address the issue of discrimination. In this connection, the Advisory Committee welcomes the work carried out by the Centre for Combating Ethnic Discrimination, established by the King in Council in 1998, which has also drawn on the Framework Convention in a commendable fashion. The Advisory Committee encourages the Government to pursue its plans to turn the Centre, which is operating on a trial basis until the end of 2002, into a permanent office with promotional and documentary functions, and urges the authorities to allocate adequate funding to enable the Centre to pursue its activities. From the perspective of national minorities, it would also be advisable to strengthen the presence of the Centre in those regions where national minorities reside in high numbers. Furthermore, the Advisory Committee is of the opinion that the Government should consider the establishment of a special supervisory body to ensure compliance with the proposed laws against ethnic discrimination, as proposed by the legislative committee mentioned above in paragraph 22. The Advisory Committee furthermore notes with satisfaction the sensitivity shown by the Office of Parliamentary Ombudsman towards the protection of national minorities and the fact that he has resorted to the Framework Convention in formulating views in this sphere (see related comments under Article 11 below).

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

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

#### **In respect of Article 4**

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

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

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

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

The Advisory Committee *finds* that there are only a limited number of positive measures put in place to address, *inter alia*, the socio-economic differences between the majority population and the Romani and Roma populations, despite reports indicating that shortcomings exist, e.g. in the field of

employment and housing. It *considers* that additional special measures should be considered in these specific areas, paying particular attention to the situation of Romani and Roma women.

## 27. POLAND

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

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

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

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

The Advisory Committee notes however that the Draft Law on National and Ethnic Minorities provides for a new body that would develop and implement policy on national minorities, including elimination of discrimination, as well as take action to prevent discrimination of persons belonging to national minorities. In this connection the Advisory Committee considers that care should be taken, both in legislation enacted and terms of reference issued, that the various institutions are able to co-ordinate their anti-discrimination work properly. The Advisory Committee considers that it will also be necessary to clarify relations between new structures such as the body for implementing policy on national minorities and existing structures, notably the Ombudsman and the Plenipotentiary for Equal Treatment between Women and Men, because it is important that everyone concerned, including persons belonging to national minorities, has a clear idea of how responsibilities are divided in this field.

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

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

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

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

Given the important needs in this area and the repeated requests from representatives of the Roma minority, the Advisory Committee considers it essential that the Government makes available the necessary resources for its effective implementation, which should take place in full consultation with Roma and representatives of civil society. The Advisory Committee also notes that during implementation, special attention will need to be paid to Roma women. More generally, the Advisory Committee recalls that, in designing further measures to promote full and effective equality in favour of the Roma, the Polish authorities should take into due account the Committee of Ministers' Recommendation (2001) 17 on improving the economic and employment situation of Roma/Gypsies and Travellers in Europe.

## In respect of Article 4

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

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

## 28. PORTUGAL

The Advisory Committee welcomes the strong commitment expressed by the Portuguese authorities to combat discrimination. It welcomes the efforts made during recent years to develop the anti-discrimination legal framework, especially through the adoption in 1999 of Law N°134/99 which prohibits discrimination in the exercise of rights on grounds of race, colour and ethnic or national origin and, therefore, complements the constitutional equality guarantee (contained in Article 13 of the Portuguese Constitution). It also notes that measures were taken to transpose the EU Directive 2000/43/CE in Portuguese law in 2004 (Law 18/2004) and that ACIME, which integrates the Commission for Equality and against Racial Discrimination (CICDR, set up in 1999), was designated as the required special body for promoting equality on grounds of ethnicity and race. The labour legislation was revised in 2003; it reflects the principles of EC Directive 2000/78/CE and prohibits all forms of discrimination in the field of employment. Furthermore, the Ombudsperson's Office (Provedor de Justiça) is operating since 1975 and has been dealing with cases related to equal opportunities for immigrants and racial discrimination.

However, according to information received by the Advisory Committee, there remain gaps in the implementation of the anti-discrimination legislation, despite the existence of a comprehensive set of legal and practical tools to fight discrimination. The jurisprudence linked to discrimination cases is very limited: it seems that some victims of racial discrimination have limited awareness of their rights and limited confidence in the law enforcement agencies and the justice system. Further efforts should be made to raise awareness among the judiciary on discrimination-related issues. Initiatives to disseminate information among the population at large, including persons belonging to ethnic minorities, on human rights and remedies to racial discrimination, should also be pursued.

