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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 3 OF THE FRAMEWORK CONVENTION**

**FIRST CYCLE**

“Article 3

1. Every person belonging to a national minority shall have the right freely to choose to be treated or not to be treated as such and no disadvantage shall result from this choice or from the exercise of the rights which are connected to that choice.
2. Persons belonging to national minorities may exercise the rights and enjoy the freedoms flowing from the principles enshrined in the present framework Convention individually as well as in community with others.”

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 underlines that in the absence of a definition in the Framework Convention itself, the Parties must examine the personal scope of application to be given to the Framework Convention within their country. The position of the Albanian Government is therefore deemed to be the outcome of this examination.

Whereas the Advisory Committee notes, on the one hand, that Parties have a margin of appreciation in this respect in order to take the specific circumstances prevailing in their country into account, it notes, on the other hand, that this must be exercised in accordance with general principles of international law and the fundamental principles set out in Article 3. In particular, it stresses that the implementation of the Framework Convention should not be a source of arbitrary or unjustified distinctions.

For this reason, the Advisory Committee considers that it is part of its duty to examine the personal scope given to the implementation of the Framework Convention in order to verify that no arbitrary or unjustified distinctions have been made. Furthermore, it considers that it must verify the proper application of the fundamental principles set out in Article 3.

The Advisory Committee notes from the State Report that the Albanian authorities recognise as national minorities the Greek, Macedonian and Montenegrin national minorities and that the Roma and Aromanians / Vlachs are recognised as linguistic minorities. The Advisory Committee understands that, according to the Government, the Framework Convention is applied equally to these groups of national and linguistic minorities without distinction or discriminating effect. It understands that the designation of the Roma and Aromanians / Vlachs as linguistic minorities rather than national minorities is based on the assumption that they do not have a kin-state. Notwithstanding this explanation, the Advisory Committee has learnt that some members of these communities are not satisfied with this term “linguistic minority” as it does not reflect the essential elements of their identity that go beyond a purely linguistic connotation. The Advisory Committee encourages the Government, in consultation with those concerned, to re-examine the question of the designation of the Roma and Aromanians / Vlachs as linguistic minorities, as opposed to national minorities, ensuring at the same time that this distinction has no impact on the application of the Framework Convention to these communities.

The Advisory Committee has learnt that many persons belonging to the Egyptian community consider themselves to be a national minority distinct from both the Roma community and the Albanian community. The Advisory Committee notes, in this respect, that persons belonging to this community define themselves by their ethnic background, their stated historical roots as descendants of persons from Egypt, their traditions and their cultural heritage. The Advisory Committee notes the Government’s contention that the Egyptian community is well integrated into Albanian society and their members only speak Albanian, having lost their minority language over time. Persons belonging to the Egyptian community have, however, made it clear to the Advisory Committee that they would like to receive recognition as a national minority.

The Advisory Committee considers that, given the historic presence of Egyptians in Albania and the desire of persons belonging to this group to identify themselves as persons belonging to a national minority, and given their ethnic background, history, traditions and cultural heritage, persons belonging to this group should not, *a priori*, be excluded from the personal scope of application of the Framework Convention. The Advisory Committee considers that such an *a priori* exclusion is

not compatible with the Framework Convention and encourages the Government, in consultation with those concerned, to re-examine the question of their possible designation as a national minority.

The Advisory Committee notes that, with the exception of the Egyptian community, the Albanian government did not provide information on any linguistic or ethnic groups (whether they consist of citizens or of non-citizens living in the country), which are not considered to be national minorities. The Advisory Committee believes, however, that it would be possible to consider, where appropriate, the inclusion of persons belonging to other groups, including non-citizens as appropriate, in the application of the Framework Convention on an article-by-article basis, and takes the view that the Albanian authorities should, as appropriate, consider this issue in consultation with those concerned.

The Advisory Committee notes that, according to the Government, national minorities are recognised and protected throughout the territory of the Republic of Albania without reference to any geographical criteria. While this may be the official position, the Advisory Committee understands that the application of “minority zones”, which existed both during and before the former communist regime, covering areas where national minorities lived traditionally, continues to have a certain currency, in particular in relation to the teaching in and of minority languages (see also under Article 14 below). The Advisory Committee is of the view that steps are needed in order to ensure that no undue limitations are placed on the rights of persons belonging to national minorities who live outside these formerly identified “minority zones” and that it is necessary to clarify this matter with those concerned in both governmental and non-governmental circles.

### **In respect of Article 3**

The Advisory Committee *finds* that some persons belonging to the Roma and Aromanian / Vlach communities are not satisfied with being classified as only a linguistic minority. The Advisory Committee *considers* that the Government should, in consultation with those concerned, re-examine the question of the designation of the Roma and Aromanians / Vlachs as only a linguistic minority.

The Advisory Committee *finds* that the *a priori* exclusion of Egyptians from the personal scope of application of the Framework Convention is not compatible with the Framework Convention and *considers* that the Government should re-examine the question in consultation with those concerned.

The Advisory Committee *finds* that it would be possible to consider, where appropriate, the inclusion of persons belonging to other groups in the application of the Framework Convention on an article-by-article basis and *considers* that Albania should examine this issue with those concerned.

## **2. ARMENIA**

The Advisory Committee underlines that, in the absence of a definition in the Framework Convention itself, the Parties must examine the personal scope of application to be given to the Framework Convention within their country. The position of the Armenian Government is therefore deemed to be the outcome of this examination.

Whereas the Advisory Committee notes on the one hand that Parties have a margin of appreciation in this respect in order to take the specific circumstances prevailing in their country into account, it notes on the other hand that this must be exercised in accordance with general principles of international law and the fundamental principles set out in Article 3. In particular, it stresses that the implementation of the Framework Convention should not be a source of arbitrary or unjustified distinctions.

For this reason the Advisory Committee considers that it is part of its duty to examine the personal scope given to the implementation of the Framework Convention in order to verify that no arbitrary or unjustified distinctions have been made. Furthermore, it considers that it must verify the proper application of the fundamental principles set out in Article 3.

The Advisory Committee notes that the expression "national minority" is not legally defined in Armenia. The Advisory Committee nevertheless notes that the State Report says that the term is in practice taken to mean "the nationals of the Republic of Armenia permanently living in the Republic of Armenia who are different from the basic population by its ethnic origin". This definition apparently reiterates the one which appears in the Convention of the Commonwealth of Independent States on the Protection of Persons belonging to National Minorities, which came into force in respect of Armenia in January 2001.

The Advisory Committee also notes that there is no list of officially recognised national minorities, and that a level of uncertainty exists in this respect. The State Report mentions the existence of over twenty "nationalities", eleven of which are included in an open-ended list: Germans, Belarusians, Georgians, Greeks, Jews, Kurds, Poles, Russians, Syrians, Ukrainians and Yezidis.

The Advisory Committee notes in this regard the existence of a controversy as to the national identity of the Kurds and Yezidis and their belonging to a single national minority or to two distinct national minorities. The Advisory Committee is pleased to note that the recent census (October 2001) offered the persons concerned an opportunity to identify themselves as either Yezidis or Kurds. The Advisory Committee hopes that the census results will provide clarification in this respect, and it encourages the Armenian authorities to clarify as appropriate in consultation with those concerned, when preparing and adopting the forthcoming legislation on national minorities. The Advisory Committee notes that the census forms contained an open-ended optional question about ethnic origin, as well as other questions covering mother tongue and any other languages spoken. The results, which, according to the authorities, will be available around July 2002, should provide an up-to-date picture, based on reliable data, of the current make-up of the population of Armenia (see also comments relating to Article 4 below).

The Advisory Committee notes that the Armenian authorities supplied information about the existence of other ethnic groups which they do not, at this stage, regard as national minorities. For instance, the authorities have specified that the eleven national minorities mentioned in the State Report are those which have their own representative organisations and which are represented in the Co-ordinating Council, a representative body of national minorities within the President's Office. According to the authorities, it is difficult to consider the other ethnic groups which exist in Armenia as being national minorities, in the absence of a manifest expression of their wish to be treated as such. These groups have no representative organisations, a fact which reflects the lack of such a wish, according to the authorities.

The Advisory Committee notes that the authorities do not exclude the possibility that these groups, in future, expressly communicate their wish to be recognised as national minorities. The Advisory Committee nevertheless takes the view that the mere fact that the individuals belonging to these groups have no representative organisations should not lead to their exclusion from the right to benefit from the protection of the Framework Convention. The Advisory Committee is of the opinion that it would be possible to consider including persons who belong to other groups, including non-citizens where appropriate, in the application of the Framework Convention on an article-by-article basis. It considers that the Armenian authorities should examine this question in consultation with those concerned.

With respect to the legal basis for the protection of persons belonging to national minorities, the Advisory Committee notes that there is no special law governing the protection of national minorities. Given that, apart from the general guarantee which appears in Article 37 of the Constitution, Armenian legislation contains few detailed provisions on the protection of national minorities, the authorities consider that this absence represents a shortcoming in the Armenian legislation. The Advisory Committee notes that preparatory work with a view to the drafting of such a law is under way and that the future law could contain a definition of the concept of national minority. It also notes the existence of two draft laws, one drawn up by the Government Department for Migration and Refugees and the other stemming from a Parliamentary initiative.

The Advisory Committee notes, alongside the lack of co-ordination and communication between the different government bodies in this context and between them and the parliament, that there is no agreement for such a law by all those who play an active role in Armenian political life (see also comments relating to Article 15). The Advisory Committee did, in contrast, note that the national minorities were in favour of the adoption of such a law and wished to be involved in its preparation. In this context, their representatives have expressed discontent that they were not involved in the preparation of the governmental draft and have been critical of the draft subsequently submitted to them. The Advisory Committee considers that it is important to establish a legal framework likely to guarantee appropriate protection for persons belonging to national minorities, in conformity with the principles enshrined in the Framework Convention and in consultation with those concerned, and it encourages the competent authorities to do all that is necessary in this respect.

The Advisory Committee notes that the Armenian Constitution, like all Armenian legislation, is currently undergoing a broad process of revision, with a view to it being brought into line with European standards. In this context, it encourages the authorities to ensure, through appropriate co-ordination between the various authorities responsible, that all the amendments to be made take due account of the needs of persons belonging to national minorities, so as to ensure that the Armenian legislative system is consistent in this field and that it complies with the principles laid down in the Framework Convention.

### **In respect of Article 3**

The Advisory Committee *finds* that Armenian legislation contains few provisions specific to the protection of national minorities. The Advisory Committee *considers* that it is important to establish a legal framework capable of securing appropriate protection for persons belonging to national minorities and encourages the authorities to make all the necessary efforts in this regard, in consultation with those concerned.

The Advisory Committee *finds* that a level of uncertainty exists over what is understood by the concept of “national minorities” and the groups recognised by the Armenian authorities as national minorities, particularly when such groups do not have any representative organisations. Similarly, the Advisory Committee *finds* that there is some controversy over the national identity of the Kurds and the Yezidis. The Advisory Committee *considers* that, in the context of the legislative measures planned in this field and in the light of the recent census, the authorities should make the necessary clarifications, taking due account of the positions expressed by the persons concerned. The Advisory Committee *considers* that it would be possible to consider the inclusion of persons belonging to other groups, including, where appropriate, non-citizens, in the application of the Framework Convention on an article-by-article basis.

### 3. AUSTRIA

The Advisory Committee notes that when depositing its instrument of ratification of the Framework Convention, Austria made the following declaration: “The Republic of Austria declares that, for itself, the term “national minorities” within the meaning of the Framework Convention for the Protection of National Minorities is understood to designate those groups which come within the scope of application of the Law on Ethnic Groups (*Volksgruppengesetz*, Federal Law Gazette No. 396/1976) and which live and traditionally have had their home in parts of the territory of the Republic of Austria and which are composed of Austrian citizens with non-German mother tongues and with their own ethnic cultures.”

The Advisory Committee underlines that in the absence of a definition in the Framework Convention itself, the Parties must examine the personal scope of application to be given to the Framework Convention within their country. The position of the Austrian Government is therefore deemed to be the outcome of this examination.

Whereas the Advisory Committee notes on the one hand that Parties have a margin of appreciation in this respect in order to take the specific circumstances prevailing in their country into account, it notes on the other hand that this must be exercised in accordance with general principles of international law and the fundamental principles set out in Article 3. In particular, it stresses that the implementation of the Framework Convention should not be a source of arbitrary or unjustified distinctions.

For this reason the Advisory Committee considers that it is part of its duty to examine the personal scope given to the implementation of the Framework Convention in order to verify that no arbitrary or unjustified distinctions have been made. Furthermore, it considers that it must verify the proper application of the fundamental principles set out in Article 3.