The Advisory Committee was also informed by the authorities that the procedure set up by Law 18/2004, by which ACIME is to impose sanctions in cases of administrative discrimination, based on an opinion to be delivered by the Commission for Equality and against Racial Discrimination, has not, as yet, proved to be very effective. Moreover, with ACIME placed directly under the authority of the Prime Minister, the impact of actions taken by the Commission for Equality and

against Racial Discrimination risks being diminished because of lack of independence with regard to the Government, although the Advisory Committee was informed by the authorities that no problems in this respect have so far been reported. The Advisory Committee encourages the authorities to seek ways of ensuring that the complaints procedure before the Commission for Equality and against Racial Discrimination is made more accessible and effective. It also invites the authorities to secure over time the effective independence of the Commission for Equality and against Racial Discrimination.

While it is aware of the reluctance regarding ethnic data collection in Portugal, the Advisory Committee stresses that the absence of reliable data on the situation of minorities complicates the development of suitable policies to advance equal opportunities of persons belonging to minorities, as well as the prevention of racial discrimination. Very little information is available on the position of ethnic minorities in areas such as housing, education and employment because Law 67/98 of 1998 regarding the collection, processing and communication of sensitive personal data is interpreted by the authorities as impeding the collection of any ethnic data. The Advisory Committee is also informed that, in view of the lack of data based on ethnic origin, providing statistical evidence of discrimination before a court remains a challenge.

The Advisory Committee notes that this view is shared to some extent by the Portuguese authorities, as they informed the Advisory Committee that the absence of a national study on the Roma population hampers a more rigorous analysis of their situation. The Advisory Committee also notes that, according to the information available, a research project is being implemented under the leadership of ACIME with a view to gathering data on the demographic and economic situation of Roma in Portugal and that data are collected on Roma in the educational system. The Advisory Committee strongly encourages the authorities to collect further information on the situation of ethnic minorities, on a regular basis, and it emphasises the fact that methods exist whereby such data could be collected while ensuring the protection of personal data. It also urges the authorities to ensure that the right of the individuals concerned freely to choose to be treated or not to be treated as a person belonging to a minority is fully respected when collecting data on the demographic, economic and educational situation of ethnic groups (for example the Roma). This right is enshrined in Article 3 of the Framework Convention.

The Advisory Committee acknowledges the efforts made by the authorities to improve the situation of Roma. It observes that projects and programmes have been put in place to tackle problems in the field of education (through setting up a network of cultural mediators for instance), housing (through the resettlement and accommodation programmes started in 1993) and access to employment (training/retraining courses and other programmes targeting vulnerable groups, in partnership with the employment services). However, despite these laudable efforts, information provided to the Advisory Committee shows, even in the absence of detailed statistical data in this respect, that persons belonging to the Roma minority seem to be particularly at a disadvantage in areas such as housing, education and access to employment in comparison with the majority population.

The Advisory Committee is disconcerted by reported practices of grouping Roma students together in one class, with worse schooling conditions (see also remarks in respect of Article 6). Although the latter practices sometimes result from the willingness of the parents themselves or from an intention to solve specific problems, the Advisory Committee is of the opinion that practices of separation are not contributing to improving achievement levels and are potentially harmful to community relations. The limited data on the position of Roma in the education system also show that most Roma pupils do not continue their studies beyond primary education. Their representation in secondary and higher education is very low. Roma pupils have higher rates of drop-out and



absenteeism than pupils from the majority population. This is even more so for Roma girls and young women, who often drop out of school at a very early stage. While acknowledging the attention paid by ACIME to problems facing Roma at school, the Advisory Committee is concerned about this situation and urges the Portuguese authorities to take further measures to meet the specific needs of Roma pupils, so as to ensure equal opportunities in education. The result of initiatives, such as the placement of Roma cultural mediators in schools, the possibility to apply flexible curricula and the creation of Priority Intervention Educational Areas should, in this context, be carefully assessed and, where appropriate, further developed. Participation of Roma children in pre-school education should also be further supported.

The Advisory Committee is also informed of the persisting difficulties facing those Roma engaged in itinerant trade, a traditional occupation in this community which is increasingly discouraged by local authority regulations and law enforcement authorities. In so far as itinerant trade is still an important source of income for part of the Roma population, the Advisory Committee invites the authorities to ensure that no undue obstacles are placed to the practice of itinerant trade. It also encourages ACIME to pursue their commendable efforts to promote dialogue between the persons involved in itinerant trade and local authorities.

While taking note of the efforts made to improve the socio-economic and educational situation of Roma, the Advisory Committee strongly urges the Portuguese authorities to further develop long-term programmes targeting persons belonging to the Roma minority specifically and aiming at ensuring equal opportunities in different areas. The assumption by the authorities that the equality guarantee ensures that all citizens can equally benefit from existing social programmes, without a need for specific or targeted measures, can, in the view of the Advisory Committee, hamper efforts to combat discrimination and even lead to further indirect discrimination, as the most vulnerable persons are often too marginalised to be reached through programmes aimed at the population as a whole; as a result, they sometimes “fall through the net”. The Advisory Committee recalls that temporary measures targeting specific ethnic groups in order to restore equality of opportunities shall not be considered to be an act of discrimination. The Portuguese Labour Code (see in particular its article 25), as well as Law 99/134 on the prohibition of discrimination, allow for such measures.

Moreover, the Advisory Committee notes that, in the Portuguese National Action Plans against Poverty and Social Exclusion, measures to improve the socio-economic situation of the Roma are mentioned, although not in a very detailed manner. The Advisory Committee encourages the authorities to further integrate and mainstream Roma issues in nation-wide social policies.

#### **In respect of Article 4**

The Advisory Committee *finds* that the existing anti-discrimination provisions in Portuguese legislation are not sufficiently used in practice and that there is a lack of awareness of discrimination-related issues, both among the judiciary and in the population at large, including among potential victims of discrimination. The Advisory Committee further *finds* that the complaint procedure before the Commission for Equality and against Racial Discrimination is not sufficiently effective in acting against cases of administrative discrimination and it *considers* that the authorities should examine ways of improving its accessibility and effectiveness. It also *considers* that the authorities should secure over time the effective independence of the Commission for Equality and against Racial Discrimination.

The Advisory Committee *finds* that the current lack of information on the socio-economic and educational situation of persons belonging to ethnic, cultural and linguistic groups complicates the prevention of racial discrimination and the development of suitable policies to ensure full and effective equality of persons belonging to minorities. The Advisory Committee *considers* that the authorities should therefore make a concerted effort to identify further means of obtaining reliable data on the situation of persons belonging to minorities, while ensuring that the necessary safeguards for protecting personal data are in place.

The Advisory Committee *finds* that persons belonging to the Roma minority seem to be under-achieving at school, that they seem to have higher drop-out and absenteeism rates and that they are sometimes placed in separate classes. It also *finds* that undue obstacles are often placed in the way of those Roma practising itinerant trade. In general, the Roma are at a disadvantage in comparison with the population at large in areas such as housing, employment and education, despite measures already taken by the authorities in this respect. Therefore, the Advisory Committee *considers* that the authorities should develop further specific measures to improve the socio-economic situation of the Roma and narrow the gap identified in the field of education.

## 29. ROMANIA

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

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

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

The Advisory Committee takes note with satisfaction of the Romanian authorities' determination to launch a significant action programme to speed up full integration of the Roma minority within the

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

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

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

The Roma are seriously disadvantaged in relation to health care. The Advisory Committee is notably deeply concerned by credible reports from various sources that maternity units in some hospitals refuse to issue birth certificates to mothers – most of them Roma – who are unable to pay the bill of their childbirth. This practice is also denounced in the Special Report of the People’s Advocate. According to other allegations, some public hospitals also refuse to treat members of the Roma community, on the grounds that they can neither afford to pay for their medical treatment nor prove that they are covered by a medical insurance. In view of the Roma community’s health situation, the Advisory Committee further stresses the importance of developing preventive measures in this field.

More generally, the Advisory Committee notes that the above-mentioned discrimination, mainly affecting Roma, is partly due to problems arising with implementation of Act No. 67/1995 on social welfare by local authorities. As the People’s Advocate says in his Special Report, some authorities misinterpret the Act, arbitrarily depriving certain people of social benefits to which they are entitled. The Advisory Committee is concerned by complaints of discrimination, hostility and harassment in some local authorities’ treatment of Roma. These concern, in particular, the registration formalities for social benefits. In view of all this, it is essential that the Romanian

Government ensure that - regardless of their margin of discretion in this area - local authorities implement Act No. 67/1995 on social welfare with due respect for the principles of equality and non-discrimination, and so fulfil their responsibilities to the Roma community. The Advisory Committee is also of the opinion that the Government should examine the possibility of improving the situation by drawing up guidelines for local authorities, in order to harmonise the implementation of Act No. 67/1995.