In their reply to the questionnaire the Austrian authorities, referring to Article 1 paragraph 2 of the Law on Ethnic Groups which governs in general the protection of national minorities in Austria, together with the State Treaty of 1955 re-establishing an independent, democratic Austria (hereinafter referred to as the State Treaty), explain that each national minority has its specific autochthonous settlement area. In this context, the Advisory Committee notes that Article 7 of the State Treaty appears to be the only legal basis including a specific territorial dimension as concerns the rights of the Slovenes and Croats insofar as the *Länder* of Carinthia, Styria and Burgenland are explicitly mentioned. Other legal sources, in particular the recently amended Article 8, paragraph 2 of the Federal Constitution (see related comments under Article 5) and the Law on Ethnic Groups do not contain any restriction to the *Länder* or minorities mentioned under Article 7 of the State

Treaty, but refer more generally to “parts of the Federal territory”. During the Advisory Committee’s visit to Vienna, the representatives of the Federal Chancellery explained that although persons belonging to a national minority who live outside their autochthonous settlement area do not enjoy the same rights as those who do live in that area, particularly those rights necessarily linked to a certain territory or a certain population density, they keep their status as persons belonging to a national minority, which entitles them to certain rights (see related comments under Article 5). The Advisory Committee welcomes that they keep their status and encourages the Austrian authorities to ensure this approach is fully implemented in practice as persons belonging to national minorities who live outside their autochthonous settlement area have specific needs to be catered for. This applies in particular to the numerous Croats of Burgenland living in Vienna, as this city was not considered by the Government as part of the autochthonous settlement area of that minority.

The Advisory Committee notes that when it comes to adopting measures for persons belonging to recognised national minorities, notably as concerns financial support, the authorities appear to take in practice a more inclusive approach than what is suggested by the declaration, in particular as far as the criteria of citizenship and autochthonous territory are concerned. Given the risk involved by a too strict application of the above-mentioned criteria, the Advisory Committee can but encourage the authorities to keep following their more inclusive approach.

Article 3 of the Framework Convention establishes the right of every person belonging to a national minority freely to choose to be treated or not to be treated as such. Freedom to identify, or not to identify, with the name used to designate a minority is one essential aspect of this right. At the time of the census organised in 2001, the question about the language spoken in everyday life made a distinction for the first time between “Croatian” and “Burgenland Croatian”. The Advisory Committee notes that opinions differ among the various representatives of the Croat minority in Burgenland as to the justification of this distinction, some fearing that it might be a source of division which could weaken the position of this community as a whole. The Advisory Committee considers it important that the Austrian authorities continue with other representatives of the Croat minority the dialogue already initiated with the Advisory Council for the Burgenland Croat minority concerning the relevance of this distinction and whether it should be maintained.

In addition to the groups identified by the Austrian authorities as being covered by the Framework Convention, in their reply to the questionnaire and during meetings with the Advisory Committee, the Austrian authorities reported the existence of other groups, including non-citizens, whom they do not consider to be covered by the Framework Convention, *inter alia* because they have not inhabited the country for sufficient time. One such group is the Polish community, some representatives of which expressed interest in the possibility of protection under the Law on Ethnic Groups. After investigating the circumstances that led to the constitution and continuing presence of a Polish community in Austria, the Federal authorities considered such a protection not to be appropriate. They subsequently communicated this decision to the persons concerned, who do not appear to have responded so far. The Advisory Committee nevertheless encourages the Austrian authorities to continue to examine this issue in consultation with the representatives of the Polish community.

As concerns the situation of other groups as well as the one of the Polish group, the Advisory Committee is of the opinion that it would be possible to consider the inclusion of persons belonging to these groups, including non-citizens as appropriate, in the application of the Framework Convention on an article-by-article basis, and takes the view that the Austrian authorities should consider this issue in consultation with those concerned at some appropriate time in the future (see related comments under Article 6, paragraph 35).



### **In respect of Article 3**

The Advisory Committee *finds* that it would be possible to consider the inclusion of persons belonging to other groups in the application of the Framework Convention on an article-by-article basis and *considers* that Austria should consider this issue in consultation with those concerned.

The Advisory Committee *finds* that opinions differ among the various representatives of the Croat minority in Burgenland as to the justification of the distinction made for the first time between “Croatian” and “Burgenland Croatian” languages in the 2001 census. It *considers* important that the Austrian authorities continue with other representatives of the Croat minority the dialogue already initiated with the Advisory Council for the Burgenland Croat minority concerning the relevance of this distinction and whether it should be maintained.

## **4. AZERBAIJAN**

The Advisory Committee underlines that in the absence of a definition in the Framework Convention itself, the Parties must examine the personal scope of application to be given to the Framework Convention within their country. The position of the Azerbaijani Government is therefore deemed to be the outcome of this examination.

Whereas the Advisory Committee notes on the one hand that Parties have a margin of appreciation in this respect in order to take the specific circumstances prevailing in their country into account, it notes on the other hand that this must be exercised in accordance with general principles of international law and the fundamental principles set out in Article 3. In particular, it stresses that the implementation of the Framework Convention should not be a source of arbitrary or unjustified distinctions.

For this reason the Advisory Committee considers that it is part of its duty to examine the personal scope given to the implementation of the Framework Convention in order to verify that no arbitrary or unjustified distinctions have been made. Furthermore, it considers that it must verify the proper application of the fundamental principles set out in Article 3.

The Advisory Committee notes that whereas the legislation of Azerbaijan contains no definition of the term national minority, in practice the authorities appear to pursue an inclusive approach to the question of the personal scope of application of the Framework Convention and consider a large number of groups to fall within the scope of the Framework Convention. Indeed, the Advisory Committee has not been informed of any cases suggesting that the authorities would have objected in principle to claims to be protected by the Framework Convention. The Advisory Committee welcomes this inclusive stance of the authorities and considers it important that this stance is reflected in all pertinent practice as well as in the drafting of new relevant legislation, such as the new law on the protection of national minorities. Furthermore, as new relevant groups emerge, the Advisory Committee is of the opinion that it would be possible to consider the inclusion of persons belonging to these groups, including non-citizens as appropriate, in the application of the Framework Convention on an article-by-article basis. The Advisory Committee takes the view that the Azerbaijani authorities should consider this issue in consultation with those concerned.

The Advisory Committee notes that Azerbaijan collects ethnicity data in certain contexts, including in the population census. It appears that the latest census, conducted in 1999, included a compulsory question on individuals’ “ethnic origin”. While taking note of the Government’s information that

individuals were free to choose their ethnic affiliation in this connection, the Advisory Committee is of the opinion that replying to such a question should be fully optional. This, in the view of the Advisory Committee, is a suitable way to reconcile the need to have quality data in this field with the right to be treated or not to be treated as a person belonging to a national minority.

More generally, the Advisory Committee recalls the importance of ensuring that questions on individuals ethnicity is in all contexts based on clear normative criteria and that those individuals who choose not to answer a question on one's ethnicity are not categorized as ethnic Azerbaijanis in the resulting statistics. Furthermore, it is important that when collecting ethnicity information and publishing the relevant statistics the authorities include, as a rule, also the numerically smallest minorities, such as Khynalyg, Budukha and Kryz, as separate categories rather than grouping them together under the general category of "other nationalities" and that the authorities use designations preferred by the representatives of the national minorities concerned.

The Advisory Committee understands that internal passports issued under the Soviet-era regulations provided for an obligatory ethnicity entry. The Advisory Committee considers that an obligatory ethnicity ("nationality") entry in internal passports, in particular when coupled with limitations on persons' right freely to choose which ethnicity should be indicated therein, is not compatible with the principles contained in Article 3 of the Framework Convention, notably as concerns the right not to be treated as a person belonging to a national minority. Therefore, the Advisory Committee welcomes the fact that there is no obligatory ethnicity entry in new identity cards in Azerbaijan. Bearing in mind the old internal passports are still widely in use in Azerbaijan, the Advisory Committee considers it important that the on-going process of replacing such passports by new identity cards is carried out decisively and that it entails no excessive costs or other shortcomings that would harm the accessibility of the process.

### **In respect of Article 3**

The Advisory Committee *finds* that the authorities appear to pursue an inclusive approach to the question of the personal scope of application of the Framework Convention and *considers* that this positive stance should be reflected in all pertinent practice as well as in the drafting of new relevant legislation.

The Advisory Committee *finds* that Azerbaijan collects ethnicity data in certain contexts and that the latest census apparently included a compulsory question on individuals' ethnic origin. It *considers* that replying to such a question should be optional.

The Advisory Committee *finds* that the Soviet-era internal passports with an obligatory ethnicity entry, which are not compatible with Article 3 of the Framework Convention, are still widely in use in Azerbaijan. It *considers* that the on-going process of replacing such passports by new identity cards should be carried out decisively and in an accessible manner.

## **5. BOSNIA AND HERZEGOVINA**

The Advisory Committee underlines that in the absence of a definition in the Framework Convention itself, the Parties must examine the personal scope of application to be given to the Framework Convention within their country. The position of the authorities of Bosnia and Herzegovina is therefore deemed to be the outcome of this examination.

Whereas the Advisory Committee notes on the one hand that Parties have a margin of appreciation in this respect in order to take the specific circumstances prevailing in their country into account, it notes on the other hand that this must be exercised in accordance with general principles of international law and the fundamental principles set out in Article 3 of the Framework Convention. In particular, it stresses that the implementation of the Framework Convention should not be a source of arbitrary or unjustified distinctions.

For this reason the Advisory Committee considers that it is part of its duty to examine the personal scope given to the implementation of the Framework Convention in order to verify that no arbitrary or unjustified distinctions have been made. Furthermore, it considers that it must verify the proper application of the fundamental principles set out in Article 3 of the Framework Convention.

Bosnia and Herzegovina has not entered any declaration or reservation on the personal scope of application upon accession to the Framework Convention. The State Report only implicitly addresses this question in that it refers to the 2003 Law on the Protection of Rights of Persons Belonging to National Minorities, Article 3 of which gives a definition of the term “national minority” and contains a list of the groups protected:

*“A national minority, in the sense of this Law, is a part of the population - citizens of Bosnia and Herzegovina - that does not belong to one of the three constituent peoples of Bosnia and Herzegovina, and it consists of the people of the same or similar ethnic origin, same or similar tradition, customs, religion, culture, and spirituality, and close or related history and other features.*

*Bosnia and Herzegovina shall protect the position and equality of persons belonging to national minorities: Albanians, Montenegrins, Czechs, Italians, Jews, Hungarians, Macedonians, Germans, Poles, Roma, Romanians, Russians, Ruthenians, Slovaks, Slovenians, Turks, Ukrainians, and others who satisfy requirements from paragraph 1 of this Article.”*

The Advisory Committee finds it positive that this definition covers a large number of groups residing in Bosnia and Herzegovina, including numerically smaller ones, and that the list of groups protected is not conceived as an exhaustive one. However, it notes that limiting the scope of the term national minority to citizens only may have a negative impact for example on the protection of those Roma or other persons whose citizenship status, following the break-up of the Socialist Federal Republic of Yugoslavia and the conflict in Bosnia and Herzegovina, has not been regularised (see related comments under Article 4 below, paragraph 47).

The Advisory Committee considers that there remains room for including further groups within the scope of the Framework Convention and legislation pertaining to its implementation. The Advisory Committee is of the opinion that it would be possible to consider the inclusion of persons belonging to other groups, including non-citizens as appropriate, in the application of the Framework Convention on an article-by-article basis, and takes the view that the authorities should consider this issue in consultation with those concerned.

As concerns the position of the Bosniacs, Croats and Serbs, the Advisory Committee notes that they are not considered as national minorities for the purposes of the 2003 Law on the Protection of Rights of Persons Belonging to National Minorities. The GFAP labels them “Constituent Peoples”, as reflected in the Preamble of the Constitution of Bosnia and Herzegovina. In accordance with the partial decision No. 5/98 of 30 June and 1 July 2000 of the Constitutional Court, Bosniacs, Croats and Serbs are to be considered constituent peoples across the whole territory of Bosnia and

Herzegovina, no matter the Entity in which they reside. In other words, even if constituent peoples are, in actual fact, in a majority or minority position in the Entities, the express recognition of Bosniacs, Croats and Serbs as constituent peoples means that none of them is constitutionally recognised as a majority since they enjoy equality as a group.

The status of constituent peoples represents an important guarantee for the equal treatment of Bosniacs, Croats and Serbs in both Entities and the Advisory Committee acknowledges that this equal treatment has been instrumental in ensuring a lasting peace and stability in the country after the conflict. It is therefore fully understandable that there is no willingness among these groups to substitute their status of constituent people with that of national minorities under the 2003 Law on the Protection of Rights of Persons Belonging to National Minorities.

The Advisory Committee nevertheless notes that Bosniacs and Croats *de facto* live in a minority situation in the Republika Srpska as do Serbs in the Federation, a point already stressed by the Constitutional Court. In such a situation and notwithstanding their status of constituent peoples, these persons may find themselves in a vulnerable position and be subject to various types of discrimination (see related comments under Article 4 below). Taking into account the organisational autonomy enjoyed and the wide powers exercised by the Entities in a number of key areas like education, culture or media, the Advisory Committee considers that Bosniacs and Croats in the Republika Srpska as well as Serbs in the Federation could also be given the possibility - in case they so wish - to rely on the protection provided by the Framework Convention as far as the issues concerned are within the competence of the Entities. Taking into account the organisational autonomy enjoyed and the wide powers exercised by the Cantons in the Federation, the same possibility could also be given to the Croats and the Bosniacs living in the Cantons where they constitute a numerical minority. The Advisory Committee wishes to make clear that this possibility would by no means imply a weakening of their status as constituent peoples as provided for by the Constitution, but merely aim at offering an additional tool to respond to a specific need for protection. The Advisory Committee therefore takes the view that Bosnia and Herzegovina should consider this issue in consultation with those concerned.

As a matter of principle, the Advisory Committee underlines that the quasi-systematic use of the term “Others” at the constitutional level in relation to national minorities, in contrast with the so-called constituent peoples, raises some problems. On the one hand the concept of “Others” gives rise to diverging interpretations as to whether it only applies to persons belonging to national minorities or to all those not wishing to be associated with one of the three constituent peoples. On the other hand, several representatives of national minorities indicated that they perceived the term “Others” as offensive and implying exclusion rather than inclusion into Bosnian society. The Advisory Committee is therefore pleased to note that the 2003 Law on the Protection of Rights of Persons Belonging to National Minorities consistently uses the term “national minorities”, which is also mentioned in Article II.5 of the Constitution. It expresses the hope that the competent authorities, both at State and Entity levels, will contemplate the possibility of consistently introducing similar terminology at the constitutional level.

The Advisory Committee notes that, in Bosnia and Herzegovina, the ethnicity of individuals is regularly referred to in a number of areas, in particular in access to political posts, in the allocation of public posts and, more generally, in access to employment. While recognising that this approach has contributed to reaching a certain balance between the three constituent peoples and admitting that there is a need to obtain quality data in these fields, the Advisory Committee emphasises that the collection of data on individuals' affiliation with a particular ethnicity needs to be coupled with adequate legal safeguards, bearing in mind the principles contained in the Committee of Ministers' Recommendation No. (97) 18 concerning the protection of personal data collected and processed

for statistical purposes. In this context, it is particularly important to ensure that every person has the right to be treated or not to be treated as a person belonging to a given ethnic group and furthermore that no disadvantage should result from that choice. Moreover all persons concerned must be informed that the provision of ethnicity data is voluntary.

The Advisory Committee notes that the Bosnian legal order does not seem to contain sufficient safeguards in this respect. In certain cases individuals are even *de facto* obliged to declare their ethnicity since identifying as “Others” raises some problems from the non-discrimination viewpoint (see related comments under Article 4 below, paragraphs 37-41. For instance Article 4.19, paragraph 5 of the Election Law prescribes that “*the candidates lists for the House of Representatives of the Federation of Bosnia and Herzegovina, the President and Vice-President of the Republika Srpska, and the National Assembly of the Republika Srpska shall indicate to which constituent people, or the group of Others, the candidates declare to belong.*” Even though it might pursue a legitimate aim, namely ensuring the equal representation of constituent peoples in public authorities, such an obligation is problematic from the point of Article 3 of the Framework Convention. The Advisory Committee therefore considers that the authorities should carry out a review of the legislation in this regard and, on that basis, adopt the necessary amendments to ensure full respect of the right not to be treated as a person belonging to a given ethnic group.

Bearing in mind that the last general census of the population was carried out in 1991, the Advisory Committee encourages the authorities to start a reflection on the possibility of organising a new census at some appropriate time in the future (see related comments in paragraphs 14 and 15 above under General remarks). In this respect, it will be essential that the reply to questions pertaining to ethnicity be conceived as optional and clearly marked as such. Consideration will have to be given to the possibility of explicitly offering neutral entries - such as “Bosnian” - for self-identification in addition to the list of ethnic groups when drawing up census forms. This is particularly important in view of the fact that a significant number of persons declared themselves “Yugoslavs” or simply refused to declare their ethnicity in the last census. This would also take account of the fact that today, a growing number of Bosnian citizens, notably from mixed marriages, do not necessarily feel at ease with an exclusive label of one of the three constituent peoples. It is advisable that the Government consult in due course not only representatives of the constituent peoples, but also representatives of national minorities on the organisation and modalities of the next census, particularly on the content of the census forms.

### **In respect of Article 3**

The Advisory Committee *finds* that domestic legislation pertaining to national minorities covers a large number of groups, including smaller ones, and it *finds* that it would be possible to consider the inclusion of persons belonging to additional groups in the application of the Framework Convention on an article-by-article basis. The Advisory Committee *considers* that the authorities should examine this issue in consultation with those concerned.

The Advisory Committee *finds* that the status of constituent peoples represents an important guarantee for the equal treatment of Bosniacs, Croats and Serbs in both Entities. It also *finds* that Bosniacs and Croats *de facto* live in a minority situation in the Republika Srpska as do Serbs in the Federation, a situation that may put these persons in a vulnerable position and expose them to various types of discrimination notwithstanding their status of constituent peoples. The Advisory Committee therefore *considers* that Bosniacs and Croats in the Republika Srpska as well as Serbs in the Federation could be given the possibility - in case they so wish - to rely on the protection provided by the Framework Convention as far as the issues concerned are within the competence of the Entities. The Advisory Committee *considers* that the same possibility could also be given to the

Croats and the Bosniacs of the Federation living in the Cantons where they constitute a numerical minority. The Advisory Committee *considers* that the authorities should examine this issue in consultation with those concerned.

The Advisory Committee *finds* that the quasi-systematic use of the term “Others” at the constitutional level in relation to national minorities, in contrast with the so-called constituent peoples, raises some problems. It *considers* that the possibility to introduce the concept of “national minorities” at the constitutional level, both at the State and Entity levels, should be examined.

The Advisory Committee *finds* that the ethnicity of individuals is regularly referred to in a number of areas, in particular in access to political posts, in the allocation of public posts and, more generally, in access to employment. In this context, the Advisory Committee *considers* particularly important that domestic legislation contain sufficient safeguards to ensure that every person has the right not to be treated as a person belonging to a given ethnic group and that no disadvantage shall result from that choice, which does not seem to be the case. The Advisory Committee therefore *considers* that the authorities should carry out a review of the legislation in this regard and, on that basis, adopt the necessary amendments to ensure full respect of the right not to be treated as a person belonging to a given ethnic group.

## **6. BULGARIA**

The Advisory Committee underlines that in the absence of a definition in the Framework Convention itself, the Parties must examine the personal scope of application to be given to the Framework Convention within their country. The position of the Bulgarian Government is therefore deemed to be the outcome of this examination.

Whereas the Advisory Committee notes on the one hand that Parties have a margin of appreciation in this respect in order to take the specific circumstances prevailing in their country into account, it notes on the other hand that this must be exercised in accordance with general principles of international law and the fundamental principles set out in Article 3 of the Framework Convention. In particular, it stresses that the implementation of the Framework Convention should not be a source of arbitrary or unjustified distinctions.

For this reason the Advisory Committee considers that it is part of its duty to examine the personal scope given to the implementation of the Framework Convention in order to verify that no arbitrary or unjustified distinctions have been made. Furthermore, it considers that it must verify the proper application of the fundamental principles set out in Article 3 of the Framework Convention.

The Advisory Committee notes that the expression “national minority” has no legal definition in Bulgaria, which does not have legislation specifically dealing with the protection of minorities. The Bulgarian Constitution, furthermore, does not mention the existence of national minorities in Bulgaria. Nonetheless, Article 54.1 of the Bulgarian Constitution provides that “Everyone shall have the right to avail himself of the national and universal human cultural values and to develop his own culture in accordance with his ethnic self-identification, which shall be recognised and guaranteed by the law”.

The Advisory Committee notes that the declaration made by Bulgaria when depositing the instrument of ratification of the Framework Convention does not contain information on the personal scope of application given to the Framework Convention. In their reply to the Advisory Committee’s questionnaire, the authorities nevertheless indicate that the scope of application of the

Framework Convention in Bulgaria extends to all citizens of the Republic of Bulgaria, who self-identify themselves as belonging to ethnic, religious and linguistic minorities in the country and who have freely expressed their will to be treated as such.

Bulgaria does not have a list of the national minorities which are recognised officially, nor does it employ the concept of a recognised minority. According to the authorities, a minority's existence stems from a material position substantiated by objective and subjective criteria, and is not tied to any formal recognition by the State. This approach is expounded in detail by the Bulgarian Constitutional Court in its case-law relating to the Framework Convention's compatibility with Bulgarian law, and particularly with the Constitution. The Advisory Committee notes in addition that the terminology used by the authorities is variable: ethnic, religious or linguistic groups/minorities.

The Advisory Committee took the groups represented on the National Council on Ethnic and Demographic Questions (NCEDQ), the main interlocutors of the Government in devising and implementing the measures for protection of minorities, to be those regarded by the authorities as formally qualifying for the protection provided by the Framework Convention. However, it is unclear what the official stance is regarding the position *vis-à-vis* the Framework Convention of those groups not represented on the Council. Here the Advisory Committee notes the case of the Macedonians and the Bulgarian-speaking Muslims (commonly referred to as Pomaks).

In this connection, the Advisory Committee notes that while the authorities invoke the population census results among the factors testifying to the existence of minorities, it is nonetheless disputed by them that persons belonging to certain groups identified in the census, the Macedonians in particular (whom they systematically designate as "persons self-identified as Macedonians") meet the objective criteria needed to have a distinct identity within the Bulgarian population and thus to be eligible for the protection of the Framework Convention. The Advisory Committee notes however that by decision No. 1 of 29 February 2000 of the Constitutional Court, and in particular through its interpretation of Article 11.4 of the Constitution (see paragraph 63 below), one may infer that Macedonians are considered as a distinct ethnic group.

The Macedonians do not constitute the only group in Bulgaria whose identity is the subject of a divergence of views between the persons concerned and the authorities. The Advisory Committee also notes the case of the Pomaks, who likewise are not regarded by the authorities as meeting the aforesaid criteria. The official position where they are concerned is to regard them as being Bulgarian converts to the Muslim religion. It is therefore appreciated that they might possibly be classed as a religious minority but not as a distinct ethnic group. This approach is sustained *inter alia* by the differences that exist within the group in question as to ethnic self-identification. For instance, it appears that at the last census some of the persons concerned declared themselves as Turks and others as Bulgarians or Muslims.

The Advisory Committee notes that the results of the last two population censuses (1992 and 2001) include no figures that could reflect the presence of Pomaks in Bulgaria. The Advisory Committee is surprised at this state of affairs, and in this connection it refers to its observations on data collection under Article 4 (see paragraph 41 below).

The Advisory Committee consequently notes that there exist groups in Bulgaria, such as Macedonians and Pomaks, whom the Government is reluctant to consider as being protected by the Framework Convention. During its visit to Bulgaria the Advisory Committee, in the light of the information which it received, could note that most of the representatives of these groups had a special interest in the measures taken by the State on behalf of minorities.

Having noted these persons' keen consciousness of belonging to distinct ethnic groups, the existence of at least some distinctive features supporting their claim to a specific identity, and the aforementioned Constitutional Court decision (see paragraph 20 above), the Advisory Committee strongly encourages the Government, in consultation with those concerned, to examine the possibility of affording them access to the protection secured by the Framework Convention. Furthermore, it considers that the opening of dialogue by the authorities with the persons concerned would be desirable, for instance through their inclusion in the National Council on Ethnic and Demographic Questions, in order to discuss with them such arrangements as would enable them to retain and assert their identity (see also the observations relating to Article 5 below).