#### **In respect of Article 4**

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

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

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

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

### **30. RUSSIAN FEDERATION**

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

With regard to practice concerning implementation of anti-discrimination legislation, the Advisory Committee notes that there appears to be a very limited number of cases pursued on the basis of the Criminal Code, notably on the basis of Article 136 on the violations of equality, and no detailed information is available on any cases brought on the basis of the anti-discrimination articles in civil/administrative law. It is disconcerting that the authorities are not in a position to provide

information on the number and nature of cases in the latter category. In such circumstances, it is impossible to evaluate the effectiveness of the current mechanisms and to examine to what extent the principles contained in Article 4 of the Framework Convention are being implemented. It is therefore imperative that the monitoring of developments in this field is intensified.

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

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

The Advisory Committee is particularly concerned about the fact that these shortcomings in the residency registration regime disproportionately affect persons belonging to national minorities. There are also credible reports suggesting that the regional or local registration regimes have been in some instances abused by law-enforcement officials who have targeted, in particular, the persons from Caucasus and Central Asian origin for repeated unjustified document checks. The Advisory Committee recognises that certain important initiatives have been taken to counter such practices, but they need to be expanded and implemented more vigorously. It needs to be emphasised that the shortcomings in the registration regime pose problems not only with respect to Article 4 of the Framework Convention, but they also hamper the implementation of other articles of the Framework Convention as access to education and other rights have in some instances been *de facto* conditioned upon the registration of the persons concerned.

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

The Advisory Committee notes that in a number of subjects of the Russian Federation the legal status of Meskhetians has been addressed in a satisfactory manner as they have been provided adequate access to both citizenship and registration procedures. Such solutions should be drawn

upon by the authorities in those regions where widespread difficulties persist, notably in Krasnodar (see also related comments under Article 16).

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

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

The Advisory Committee notes with deep regret that ensuring full and effective equality has been particularly difficult with respect to persons belonging to many of the numerically small indigenous peoples of the north, who continue to face wide-ranging problems in economic, social, political and cultural life to the extent that the situation is not compatible with Article 4 of the Framework Convention. The Advisory Committee notes that the continuing marginalization of these minorities has contributed to the deeply disconcerting health situation amongst them. Furthermore, the generally low educational level amongst the group concerned, coupled with the decline in their access to their traditional means of livelihood, have led to disproportionately high unemployment. The Advisory Committee is of the opinion that the authorities should give increasing attention to their situation, including by taking more effective measures to ensure the implementation of the new legislation concerning their rights (see also related comments under Articles 5 and 15 in the present opinion).

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

#### **In respect of Article 4**

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

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

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

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

### **31. SAN MARINO**

Based on the information currently at its disposal, the Advisory Committee considers that implementation of these articles does not give rise to any specific observations.

### **32. SERBIA AND MONTENEGRO**

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

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

While stressing the importance of having adequate legislation in place to protect persons belonging to national minorities from discrimination, the Advisory Committee is particularly concerned about problems related to the implementation of such legislation in practice. While the situation has clearly improved in this respect following the end of the Milosevic regime, the problem of *de facto* discrimination of persons belonging to national minorities still persists. Such problems appear

particularly prevalent in relation to Roma, including those who have been displaced from Kosovo or who have been repatriated from abroad.

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

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

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

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

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



pursue such measures further and to draw on these practices in other relevant regions as well (see also related comments under Article 15 below).

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

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

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

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

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

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

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

#### **In respect of Article 4**

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

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

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

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

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

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

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

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

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

### 33. SLOVAK REPUBLIC

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

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

cancellation, in the municipalities of Nagov and Rokytovec, of local ordinances that had explicitly banned Roma from entering these towns.

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

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

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

#### **In respect of Article 4**

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

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

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

Ministers *recommends* that the Government considers ways and means of obtaining reliable statistical data.