The Advisory Committee notes that the question of identity and ethnic identification (of Macedonians and Pomaks, among others) was extensively discussed in the context of the last population census, held in Bulgaria in 2001. This point is even more significant in view of the fact that whereas the 1992 census accommodated several possible replies to the question on affiliation with an "ethnic group", explicitly indicating the entries Bulgarian, Turkish, Roma, Tatar, Jewish, Armenian, Gagauz and "other", only three groups were indicated explicitly in the list of replies in 2001: Bulgarian, Turkish, Roma (Gypsy), "other", and "not stated".

This development was met with dissatisfaction by most groups other than the ones actually indicated; their representatives have conveyed to the Advisory Committee queries and doubts as to whether in these circumstances the right enshrined in Article 3 of the Framework Convention is suitably enforced. According to certain of the Advisory Committee's contacts, the approach adopted by the Government made some people unwilling to state their ethnic identity openly, their reluctance being heightened by various irregularities reportedly detected during the census. The Advisory Committee notes with concern that such reported irregularities include pressure (also by the media, through press articles intended to discredit them) on individuals and organisations who conducted awareness-raising actions directed at specific groups ahead of the census.

These assertions are strongly refuted by the authorities, who insist on the voluntary character of the census question on ethnic affiliation and point out that the representatives of the minorities were consulted beforehand and even involved in the conduct of the census-taking operations. The Advisory Committee draws the attention of the authorities to the provisions of Article 3, paragraph 1 of the Framework Convention, under which every person belonging to a national minority shall have the right freely to choose to be treated or not to be treated as such. Consequently, such persons should be provided the protection afforded by the Framework Convention.

The Advisory Committee is of the opinion that it would be possible to consider the inclusion of persons belonging to other groups, including non-citizens as appropriate, in the application of the Framework Convention on an article-by-article basis, and takes the view that the Bulgarian authorities should consider this issue in consultation with those concerned.

### **In respect of Article 3**

The Advisory Committee *finds* a divergence of views between the authorities and the representatives of those concerned as regards the applicability of the Framework Convention to the Macedonians and Pomaks. The Advisory Committee *considers* that the Government should review the matter in consultation with those concerned.



The Advisory Committee *finds* that certain groups have expressed concerns over the implementation of the principles contained in Article 3 of the Framework Convention, including in the context of the last population census. The Advisory Committee *considers* that the authorities should take whatever measures are necessary to establish suitable conditions, including in the context of the future population census, for due application of these principles.

## 7. CROATIA

The Advisory Committee notes that the most recent normative listing of national minorities, contained in the amendments to the Constitutional Law of Human Rights and Freedoms and the Rights of National and Ethnic Communities or Minorities, adopted in May 2000, includes 22 minorities and envisages also the inclusion of "others" in this list. In contrast, the preamble to the Constitution, as amended on 12 December 1997, suggests a more selective approach as it enlists only 10 national minorities, referred in the Constitution as "autochthonous", as well as a general category "others". The Advisory Committee considers that no undue differentiations should be made between various national minorities and therefore finds it regrettable that the preamble to the Constitution does not mention explicitly other minorities listed in the above-mentioned Constitutional Law, such as Bosniacs, Roma and Slovenes. (The way in which this more limited listing is reflected in the electoral system is examined under Article 15.)

The Advisory Committee underlines that in the absence of a definition in the Framework Convention itself, the Parties must examine the personal scope of application to be given to the Framework Convention within their country. The position of Croatia is therefore deemed to be the outcome of this examination.

Whereas the Advisory Committee notes on the one hand that Parties have a margin of appreciation in this respect in order to take the specific circumstances prevailing in their country into account, it notes on the other hand that this must be exercised in accordance with general principles of international law and the fundamental principles set out in Article 3. In particular, it stresses that the implementation of the Framework Convention should not be a source of arbitrary or unjustified distinctions.

For this reason the Advisory Committee considers that it is part of its duty to examine the personal scope given to the implementation of the Framework Convention in order to verify that no arbitrary or unjustified distinctions have been made. Furthermore, it considers that it must verify the proper application of the fundamental principles set out in Article 3.

The Advisory Committee welcomes the fact that Croatia appears to interpret the term "national minority" and the personal scope of application of the Framework Convention in an increasingly inclusive manner and hopes that an inclusive approach will be adopted in the envisaged new constitutional law on national minorities, regardless of whether or not it will contain an explicit list of national minorities. The Advisory Committee is nevertheless of the opinion that it would also be possible to consider the inclusion of persons belonging to additional groups, including non-citizens as appropriate, in the application of the Framework Convention on an article-by-article basis, and the Advisory Committee takes the view that Croatia should consider this issue in consultation with those concerned.

The Advisory Committee notes that, in Croatia, ethnicity data is collected in various contexts, ranging from the registration of marriage to criminal procedure. The Advisory Committee emphasises that collection of data on individuals' affiliation with a particular national minority needs to be coupled with adequate legal safeguards. In this connection, measures should be taken to ensure that the right not to be treated as a person belonging to a national minority is also protected, and that the persons concerned are informed, as appropriate, of the voluntary nature of ethnicity data collection, as stipulated e.g. in the legislation pertaining to the census mentioned below in paragraph 20 of the present opinion.

The Advisory Committee further notes that, in Croatia, personal data pertaining to affiliation with a national minority is, in certain circumstances, made public. This is the case in the context of parliamentary elections. Bearing in mind the potentially sensitive nature of data concerning a person's affiliation with a national minority, the Advisory Committee is of the opinion that the public bodies should communicate such data to third parties only when necessary and that the principles contained in the Committee of Ministers' Recommendation No. (91)10 on the communication to third parties of personal data held by public bodies, should be taken into account.

In respect of the census of April 2001, the Advisory Committee expresses the hope that the census results in as accurate statistics on minority population as possible, bearing in mind also the large population movements that have taken place as a result of the 1991-1995 conflict. In this respect the Advisory Committee welcomes the fact that also those persons belonging to national minorities of Croatia who are currently living outside Croatia have an opportunity to participate in the census, in accordance with Article 2, paragraph 1, of the Law on the Census of Population, Households and Apartments, adopted on 27 June 2000, and expresses the hope that this provision is effectively implemented. The Advisory Committee also finds it essential that the census results are interpreted and processed in a manner that accommodates, to the extent possible, persons' subjective choices with respect to their affiliation with a minority. In addition, the Advisory Committee considers that, when drawing on the results of the census, authorities should take into account the reluctance by some concerned to identify themselves as belonging to a national minority (see also related comments under Article 4).

### **In respect of Article 3**

The Committee of Ministers *concludes* that it would also be possible to consider the inclusion of persons belonging to additional groups in the application of the Framework Convention on an article-by-article basis, and the Committee of Ministers *recommends* that Croatia consider this issue in consultation with those concerned.

The Committee of Ministers *concludes* that data on individuals' affiliation with a particular national minority is collected in various contexts in Croatia and *recommends* that Croatia ensures that collection and possible publication of such data is coupled with adequate legal safeguards, also taking into account the principles contained in the Committee of Ministers' Recommendation No. (91)10 on the communication to third parties of personal data held by public bodies.

## **8. CYPRUS**

The Advisory Committee underlines that in the absence of a definition in the Framework Convention itself, the Parties must examine the personal scope of application to be given to the Framework Convention within their country. The position of the Cyprus Government is therefore deemed to be the outcome of this examination.

Whereas the Advisory Committee notes on the one hand that Parties have a margin of appreciation in this respect in order to take the specific circumstances prevailing in their country into account, it notes on the other hand that this must be exercised in accordance with general principles of international law and the fundamental principles set out in Article 3. In particular, it stresses that the implementation of the Framework Convention should not be a source of arbitrary or unjustified distinctions.

For this reason the Advisory Committee considers that it is part of its duty to examine the personal scope given to the implementation of the Framework Convention in order to verify that no arbitrary or unjustified distinctions have been made. Furthermore, it considers that it must verify the proper application of the fundamental principles set out in Article 3.

The Advisory Committee notes with approval that the Cyprus authorities consider that the Framework Convention can be applied in Cyprus, despite some constitutional obstacles. The Advisory Committee notes that the Government considers in its approach that the Framework Convention applies to persons belonging to the Latin, Maronite and Armenian communities, defined as religious groups under the Constitution, as well as, and without prejudice to their constitutional position, to Turkish Cypriots living within the Government controlled areas.

The Advisory Committee notes that the Constitution of Cyprus is based on a division of the population into two communities, Greek Cypriots and Turkish Cypriots, and further recognises the existence of religious groups. The religious groups designated in the State Report are the Latins, the Maronites and the Armenians. Each religious group is under a constitutional obligation to choose - as a group - once and for all, adherence to one or other of the two communities recognised by the Constitution (the Greek Cypriots and the Turkish Cypriots). The Latins, the Maronites and the Armenians decided, by an overwhelming majority, to become members of the Greek Cypriot community. It is to be noted that each person belonging to a religious group is, as an individual, entitled to make use of an opting out. However, in so doing, an individual may only choose to belong to the other community, that is to the Turkish Cypriot community. The Advisory Committee considers that such arrangements, provided for by Article 2 of the Constitution, are not compatible with Article 3 of the Framework Convention, according to which every person belonging to a national minority shall have the right freely to choose to be treated or not to be treated as such.

The Advisory Committee has learnt that many Maronites consider themselves not only a religious group, as they also share a specific ethnic origin and – at least for some of them – a specific Arabic dialect. It encourages the Government, in consultation with those concerned, to re-examine the question of the designation of the Maronites as simply a religious group.

The Advisory Committee notes that many persons belonging to the Latin community are not satisfied with the term “Latins” the Government uses to designate them, as this expression does not properly reflect the essential element of their identity, namely the Roman Catholic rites they have in common. The Advisory Committee considers that it would be possible for the Government to address this issue in consultation with those concerned without undue difficulties, as it does not appear to require any change to the Constitution.

The Advisory Committee notes that persons belonging to religious groups are obliged to cast a vote in the parliamentary elections. The general legal obligation to vote in elections is indeed extended to the election of representatives of minorities. The Advisory Committee considers that it is to be welcomed that persons belonging to religious groups have the possibility to vote for a special representative in the House of Representatives. However, it considers that this should be conceived

as a right and not an obligation. Article 3 of the Framework Convention provides that every person belonging to a national minority shall have the right freely to choose to be treated or not to be treated as such and no disadvantage shall result from this choice or from the exercise of the rights which are connected to that choice. The obligation to elect special representatives for religious groups, failure of which may theoretically result in prosecution, is not compatible with the Framework Convention. The Advisory Committee considers that it would be possible for the Cyprus Government to address this issue without undue difficulty, as it does not appear to require any change to the Constitution.

Finally, the Advisory Committee notes that the State Report refers to the existence of other groups that the Government does not consider, at this stage, to be covered by the Framework Convention. The Advisory Committee is of the opinion that it would be possible to consider inclusion of persons belonging to these groups in the application of the Framework Convention on an article-by-article basis and takes the view that the Cyprus authorities should consider this issue in consultation with those concerned.

### **In respect of Article 3**

The Committee of Ministers *concludes* that it would be possible to consider the inclusion of persons belonging to other groups in the application of the Framework Convention on an article-by-article basis and *recommends* that Cyprus consider this issue in consultation with those concerned.

The Committee of Ministers *concludes* that the obligation for religious groups and their members to choose adherence to the Greek Cypriot or to the Turkish Cypriot community, as provided for by Article 2 of the Constitution, is not compatible with Article 3 of the Framework Convention.

The Committee of Ministers *concludes* that the legal obligation for persons belonging to religious groups to elect their representatives is not compatible with Article 3. It *recommends* that the Cyprus Government address this issue.

## **9. CZECH REPUBLIC**

The Advisory Committee underlines that in the absence of a definition in the Framework Convention itself, the Parties must examine the personal scope of application to be given to the Framework Convention within their country. The position of the Czech Government is therefore deemed to be the outcome of this examination.

Whereas the Advisory Committee notes on the one hand that Parties have a margin of appreciation in this respect in order to take the specific circumstances prevailing in their country into account, it notes on the other hand that this must be exercised in accordance with general principles of international law and the fundamental principles set out in Article 3. In particular, it stresses that the implementation of the Framework Convention should not be a source of arbitrary or unjustified distinctions.

For this reason the Advisory Committee considers that it is part of its duty to examine the personal scope given to the implementation of the Framework Convention in order to verify that no arbitrary or unjustified distinctions have been made. Furthermore, it considers that it must verify the proper application of the fundamental principles set out in Article 3.

Accordingly, the Advisory Committee notes that, in the Czech Republic, the right of anyone belonging to a national minority to be treated or not to be treated as such is guaranteed by Article 3 of the Charter of Fundamental Rights and Basic Freedoms (an integral part of the country's constitutional legal system, in accordance with the Resolution of the Presidium of the Czech National Council, dated 16 December 1992).

The Advisory Committee notes that Czech legislation does not provide any general definition of the notions of "national minority" or "ethnic minority", although these terms do appear in legislation, notably in Chapter 3 of the Charter of Fundamental Rights and Basic Freedoms ("The rights of National and Ethnic Minorities"). The Advisory Committee further notes that the absence of a legal definition has not prevented the Czech Government from identifying a number of groups to whom the Framework Convention is considered applicable. It appears from the State Report that, *inter alia*, the following national or ethnic minorities are taken into consideration: Polish, German, Roma, Slovak, Hungarian, Ukrainian.

The State Report refers to a definition of the term "national minority", based on current legal practice, which appears in the "Concept of the Government's Approach to Issues concerning National Minorities in the Czech Republic" (Government Resolution No. 63/1994). The Government states that this definition corresponds to the status of the national minorities (referred to in paragraph 17 above), as well as other numerically small groups, such as Bulgarians, Ruthenians (if they do not consider themselves to be Ukrainians), Russians, Jews, Croats and Greeks. It follows from the State Report that, although not represented on the Government's Council for National Minorities, these groups, some of whom settled in the Czech territory after World War II, are also considered as national minorities.

The State Report also mentions the "Moravian and Silesian national identities", specified for the first time by citizens of Moravia and Czech Silesia during the 1991 census. The Czech authorities consider that claims to have either of these "identities" (in 1991, Moravians accounted for 13.2% of the population and Silesians for 0.4%) are only a sign of a search for an identity, characteristic of periods of changing regimes. Accordingly, the Government considers that the populations concerned do not constitute national minorities which would be covered by legislation on national minority rights.

The Advisory Committee notes that a law on the protection of national minorities is currently being drafted. The Czech authorities state in their reply to the questionnaire that the future law could provide a definition of the terms "national minority" and/or "ethnic minority". The Advisory Committee hopes that the passing of this law will not result in *de jure* or *de facto* restriction of the personal scope of the Framework Convention as applied in the Czech Republic.

The Advisory Committee also notes that a new census was held in the Czech Republic (28 February - 1 March 2001). In this context, the Advisory Committee notes that Act No. 101/2000 on the Protection of Personal Data classifies national, racial or ethnic origin as sensitive data.

The Advisory Committee notes that foreigners who have been permanently resident for a long time in the Czech Republic may take part in activities organised by national minorities of the same ethnic origin, without however being recognised as members of these minorities. This reflects the Czech state's view that only citizens of the country concerned can be recognised as persons belonging to national minorities.

The Advisory Committee notes the existence in the Czech Republic of other groups that the Government does not consider, at this stage, to be covered by the Framework Convention. The Advisory Committee is of the opinion that it would be possible to consider the inclusion of persons belonging to these groups, including non-citizens as appropriate, in the application of the Framework Convention on an article-by-article basis, and the Advisory Committee takes the view that the Czech authorities should consider this issue in consultation with those concerned.

### **In respect of Article 3**

The Committee of Ministers *concludes* that it would be possible to consider including persons belonging to additional groups in the scope of the Framework Convention, as applied on an article-by-article basis, and *recommends* that the Czech Republic consider this possibility in consultation with those concerned.

## **10. DENMARK**

As mentioned above, the Advisory Committee notes that according to the Danish authorities, this instrument applies only to the German minority in southern Jutland. This position was reflected in the declaration made by the Danish authorities at the time of ratification and was repeated in the State Report. In the meeting with the Danish Government, it was clarified that the Framework Convention covers all of the Kingdom of Denmark, thus also the areas covered by particular home rule arrangements, Greenland and the Far-Oer Islands.

The Advisory Committee underlines that in the absence of a definition in the Framework Convention itself, the parties must examine the personal scope of application to be given to the Framework Convention within their country. The position of the Danish Government is therefore deemed to be the outcome of this examination.

Whereas the Advisory Committee notes on one hand that parties have a margin of appreciation in this respect in order to take the specific circumstances prevailing in their country into account, it notes on the other hand that this margin of appreciation must be exercised in accordance with general principles of international law and the fundamental principles set out in Article 3. In particular it stresses that the implementation of the Framework Convention should not be a source of arbitrary or unjustified distinctions.

For this reason the Advisory Committee considers that it is part of its duty to examine the personal scope given to the implementation of the Framework Convention in order to verify that no arbitrary or unjustified distinctions have been made. Furthermore, it considers that it must verify the proper application of the fundamental principles set out in Article 3.

The Advisory Committee notes that the Danish Government takes the view that because territorial home rule arrangements exist for Greenland and the Far-Oer Islands, the population of these territories, who, like persons belonging to the German minority, have deep historic ties with the Kingdom of Denmark, do not fall within the scope of application of the Framework Convention. The Government adds that, according to its information, these persons have never asked for protection granted by this instrument and indeed do not consider themselves as national minorities, because they are entitled to a different form of protection as *an indigenous people* or *a people*. In this context, attention was drawn to the fact that the Far-Oer Islands are currently discussing with

the Danish Government their full independence, whilst Greenland is discussing an extension of its autonomy.

The Advisory Committee notes two problems with respect to the approach presented by the Danish authorities. Firstly, the reasoning appears to assume that the recognition of a group of persons as constituting *an indigenous people* or *a people* excludes the possibility of at the same time benefiting from protection as a national minority. The Advisory Committee does not share this view. The fact that a group of persons may be entitled to a different form of protection, cannot by itself justify their exclusion from other forms of protection. The second problem in this reasoning concerns the territorial aspect. If the reasoning of the Danish Government is to be followed, the result is that the Greenlanders and Far-Oese persons enjoy an effective protection of their identity (language, education, culture etc.) within the respective home rule areas, but no such protection outside these areas, notably in mainland Denmark. Although the Framework Convention attaches importance in a number of its provisions to the criterion of traditional inhabitation of certain areas for protection, the majority of its provisions are designed to apply throughout the territory of the state concerned, of course taking into account all relevant circumstances.

It follows from the above that the Advisory Committee considers that the *a priori* exclusion of Greenlanders and Far-Oese persons from the implementation of the Framework Convention on the basis of the reasoning presented is not compatible with the Framework Convention.

The Advisory Committee therefore considers that the Danish authorities should examine the application of the Framework Convention to these persons, in consultation with those concerned, notwithstanding and in addition to home rule arrangements. During its visit to Denmark, the delegation of the Committee noted a considerable interest in this matter among communities concerned.

In line with the reasoning developed above and taking into account the level of autonomy enjoyed and/or the nature of the powers exercised by the Home Rule Authorities, it can also not *a priori* be excluded that the Framework Convention could apply in respect of persons of ethnic Danish origin living in the home rule areas.

Also, in line with this reasoning, persons belonging to the German minority but living outside the area of Southern Jutland cannot *a priori* be excluded from the personal scope of protection of the Framework Convention.

Furthermore, the Advisory Committee considers that, given the historic presence of Roma in Denmark, also persons belonging to the Roma community cannot *a priori* be excluded from the personal scope of application of the Framework Convention.

The Advisory Committee is therefore of the opinion that the examination mentioned above should extend to these persons as well.

The Advisory Committee further notes with approval that the Report also provides some information on other groups that the Government does not consider, at this stage, to be covered by the Framework Convention. The Advisory Committee is of the opinion that it would be possible to consider inclusion of persons belonging to these groups in the application of the Framework Convention on an article-by-article basis and is of the opinion that the Danish authorities should consider this issue in consultation with those concerned. The Advisory Committee notes in this context, on the basis of information received from other sources as well as from the Government itself, that a range of measures have been introduced in Danish legislation from which these persons

may benefit, such as the possibility to have extra-curricular teaching of the (non-Danish) mother tongue within the public school system.

### **In respect of Article 3**

The Committee of Ministers *concludes* that the *a priori* exclusion of Greenlanders and Far Oese persons from the implementation of the Framework Convention on the basis of the reasoning presented is not compatible with the Framework Convention. It therefore *recommends* that the Danish authorities should examine the application of the Framework Convention to these persons, in consultation with the persons concerned, notwithstanding and in addition to home rule arrangements.

The Committee of Ministers *concludes* in line with the above and taking into account the level of autonomy enjoyed and/or the nature of the powers exercised by the Home Rule Authorities, that it can also not be *a priori* excluded that the Framework Convention could apply in respect of persons of ethnic Danish origin living in the home rule areas.

Also, the Committee of Ministers *concludes* that persons belonging to the German minority but living outside the area of Southern Jutland cannot *a priori* be excluded from the personal scope of protection of the Framework Convention.

Furthermore, the Committee of Ministers *concludes* that, given the historic presence of Roma in Denmark, also persons belonging to the Roma community cannot be *a priori* excluded from the personal scope of protection of the Framework Convention.

The Committee of Ministers therefore *recommends* that the examination mentioned above should extend to these persons as well.

The Committee of Ministers further *concludes* that it would be possible to consider inclusion of persons belonging to other groups in the application of the Framework Convention on an article-by-article basis and *recommends* that the Danish authorities consider this issue in consultation with those concerned.

## **11. ESTONIA**

The Advisory Committee notes that the instrument of ratification, deposited on 6 January 1997 by Estonia contains the following declaration: “The Republic of Estonia understands the term “national minorities”, which is not defined in the Framework Convention for the Protection of National Minorities, as follows: are considered as “national minority” those citizens of Estonia who reside on the territory of Estonia; maintain longstanding, firm and lasting ties with Estonia; are distinct from Estonians on the basis of their ethnic, cultural, religious or linguistic characteristics; are motivated by a concern to preserve together their cultural traditions, their religion or their language, which constitute the basis of their common identity.”

The Advisory Committee underlines that in the absence of a definition in the Framework Convention itself, the Parties must examine the personal scope of application to be given to the Framework Convention within their country. The position of Estonia is therefore deemed to be the outcome of this examination.



Whereas the Advisory Committee notes on the one hand that Parties have a margin of appreciation in this respect in order to take the specific circumstances prevailing in their country into account, it notes on the other hand that this must be exercised in accordance with general principles of international law and the fundamental principles set out in Article 3. In particular, it stresses that the implementation of the Framework Convention should not be a source of arbitrary or unjustified dis

For this reason the Advisory Committee considers that it is part of its duty to examine the personal scope given to the implementation of the Framework Convention in order to verify that no arbitrary or unjustified distinctions have been made. Furthermore, it considers that it must verify the proper application of the fundamental principles set out in Article 3.

The Advisory Committee considers that, bearing in mind the prevailing situation of minorities in Estonia, the above declaration is restrictive in nature. In particular, the citizenship requirement does not appear suited for the existing situation in Estonia, where a substantial proportion of persons belonging to minorities are persons who arrived in Estonia prior to the re-establishment of independence in 1991 and who do not at present have the citizenship of Estonia. The Advisory Committee therefore welcomes that *de facto* the Government appears to take a considerably more inclusive approach to the protection of national minorities. In this connection, the Advisory Committee notes that in its dialogue with the Government on the implementation of the Framework Convention, the Government agreed to examine also the protection of persons not covered by the said declaration, including non-citizens. Moreover, it appears that, in the domestic legislation, the restrictive definition contained in the declaration is reflected only in rare instances, particularly in the context of cultural autonomy, the latter being an area where the present legislative approach has proved largely ineffective (see related comments under Article 5).

With a view to the foregoing, the Advisory Committee is of the opinion that Estonia should re-examine its approach reflected in the declaration in consultation with those concerned and consider the inclusion of additional persons belonging to minorities, in particular non-citizens, in the application of the Framework Convention.

The Advisory Committee notes that the questionnaire, on the basis of which a census was conducted in Estonia in 2000, contained a compulsory question on individuals' ethnic origin. While appreciating the need to have quality data in this field, the Advisory Committee considers that the right not to be treated as a person belonging to a national minority also extends to census situations and that a mandatory question on one's ethnicity is not compatible with this principle. The Advisory Committee considers it important that Estonia pay increasing attention to this principle when collecting data in the future.

Bearing in mind the foregoing, the Advisory Committee finds it essential that the resulting census data is protected in an appropriate manner and that the ethnicity data is processed, as a rule, in such a manner that data subjects are not identifiable, bearing in mind the principles contained in the Committee of Ministers' Recommendation No. 97 (18) concerning the protection of personal data collected and processed for statistical purposes. In this respect, the Advisory Committee welcomes the measures that have been taken recently to improve the relevant practice of the Estonian Statistics Office.