### 34. SLOVENIA

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

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

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

Despite the absence of adequate statistical data in this sphere (see General remarks) and notwithstanding the steps already taken by the Slovene authorities, the Advisory Committee finds that there are important socio-economic differences between many Roma and the rest of the population. The Advisory Committee welcomes the high level of integration of the Roma community living in the Prekmurje region and notes that the coexistence with other groups has been harmonious for a long time. It expresses the hope that other regions will draw inspiration from this achievement. It is to be noted, in this context, that the situation of the Roma in the Dolenjska region is much less favourable, as they still often seem to be the targets of discrimination and hostility on the part of the population. These geographical variations notwithstanding, the Roma continue to be particularly disadvantaged in the fields of education, employment and housing, and the Advisory Committee consequently finds it essential to adopt further measures in these fields. It appears that efforts undertaken as part of the programme of governmental measures to assist the Roma adopted by the Government in November 1995 have not been comprehensive enough to reduce permanently and substantially the gap between the Roma and the majority population. The Advisory Committee therefore welcomes that the Programme for active employment policy adopted in March 2002 addresses the need to improve employment opportunities for Roma. In designing further measures

to promote full and effective equality for the Roma, the Slovenian authorities should take due account of the Committee of Ministers' Recommendation No. (2001) 17 on improving the economic and employment situation of Roma/Gypsies and Travellers in Europe.

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

The Advisory Committee considers that lack of citizenship or of a residence permit often has a negative impact on the enjoyment of full and effective equality and may lead to discriminatory practices, *inter alia* regarding access to social welfare benefits and, according to some sources, to schooling. Although official statistics on the subject are lacking, it seems that a limited number of persons originating from other Republics of former Yugoslavia who were legally resident in Slovenia when independence was declared were unable to obtain Slovene citizenship within the short time-limit allowed by the authorities for this purpose. While the Act on the "Settling of the Status of Citizens of Other SFRY Successor States in the Republic of Slovenia" passed in 1999 improved the situation to some extent by granting these persons the opportunity to apply for a residence permit within a three-month period, it does not seem to have settled the situation of people who were legally resident in Slovenia before the declaration of independence but who were unable, for various reasons, to file their applications in due time and/or provide all the requisite documents.

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

#### **In respect of Article 4**

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

The Advisory Committee *finds* that, after 1991 and subsequent to denationalisation, many dwellings occupied by Roma, amongst others, have become illegal according to the Slovenian authorities. The Advisory Committee *finds* that the Roma have been proportionately far more affected by this phenomenon than persons belonging to other minorities or the majority population and that this

factor should be taken into account when remedial measures are designed. In view of this situation, the Advisory Committee *considers* it essential that the authorities adopt additional measures and speed up the introduction of the necessary legislative changes that are planned. It also *considers* important that urgent measures are taken to improve housing conditions where necessary.

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

### 35. SPAIN

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

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

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

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

The Advisory Committee notes furthermore that in Spain there is no specialist body to combat discrimination, racism and intolerance which could be made responsible, *inter alia*, for monitoring the application of the afore-mentioned legislation. The Advisory Committee notes with approval that the authorities envisage the establishment of such a structure. Given the fact that, at least at present, the afore-mentioned provisions are scattered among a large number of standard-setting texts and in some cases lack clarity and coherence, it believes that this body could play an important coordination and guidance role so as to render them more effective. The Advisory Committee

furthermore hopes that the authorities will include training and awareness activities among the attributions of this body, both for the population and for the circles concerned (police, justice, media, public authorities, etc.).

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

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

The Advisory Committee observes with concern that, despite the measures taken and the progress achieved in the different areas covered by this programme, Roma still face marginalisation and social exclusion and that discriminatory attitudes to them are evident in many fields. For example, according to various sources of information, the number of persons living below poverty level is markedly higher among the Roma than among the majority. The representatives of non-governmental organisations criticise the above-mentioned programme in particular for no longer being suited to the present situation of Roma and point to inadequate resources, the very limited involvement of Roma in its implementation and the lack of sufficient coordination or strategic vision. The Advisory Committee notes that publication of the stocktaking report commissioned by the Government on the programme is eagerly awaited in the circles concerned, together with proposals for new measures to bring about a clearer improvement in the situation. The Advisory Committee wishes to emphasise in this connection that the authorities, which have a duty to ensure respect for the principles of equality and non-discrimination, should give the new programmes being devised in this field the political support that is vital to their success.

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



are needed to encourage and prepare Roma women to enter the labour market and to promote the revaluation of their role in the family and in society, while respecting the traditions peculiar to Roma lifestyle and culture.