### **In respect of Article 3**

The Committee of Ministers *concludes* that the declaration contained in the instrument of ratification of Estonia is restrictive in nature. It further *concludes* that it would be possible to

consider the inclusion of persons belonging to additional groups in the application of the Framework Convention. The Committee of Ministers *recommends* that Estonia consider this issue in consultation with those concerned.

The Committee of Ministers *concludes* that the questionnaire on the basis of which a census was conducted in Estonia in 2000 contained a compulsory question on individuals' ethnic origin and *recommends* that Estonia pay increasing attention to the right not to be treated as a person belonging to a national minority in the collection and processing of data.

## 12. FINLAND

The Advisory Committee notes that in its explanatory note to the Act on the Ratification of the Framework Convention, dated 5 September 1997, the Government concludes that it is likely that the question of to whom the Framework Convention should be applied will, ultimately, be determined through the monitoring process. In this connection, the Advisory Committee notes that while Parties have a margin of appreciation in this respect in order to take the specific circumstances prevailing in their country into account, this margin of appreciation must be exercised in accordance with general principles of international law and the fundamental principles set out in Article 3. In particular it stresses that the implementation of the Framework Convention should not be a source of arbitrary or unjustified distinctions in the treatment of persons.

For this reason, the Advisory Committee considers that it is part of its duty to examine the personal scope given to the implementation of the Framework Convention in order to verify that no arbitrary or unjustified distinctions have been made. Furthermore, it considers that it must verify the proper application of the fundamental principles set out in Article 3.

The Report states that the Framework Convention is in practice considered to apply to the following minorities: the Sami, the Roma, the Jews, the Tatars, the so-called "Old Russians" and *de facto* also to the Swedish-speaking Finns.

In this connection, the Government makes a distinction between the so-called "Old Russians", a group it considers to be covered by the Framework Convention, and other Russians, who, in the Government's view, are not covered by the Framework Convention. However, according to the Government, this distinction has no practical consequences whatsoever. Moreover, a number of representatives of both the so-called "Old Russians" and other Russians have expressed reservations about the said distinction. In view of the foregoing, the Advisory Committee is of the opinion that the advisability of maintaining this theoretical distinction should be examined in consultation with those concerned. When considering the matter, the consistency of the Government's approach vis-à-vis various minorities should be ensured.

The Advisory Committee has been informed by representatives of the Swedish Assembly of Finland that they consider the Swedish-speaking Finns not to constitute a national minority for the purposes of the Framework Convention. At the same time, a number of persons belonging to this minority have informed the Advisory Committee - including in the course of the above-mentioned visit to Helsinki on 23 - 24 August 1999 - that they do wish to rely on the protection provided by the Framework Convention. The Government in its Report considers that the Swedish-speaking Finns are *de facto* covered by the Framework Convention. The Advisory Committee concludes that Swedish-speaking Finns may indeed rely on the protection provided by the provisions of the Framework Convention. At the same time, the Advisory Committee stresses the fact that, in accordance with Article 3, paragraph 1, of the Framework Convention, every person concerned may

decide whether or not he/she wishes to come under the protection flowing from the principles of the Framework Convention.

According to the Report, the Finnish-speaking population living in the province of Åland can be considered a "minority-in-a-minority". Taking into account the level of autonomy enjoyed and/or the nature of the powers exercised by the Province of Åland, the Advisory Committee is of the opinion that the Finnish-speaking population there could also be given the possibility to rely on the protection provided by the Framework Convention as far as the issues concerned are within the competence of the Province of Åland. The Advisory Committee is of the opinion that Finland should consider this issue in consultation with those concerned.

The Advisory Committee notes with approval that the Report provides some information also on other groups that the Government does not consider, at this stage, to be covered by the Framework Convention. The Advisory Committee is of the opinion that it would be possible to consider the inclusion of persons belonging to these groups in the application of the Framework Convention on an article-by-article basis, and the Advisory Committee takes the view that Finland should consider this issue in consultation with those concerned.

### **In respect of Article 3**

The Committee of Ministers *concludes* that it would be possible to extend the personal scope of application of the Framework Convention, where appropriate, on an article-by-article basis and *recommends* that Finland consider this issue in consultation with those concerned.

## **13. GEORGIA**

### **Scope of application of the Framework Convention**

The Advisory Committee underlines that, in the absence of a definition in the Framework Convention itself, the Parties must examine the personal scope to be given to the Framework Convention within their country. The position of the Georgian Government is therefore deemed to be the outcome of this examination.

Whereas the Advisory Committee notes on the one hand that Parties have a margin of appreciation in this respect in order to take the specific circumstances prevailing in their country into account, it notes on the other hand that this must be exercised in accordance with general principles of international law and the fundamental principles set out in Article 3. In particular, it stresses that the implementation of the Framework Convention should not be a source of arbitrary or unjustified distinctions.

For this reason the Advisory Committee considers that it is part of its duty to examine the personal scope given to the Framework Convention in order to verify that no arbitrary or unjustified distinctions have been made. Furthermore, it considers that it must verify the proper application of the fundamental principles set out in Article 3.

The Advisory Committee notes, where the personal scope given to the Framework Convention by Georgia is concerned, that ratification thereof on 22 December 2005 was preceded by a major internal debate on the possible definition to be given of the concept of "national minority". It notes in this context that the Resolution of Parliament of 13 October 2005 on the ratification of the Framework Convention contains an interpretation according to which the only groups which may

benefit from the status of “national minority” are those whose members have Georgian citizenship, are distinct from the majority of the population in terms of language, culture and ethnic identity, have lived on Georgian territory for a long period and live “compactly” on Georgian territory.

The Advisory Committee notes that, as specified by the authorities, the aforementioned resolution is merely a domestic policy document, given that no declaration or reservation was made by Georgia to the Council of Europe on ratification of the Framework Convention. Notwithstanding this information, the Advisory Committee notes that, although this Resolution has not been incorporated into any domestic legally-binding text, it does form the basis of the Georgian authorities’ approach to the protection of national minorities. The Advisory Committee points out that the interpretations contained in the resolution could give rise to serious concerns, were they to have practical effects on persons belonging to national minorities.

The Advisory Committee regards as problematic, from the viewpoint of the Framework Convention, that access to the protection of the Convention is granted exclusively to groups living “compactly”, even if this restrictive approach has not been formally codified. It takes note of the existence in Georgia of persons belonging to national minorities who have left their traditional areas of settlement and scattered to other areas, but who share the same ethnic, linguistic and cultural identity as the members of their community of origin. While it is true that certain rights protected by the Framework Convention are exercised in common with others, or their exercise is linked to conditions based on territory, the Advisory Committee takes the view that these persons should not as a result lose their status as persons belonging to a national minority or be excluded from the protection of the Framework Convention.

The authorities are encouraged to take a more open approach to such persons, who should be able to benefit from the protection of the Framework Convention in other fields, such as equality and non-discrimination, freedom of expression, of association, of belief and of religion, participation in social and economic life, and education. The Advisory Committee considers in any case that, if the criterion of “compact” settlement were to be formally used, its meaning would have to be specified and its application limited to those articles of the Framework Convention, the practical application of which has a numerical dimension or a link to a territory.

Furthermore, the Advisory Committee regrets the application by Georgia of the criterion of citizenship for access to the protection of the Framework Convention, and considers that such a step is not in line with the current efforts aimed at developing a more nuanced approach to the use of the citizenship criterion in the protection of national minorities. The Advisory Committee indeed considers that, while citizenship may be a legitimate requirement in fields such as representation in Parliament, general application of this criterion nevertheless remains problematic in relation to the guarantees associated with other important fields covered by the Framework Convention, such as non-discrimination and equality, as well as certain cultural and linguistic rights.

In more general terms, the Advisory Committee encourages the authorities to favour a flexible and open approach to the scope of the Framework Convention, both in respect of practical measures and in the context of current debates and legislative processes in Georgia. It welcomes the openness displayed in this regard by certain representatives of the authorities. The Advisory Committee considers it as essential, in the complex context of Georgia, to avoid formalising exclusions which might prove unjustified, and considers it important to preserve the possibility of other groups, including non-citizens where appropriate, being able to be covered in future by domestic legislation on minorities and being included in the scope of application of the Framework Convention (also see the comments on Articles 5 and 6 below).

The State Report indicates that persons belonging to national minorities represented 16% of the population of Georgia, according to the results of the population census held in 2002 (which covered the whole territory with the exception of Abkhazia and South Ossetia). The Advisory Committee notes that, while these results already bore witness to an appreciable decrease in the number of persons belonging to national minorities, this decrease has subsequently become more marked. This development is particularly worrying for national minorities. According to most of the available sources, this is occurring mainly because of significant emigration, which of course affects the Georgian population as a whole, including the majority, but is regarded by the representatives of minorities as an indicator of the insufficient level of integration of Georgian society. In their view, it is as a result of the difficulties that prevent these persons from effectively participating in the social, economic and political life of the country – the language barrier in particular – as well as the discriminatory attitudes that they face because of their ethnic origin or religion, that they strive to find better conditions in other countries (see in this context the comments on Articles 4, 5, 6, 10 and 15).

### **Collection of ethnic data**

A new population census is to take place in Georgia from 21 to 28 January 2010. Preparatory work is under way, in accordance with the Action plan already drawn up for the period 2006-2011. The Advisory Committee welcomes the attention given by the authorities to this process, which is indeed particularly complex and involves significant human and financial resources. It is important that the results of the census are reliable so as to obtain a useful overview of the composition of the population and the socio-economic situation of the different population categories (also see the comments on Article 4 below).

The Advisory Committee is concerned to note that, according to information supplied by the Department for Statistics, the question on individuals' ethnic affiliation will be compulsory in this new census, which would not be compatible with the principles of Article 3 of the Framework Convention, namely free expression of ethnic affiliation and the requisite optional nature of the answers to questions relating to this affiliation. Furthermore, the Advisory Committee encourages the authorities in due course to inform the population and raise public awareness about the importance, implications and methodology of the census, and to train census enumerators in such a way as to ensure full compliance with the said principles. It is important, when the methods and questionnaires to be used for the collection of ethnic data are drawn up, for the representatives of national minorities to be consulted. The inclusion among the census enumerators of persons belonging to national minorities and the making available of questionnaires in minority languages could also help to obtain reliable statistics about the ethnic composition of the population.

The Advisory Committee notes in this context that, according to the interpretation given by certain representatives of the authorities, in pursuance of Georgian legislation (the Law on the population census) it is compulsory in Georgia to reply to the question on individuals' ethnic origin. Moreover, the 2002 census forms contained a closed list of only six "nationalities": Georgian, Abkhaz, Ossetian, Azeri, Russian or Armenian. Additionally, there was an opportunity for the persons interviewed to indicate whether their mother tongue was, or was not, that of the nationality with which they had identified themselves.

According to information from the Department for Statistics, when the persons covered by the census declared a nationality other than the six shown on the form, the census enumerators processed the information supplied on the basis of a larger list containing more than a hundred nationality options, but without the person concerned being able to ensure that this information

processing corresponded to the choice that he or she had expressed. The Advisory Committee takes the view that the obligation to answer the ethnic question, on the one hand, and such processing of the replies received, on the other, raise problems of compatibility with Article 3 of the Framework Convention. It strongly encourages the authorities to ensure, when the next population census is carried out, that the right to free expression of ethnic or national affiliation is fully respected, and that the question concerning such ethnic or national affiliation is optional.

The Advisory Committee takes note of information, obtained from official sources, according to which applicants for posts in the police force supply information about their ethnic origin, which is subsequently retained by the Ministry of the Interior. The Advisory Committee is aware that such information may prove useful when members of the police are assigned to the Georgian territory, and may facilitate communication with the different ethnic communities. At the same time, if the collection and retention of such data were not accompanied by sufficient safeguards as to the protection of personal data, this practice could be incompatible with Article 3 of the Framework Convention. The Advisory Committee therefore wishes to remind the authorities of the importance, when information about individuals' ethnic origin is collected, processed and disseminated, of compliance with the safeguards which appear, *inter alia*, in Recommendation (97) 18 of the Committee of Ministers concerning the protection of personal data collected and processed for statistical purposes.

### **In respect of Article 3**

The Advisory Committee finds that the Georgian authorities apparently favour a restricted approach to the personal scope of application of the Framework Convention, particularly in that access to protection under the Convention is granted only to “compactly” settled groups and to persons with Georgian nationality, even though this approach is not strictly codified. The Advisory Committee considers that the authorities should favour a flexible and open approach to the scope of application of the Framework Convention, both where practical measures are concerned and in the context of the current legislative processes in Georgia.

The Advisory Committee finds that at the last census in 2002, the information-gathering methods did not permit full compliance with the right to free self-identification with a national minority and that the population census planned for 2010 might include a compulsory question on individuals' ethnic affiliation. The Advisory Committee considers that the authorities should ensure, in the next population census, that the right to self-identification, and the optional nature of the answer to a question on ethnic affiliation, are fully respected.

## **14. GERMANY**

The Advisory Committee notes that upon signing the Framework Convention Germany made the following declaration and subsequently renewed it in the instrument of ratification: “The Framework Convention contains no definition of the notion of national minorities. It is therefore up to the individual Contracting Parties to determine the groups to which it shall apply after ratification. National Minorities in the Federal Republic of Germany are the Danes of German citizenship and the members of the Sorbian people with German citizenship. The Framework Convention will also be applied to members of the ethnic groups traditionally resident in Germany, the Frisians of German citizenship and the Sinti and Roma of German citizenship”.

The Advisory Committee underlines that in the absence of a definition in the Framework Convention itself, the Parties must examine the personal scope of application to be given to the Framework Convention within their country. The position of the German Government is therefore deemed to be the outcome of this examination.

Whereas the Advisory Committee notes on the one hand that Parties have a margin of appreciation in this respect in order to take the specific circumstances prevailing in their country into account, it notes on the other hand that this must be exercised in accordance with general principles of international law and the fundamental principles set out in Article 3. In particular, it stresses that the implementation of the Framework Convention should not be a source of arbitrary or unjustified distinctions.

For this reason the Advisory Committee considers that it is part of its duty to examine the personal scope given to the implementation of the Framework Convention in order to verify that no arbitrary or unjustified distinctions have been made. Furthermore, it considers that it must verify the proper application of the fundamental principles set out in Article 3.

The German authorities consider that members of a national minority who live outside the minority's traditional settlement area are also entitled in principle to protection under the Framework Convention. The Advisory Committee agrees with and welcomes this approach.

Apart from the groups identified by the German authorities as being covered by the Framework Convention, in their reply to the questionnaire and in the course of interviews with the Advisory Committee, the German authorities reported the existence of other groups that they do not consider, at this stage, to be covered by the Framework Convention. In this context they referred in particular to the large number of groups living in Germany and indicated that "about 7.49 million persons are non-citizens". In particular, the Advisory Committee notes that, according to official statistics, several groups of non-citizens made up of hundreds of thousands of people were residing in Germany on 31 December 1999. While noting that there was little knowledge of the Framework Convention among groups that are not considered to be covered by this instrument, the Advisory Committee received no claims by any other group, including citizens and non-citizens, to be considered a national minority under the Framework Convention.

The Advisory Committee is of the opinion that it would be possible to consider the inclusion of persons belonging to other groups, including citizens and non-citizens as appropriate, in the application of the Framework Convention on an article-by-article basis. It takes the view that the German authorities should consider this issue in consultation with those concerned at some appropriate time in the future. This has particular significance in the context of the citizenship legislation (see related comments under Article 6, in paragraph 40 below).

The Advisory Committee notes that in principle the *Länder* have stopped mentioning ethnic characteristics in criminal investigation procedures and that Bavarian authorities have very recently decided to replace the personal description form they have been using until now. The Bavarian police have used a personal description form of the suspect containing such details as "*Ostpreussisch*" (East Prussian), "*Westpreussisch*" (West Prussian) or "*Negroid*" (negroid). Such a description form also included physical qualifications such as "full breasted". Another heading read "*Sinti/Rom*" and the police were trained to fill in these details based solely on the suspect's physical appearance, without the suspect having a say in the matter and without his or her consent being requested. While all the other *Länder* had stopped using this form, the Bavarian authorities took the view, until recently, that crime prevention constraints obliged them to maintain

“*Sinti/Rom*” in their data base as a classification for those charged with a criminal offence. The Advisory Committee notes, however, that in one respect, the *Land* of Bavaria did cease, in 1998, its systematic regional collection of data concerning Roma/Sinti, namely in relation to the movements of vagrants .

The Federal Government points out that criminal data recording techniques differ from one *Land* to another because crime prevention is the responsibility of the *Länder*.

It is to be noted that under Article 3 of the Framework Convention every person belonging to a national minority has the right freely to choose to be treated or not to be treated as such, and no disadvantage must result from that choice. The Advisory Committee is deeply concerned by the fact that police practice in Bavaria regarding the use of a personal description form, has permitted any suspect questioned by the police to be classified as belonging to an ethnic group without the person’s permission and without them even being informed, which does not guarantee the above-mentioned freedom of choice. The Advisory Committee notes that several representatives of Roma/Sinti in Germany clearly opposed this police practice in Bavaria and the Advisory Committee considers that such a practice is not compatible with Article 3 of the Framework Convention. Such a practice raised questions from the point of discrimination (see related comments under Article 4) as it seems to have mainly focussed on Roma/Sinti. The Advisory Committee therefore notes with satisfaction the information made available to it by the Federal Ministry of Interior after its visit to Germany, according to which the Bavarian authorities very recently decided to completely revise the personal description form at issue, including by removing the qualification “*Sinti/Rom*” from it, and to make the revised form available to Bavarian police as soon as possible. More generally, the Advisory Committee considers that the Federal and *Länder* authorities should review the *Länders’* various methods of collecting criminal data of an ethnic nature in order to ensure that they are fully compliant with the principles laid down in Article 3 of the Framework Convention.

### **In respect of Article 3**

The Advisory Committee *finds* that it would be possible to consider the inclusion of persons belonging to other groups in the scope of the Framework Convention on an article-by-article basis and *considers* that Germany should consider the question in consultation with those concerned.

The Advisory Committee *finds* that there is reason for concern about the fact that police practice in Bavaria has permitted, until a recent decision, any suspect questioned by the police to be classified as belonging to an ethnic group without the person’s permission and without this person even being informed, and that such a practice is not compatible with Article 3 of the Framework Convention. In general it *considers* that the Federal and *Länder* authorities should review the various methods of collecting criminal data of an ethnic nature in order to ensure that they are fully compliant with the principles laid down in Article 3 of the Framework Convention.

## **15. HUNGARY**

The Advisory Committee notes that the right to choose freely to be treated or not to be treated as belonging to a national minority is safeguarded by Hungarian law. It notes that the law allows for dual or multi-affiliation. In this context it further notes that no registration of ethnic or national belonging of individuals takes place. The Advisory Committee will return to questions related to the latter issue under Articles 4 and 15. In the context of the census, on condition that the principles identified in Committee of Ministers Recommendation (97) 18 to Member States concerning the protection of personal data collected and processed for statistical purposes are respected, persons



belonging to national minorities should be encouraged to make use of the possibility to identify themselves.

The Advisory Committee underlines that in the absence of a definition in the Framework Convention itself, the parties must examine the personal scope of application to be given to this instrument within their country. The position of the Hungarian Government is therefore deemed to be the outcome of this examination.

Whereas the Advisory Committee notes on one hand that parties have a margin of appreciation in this respect in order to take the specific circumstances prevailing in their country into account, it notes on the other hand that this margin of appreciation must be exercised in accordance with general principles of international law and the fundamental principles set out in Article 3. In particular, it stresses that the implementation of the Framework Convention should not be a source of arbitrary or unjustified distinctions.

For this reason the Advisory Committee considers that it is part of its duty to examine the personal scope given to the implementation of the Framework Convention in order to ensure that no arbitrary or unjustified distinctions have been made. Furthermore, it considers that it must verify the proper application of the fundamental principles set out in Article 3.

The Advisory Committee welcomes that the Report refers to the existence of other groups that the Government does not consider, at this stage, to be covered by the Framework Convention. The Advisory Committee is of the opinion that it would be possible to consider inclusion of persons belonging to these groups in the application of the Framework Convention on an article-by-article basis and takes the view that the Hungarian authorities should consider this issue in consultation with those concerned.

### **In respect of Article 3**

The Committee of Ministers *concludes* that it would be possible to consider inclusion of persons belonging to other groups in the application of the Framework Convention on an article-by-article basis and *recommends* that the Hungarian authorities consider this issue in consultation with those concerned.

## **16. IRELAND**

The Advisory Committee underlines that in the absence of a definition in the Framework Convention itself, the Parties must examine the personal scope of application to be given to the Framework Convention within their country. The position of the Irish Government is therefore deemed to be the outcome of this examination.

Whereas the Advisory Committee notes on the one hand that Parties have a margin of appreciation in this respect in order to take the specific circumstances prevailing in their country into account, it notes on the other hand that this must be exercised in accordance with general principles of international law and the fundamental principles set out in Article 3. In particular, it stresses that the implementation of the Framework Convention should not be a source of arbitrary or unjustified distinctions.

For this reason the Advisory Committee considers that it is part of its duty to examine the personal scope given to the implementation of the Framework Convention in order to verify that no arbitrary or unjustified distinctions have been made. Furthermore, it considers that it must verify the proper application of the fundamental principles set out in Article 3.

The Advisory Committee notes that the term national minority is not legally defined in Irish law. The Advisory Committee notes however that the Government has recognised the special position of Ireland's Traveller community, with their long shared history, cultural values, language, customs and traditions, and that Travellers are included as one of the nine categories in the equality legislation in Ireland.

The Advisory Committee notes the statement in the State Report that the definition of what constitutes a national minority is dynamic and that the number and composition of national minorities in a State may change and develop over time, being subject to the individual's right to consider him or herself as a member of a national minority. The Advisory Committee considers this to be pertinent taking into account political and other developments linked to the implementation of the Belfast (Good Friday) Agreement (1998).

The Advisory Committee welcomes the statement made in the State Report that groups, which do not constitute national minorities, may nevertheless benefit from the protection of the Framework Convention on an article-by-article basis. The Advisory Committee also appreciates the fact that Ireland has provided information on several of these other groups in the State Report without prejudice as to whether or not they constitute a national minority. This is in line with the approach adopted by the Advisory Committee in its first monitoring cycle. In this respect the Advisory Committee notes in particular the information provided in the State Report on persons belonging to the Irish speaking community (notwithstanding that Irish is the first official language) including those living in the *Gaeltacht* regions, and information given, or mention made, of persons belonging to the Protestant communities, the Jewish community, and also non-citizens, including the Roma and others. The Advisory Committee also notes the reference to Ulster-Scots in the State Report.

The Advisory Committee is therefore of the opinion that it would be possible to examine, where appropriate, the inclusion of persons belonging to other groups in the application of the Framework Convention on an article-by-article basis, and that the Irish authorities should, as appropriate, consider this issue in consultation with those concerned.

### **In respect of Article 3**

The Advisory Committee *finds* that it would be possible to examine, where appropriate, the inclusion of persons belonging to other groups in the application of the Framework Convention on an article-by-article basis and *considers* that Ireland should examine this issue in consultation with those concerned.

## **17. ITALY**

The Advisory Committee notes that Article 6 of the Italian Constitution enjoins the Republic to protect, by means of special provisions, "linguistic minorities". It further notes that Law No. 482 of 15 December 1999, which came into force in January 2000, makes provisions on the protection of the "historical linguistic minorities" and applies to the populations speaking Albanian, German, Catalan, Croatian, Greek, French, Franco-Provençal, Friulian, Ladin, Occitan, Sardinian and

Slovenian. This law, whose implementing regulations were finally passed in April 2001, provides a general legislative framework applying to all the aforementioned minorities. It allows various protective measures to be activated in specific territorial areas. These will need to be demarcated beforehand according to a complex procedure which requires a decision by the provincial authorities but can be set in motion by the population of the areas concerned.

In its initial State Report and its two further reports, the Italian Government supplied information on all minorities protected by Law No. 482 of 15 December 1999, deeming them covered by the Framework Convention. Furthermore it has indicated that the Ladins and the Walsers are a minority-in-minority. However, there was no detailed information on the Roma minority although the initial State Report mentions its presence as a "minority with no connection with any territory" and gives an estimate of its numbers.

The Advisory Committee underlines that in the absence of a definition in the Framework Convention itself, the Parties must examine the personal scope of application to be given to the Framework Convention within their country. The position of the Italian Government is therefore deemed to be the outcome of this examination.

Whereas the Advisory Committee notes on the one hand that Parties have a margin of appreciation in this respect in order to take the specific circumstances prevailing in their country into account, it notes on the other hand that this must be exercised in accordance with general principles of international law and the fundamental principles set out in Article 3. In particular, it stresses that the implementation of the Framework Convention should not be a source of arbitrary or unjustified distinctions.