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

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

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

The Advisory Committee notes that, although these problems have received priority attention from the authorities, in many cases the measures taken have proved unsuited to the Roma lifestyle and traditions, and consequently ineffective. It should also be stressed that, despite a strong sense of identity and a common ethnic origin, the Roma population of Spain is very heterogeneous in terms of level of education, vocational skills, way of life and beliefs. For this reason it is essential that the authorities at every level (central, regional and especially local) consult Roma representatives in order to take their lifestyles and socio-economic circumstances fully into account. On this point the Advisory Committee wishes to draw the authorities' attention to the guidelines offered in Committee of Ministers' Recommendation No. (2001) 17 on improving the economic and employment situation of Roma/Gypsies and Travellers in Europe.

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

The Advisory Committee wishes to draw attention to another matter which could have implications for Spain's efforts to implement the principle of full and effective equality, namely the availability of reliable demographic and socio-economic indicators for the different population groups in the country. In this connection the Advisory Committee notes that the latest population and housing

census was held in November 2001 and that the results are expected to be made public in their final form in late 2003.

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

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

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

#### **In respect of Article 4**

The Advisory Committee *finds* that the anti-discrimination provisions in Spanish legislation are rarely applied in practice and that the number of cases which come before the courts do not reflect the actual number of acts of discrimination or racism. The Advisory Committee further *finds* that there is no specialized body in Spain to combat discrimination and *considers* that such a body, which the authorities intend to set up, could make recourse to the relevant legislative provisions more effective and raise awareness in Spanish society about discrimination.

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

The Advisory Committee *finds* that, according to the authorities, Spanish legislation does not allow the gathering of information on individuals' ethnic origin. However, the Advisory Committee *finds* that the lack of reliable statistical data on the various population groups may hinder the Spanish authorities' efforts to ensure full and effective equality. The Advisory Committee *considers* that the

authorities should therefore try to identify means of obtaining reliable data in this respect, while making sure that the necessary safeguards are in place for protecting personal data.

### 36. SWEDEN

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

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

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

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

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

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

The Advisory Committee notes that some general legal provisions have potential to improve the situation of persons belonging to national minorities as regards the implementation of Article 4, paragraph 2 of the Framework Convention. This is the case, for example, as regards Article 4 of the Act on the Measures to Counteract Discrimination in Working Life, which provides that employers “shall carry out goal-oriented work in order to actively promote ethnic diversity in working life”. It appears however that awareness of this obligation is not wide-spread and that only a limited number of employers have taken specific steps on the basis of this provision. The Advisory Committee finds it important that the efforts of the Ombudsman against Ethnic Discrimination to promote awareness and full implementation of these norms are expanded further and that the employers are given practical guidance as to how to design and implement such promotional measures.

#### **In respect of Article 4**

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

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

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

### 37. SWITZERLAND

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

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

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

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

#### **In respect of Article 4**

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

discrimination. The Advisory Committee also *considers* that the Swiss authorities should contemplate collecting statistical data on discrimination more systematically, in particular as regards judicial decisions.

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

### **38. “THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA”**

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

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

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

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

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

that many Roma are unable to meet. The Advisory Committee considers that these problems demand the full attention of the authorities, which should take appropriate steps to revise these practices.

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

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

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

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

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

attendant consequences in terms of lack of access to political, economic and social rights (see also Article 3 above, paragraph 23).

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

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

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

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

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

#### **In respect of Article 4**

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

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



The Advisory Committee *finds* that there is a socio-economic gap between the Roma and the rest of the population and *considers* that the Government should step up its efforts to establish a national strategy for the Roma and ensure that adequate funding is allocated to this strategy and that evaluation procedures are put in place.

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

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

### 39. UKRAINE

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

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

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

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

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

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

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

#### **In respect of Article 4**

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

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

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

## **40. UNITED KINGDOM**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The Advisory Committee is aware that many housing estates in Northern Ireland are split along sectarian lines and that the same applies to schools. The Advisory Committee, while recognising the particular circumstances that have led to this situation, believes that the Government should explore further with the communities concerned how a more integrated approach to both housing and education could lead to strengthening of relations between the two communities. In this, the Advisory Committee recognises that there will be a need for the release of additional funding to encourage a more integrated approach. The recent school route riots in Belfast attest to the importance of further action in this sensitive area. The Advisory Committee notes in this context that certain steps have already been taken and that there has been some success in encouraging integrated schooling. Some of these steps include the commissioning by the Housing Executive of an investigation into the possibilities for the development of further integration, as well as work by a Ministerial Working Group responsible for examining issues concerning strategic planning of integrated school provisions which has published a progress report entitled “Towards a Culture of Tolerance: Integrating Education”.

#### **In respect of Article 4**

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

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

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

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

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