For this reason, the Advisory Committee considers that it is part of its duty to examine the personal scope given to the implementation of the Framework Convention in order to verify that no arbitrary or unjustified distinctions have been made. Furthermore, it considers that it must verify the proper application of the fundamental principles set out in Article 3.

The Advisory Committee agrees with the Italian Government that the Framework Convention must be applied to the historical linguistic minorities protected by Law No. 482 of 15 December 1999, and notes the Government's opinion that the Framework Convention could be invoked by the Italian courts when delivering rulings. Next, the Committee observes that although the initial draft of Law No. 482 on protection of historical linguistic minorities included the Roma minority, it was later excluded at the parliamentary deliberation stage chiefly on the ground of this group's having no association with a given territory. The Advisory Committee is of the opinion that, especially in view of their attested historical presence in Italy, the Roma should also be entitled to the protection afforded by the Framework Convention. The Committee therefore welcomes the clarification given when it visited Rome by the representatives of the Italian Government to the effect that the Roma, while not coming under Law No. 482 of 15 December 1999, are nonetheless protected by the Framework Convention. The Advisory Committee notes, however, that at present there is no legal instrument at national level granting the Roma comprehensive protection. The many legislative provisions concerning the Roma which have been adopted at regional level may in fact not suffice; often confined to promoting certain cultural aspects or to the pursuit of social aims, they are very disparate and significantly lack coherence. The Advisory Committee will discuss in more detail, in its comments on each article, the areas where protection of Roma could be improved.

The Advisory Committee notes that the Italian authorities have provided only limited information on the existence of other linguistic or ethnic groups which the Government does not at present regard as being protected by the Framework Convention. The Advisory Committee believes it

would be possible to consider the inclusion of persons belonging to these groups in the application of the Framework Convention on an article-by-article basis, and is of the opinion that the Italian authorities should address this issue in consultation with those concerned.

The Advisory Committee notes that a series of measures (“the package”) has been taken in favour of the German-speaking minority in Trentino-Alto Adige in order to give effect to the Gruber-de Gasperi agreement signed in 1946 by Italy and Austria. These measures include Presidential Decree No. 752 of 26 July 1976, Article 18 of which lays down regulations governing the general census of the population in the province of Bolzano, including the individual declaration of linguistic affiliation. The Advisory Committee acknowledges that the measures in “the package” have led to a commendable level of protection for the German-speaking minority with the result that on 17 June 1992 the representatives of Italy and Austria informed the United Nations of the end of their dispute on this issue. However it is important that the measures in “the package” also allow for developments over time and not be rigidly set in time. The Advisory Committee considers that the individual declaration of linguistic affiliation, in its current form, gives rise to deep concern from the standpoint of Article 3 of the Framework Convention.

At each nationwide general population census, the Ladin and German-speaking communities in Bolzano province are also covered by a statistical census by the State authorities, unlike Italy's other national minorities. The statistical census of the Ladin, German-speaking and Italian communities in Bolzano province is used in particular to ensure equitable distribution of political mandates and public sector posts between these three communities. When completing the general census forms, residents of Bolzano province must also fill in an individual declaration of linguistic affiliation. This declaration, which cannot be made anonymously, is retained by the district courts until the next census.

The Advisory Committee stresses that the individual declaration of linguistic affiliation is compulsory and that there is no sufficient guarantee of its confidentiality. As it remains valid following the census, each individual's choice is effectively firmly made and cannot be changed for a period of 10 years. Failure to declare one's linguistic affiliation has clear disadvantages since, in the province of Bolzano, all public service posts – at national, regional, provincial and municipal levels – are allocated among the three linguistic communities in proportion to the size of each community. Accordingly, only those who have made their declaration of linguistic affiliation can occupy a public service post reserved for their linguistic group. Refusal to declare one's linguistic affiliation also means that the person concerned is unable to exercise certain political rights. One example is the right to stand as a candidate in municipal, provincial and regional elections, since a candidate's linguistic affiliation is checked so as to guarantee the strict allocation of political offices among the three communities. The system of individual declaration of linguistic affiliation also poses problems on account of the limited freedom of choice it offers. Admittedly, the declaration has a category labelled “other” in addition to the Ladin, German-speaking and Italian-speaking groups. However, anyone choosing “other” must also be affiliated to one of the three aforementioned groups in order to be eligible for a public service post or to stand as a candidate in an election.

In view of the foregoing, the Advisory Committee is of the opinion that the current system of individual declaration of linguistic affiliation in the province of Bolzano does not adequately safeguard the principle of free affiliation and protection of ethno-linguistic data. It is of the opinion that the authorities should review this matter to make sure that the methods used to determine linguistic affiliation are fully in keeping with the right of every person to choose to be treated or not to be treated as someone belonging to a minority, also bearing in mind 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 3**

The Committee of Ministers *concludes* that it would be possible to consider the inclusion of persons belonging to other groups in the scope of the Framework Convention on an article-by-article basis and *recommends* that Italy consider the question in consultation with those concerned.

The Committee of Ministers *concludes* that the current system of individual declaration of linguistic affiliation applied in Bolzano province does not adequately safeguard the principle of free affiliation and protection of ethno-linguistic data. It *recommends* that the authorities review this matter to identify methods fully in keeping with the right of every person to choose to be treated or not to be treated as someone belonging to a minority.

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

### **Article 3**

#### **Scope of application of the Framework Convention**

The term “national minority” *per se* is not regularly used in the legislation or practice of Kosovo, as the preferred term appears to be “communities”. At the same time, it is widely agreed that the non-Albanian communities of Kosovo are covered by the Framework Convention and this position is reflected also in the UNMIK Report. The Advisory Committee welcomes this pragmatic approach, and agrees that the applicability of the Framework Convention does not necessarily mean that the term “national minority” should be used in the relevant legislation, policies or practices to designate the groups concerned.

There are, however, various disagreements and inconsistencies as regards the endorsement of the specific identity of certain communities. This applies in particular to the Egyptian community, which is often treated by the authorities as part of the Roma and/or Ashkali community. Similarly, the Ashkali are often treated together with the Roma, which does not reflect the self-identification practices amongst the Ashkali. Representatives of the international community often refer to the aforementioned groups together as “RAE communities”. While understanding that this term has been devised merely for practical reasons, to facilitate the task of referencing, the Advisory Committee considers that such a designation should be avoided as it may be perceived as a sign of lack of acceptance of the specific identities of the groups concerned.

#### **Population and housing census and data collection**

The Advisory Committee considers that one of the key initiatives related to the implementation of the Framework Convention is the planned population and housing census. A test census was organised in selected municipalities between 31 October and 15 November 2005, with the understanding that the full census would be carried out in 2006.

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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.

The Advisory Committee agrees with the need to carry out a census in Kosovo and to improve statistics also as regards the ethnic composition of the population. The existing statistical data are of poor quality. The results of the census of 1991 were incomplete already at the time of their publication, due to limited participation in the census, and since then the situation in Kosovo, including as regards the ethnic composition of the population, has of course undergone drastic changes. The lack of reliable data makes it difficult to develop and implement minority policies, programmes and legislation. Such data are necessary, for example, in order to design and carry out effective and appropriate measures to ensure the effective participation of persons belonging to national minorities in public bodies or to ensure the proper allocation of support for minority languages and cultures in education and other fields. Improved statistical information is also a prerequisite for the effective and objective implementation of the envisaged law on languages, which in its current form contains numerical thresholds for the applicability of many of its key provisions.

The Advisory Committee welcomes the fact that the authorities responsible for the preparation of the population and housing census are aware of the need to take into account certain key principles contained in Article 3 of the Framework Convention, including the right to be treated or not to be treated as a person belonging to a national minority, a right which is also guaranteed in the Constitutional Framework. For example, while the Law on the Kosovo Population and Housing Census, adopted by the Assembly of Kosovo and promulgated by the SRSB on 13 December 2004, is regrettably ambiguous on the subject, the census forms designed prior to the test census, as well as the enumerators' manual issued on 31 October 2005, clearly state that individuals do not have an obligation to reply to the questions as regards their nationality/ethnicity or to the question on their religious affiliation.

There are, however, risks associated with the organisation of a census in the present circumstances in Kosovo. Aside from the capacity problems detected in the Statistics Office of Kosovo (SOK), which is responsible for the gathering, processing and distribution of statistical data, and shortcomings in the crucial guarantees concerning data protection, the census process will face serious legitimacy problems if it does not involve the participation of all communities of Kosovo, including the Serbs, Roma and other minority communities. At present, there are disagreements on certain key aspects of the process, notably as to whether the internally displaced persons (IDPs) and others who have resided outside Kosovo for more than 12 months should be included in the census process. The Advisory Committee considers that this issue merits careful consideration and that the views of representatives of minority communities should be taken into account in this context. While conscious of the various technical, methodological and other problems involved, the Advisory Committee considers that the authorities should seek ways to include in the process of establishing more reliable statistics also those displaced persons who express a desire to return.

The Advisory Committee is of the opinion that conducting a census without clear prospects for a wide participation rate within all communities and support also amongst minority communities could have negative implications not only in terms of the quality of the resulting statistics but also as regards the implementation of various principles of the Framework Convention. It appears that such confidence in and support for the process need to be strengthened further, as suggested by the fact that the plans to carry out the test census of October – November 2005 also in the municipality of Leposavić/Leposaviq, with a majority Serb population, could not be implemented.

In the light of the foregoing, the Advisory Committee considers that more time is probably needed for the preparation of the full census than what is currently envisaged by the authorities, and it notes that postponement of the census was one of the recommendations issued by the experts of the

Council of Europe, European Commission and the United Nations, who carried out an international monitoring mission on the census in Kosovo on 17-20 October 2005.

The Advisory Committee notes that, in Kosovo, data on individuals' community affiliation are collected also in various other contexts, ranging from education to employment, including at the municipal level. While agreeing that there is a need to obtain quality data in these fields, the Advisory Committee emphasises that the collection of data on individuals' affiliation with a particular minority community needs to be coupled with adequate legal safeguards, including as regards the protection of personal data. As the importance of data protection has not yet received adequate attention in Kosovo, the Advisory Committee would like to underline the principles identified in the Committee of Ministers' Recommendation (97) 18 concerning the protection of personal data collected and processed for statistical purposes. It is also important to ensure that the right not to be treated as a person belonging to a national minority is protected and that the persons concerned are consistently informed that the provision of data on one's affiliation with a community is voluntary, in accordance with Chapter 4 of the Constitutional Framework.

## 19. LATVIA

### **Personal scope of application of the Framework Convention. “Non-citizens” access to the protection afforded by the Framework Convention**

The Advisory Committee underlines that, in the absence of a definition in the Framework Convention itself, the Parties must examine the personal scope of application to be given to the Framework Convention within their country. The position of the Government of Latvia is deemed to be the outcome of such an examination.

Whereas the Advisory Committee notes, on the one hand that Parties have a margin of appreciation in this respect in order to take the specific circumstances prevailing in their country into account, it concludes, on the other hand, that this must be exercised in accordance with general principles of international law and the fundamental principles set out in Article 3. In particular, it stresses that the implementation of the Framework Convention should not be a source of arbitrary or unjustified distinctions.

For this reason the Advisory Committee considers that it is part of its duty to examine the personal scope given to the implementation of the Framework Convention in order to verify that no arbitrary or unjustified distinctions have been made. Furthermore, it considers that it must verify the proper application of the fundamental principles set out in Article 3.

The Advisory Committee notes that, upon ratifying the Framework Convention on 26 May 2005, Latvia stated, in a Declaration concerning the personal scope of application it intended to give the Convention, that the "notion 'national minorities', which has not been defined in the Framework Convention for the Protection of National Minorities, shall, in the meaning of the Framework Convention, apply to citizens of Latvia who differ from Latvians in terms of their culture, religion or language, who have traditionally lived in Latvia for generations and consider themselves to belong to the State and society of Latvia, who wish to preserve and develop their culture, religion or language. Persons who are not citizens of Latvia or another State but who permanently and legally reside in the Republic of Latvia, who do not belong to a national minority within the meaning of the Framework Convention for the Protection of National Minorities as defined in this Declaration, but who identify themselves with a national minority that meets the definition contained in this

Declaration, shall enjoy the rights prescribed in the Framework Convention, unless specific exceptions are prescribed by law."



The Advisory Committee welcomes the fact that Latvia has explicitly opted for a flexible approach to the personal scope of application of the Framework Convention and notes that this scope includes both citizens of Latvia and “non-citizens” satisfying the conditions laid down in the previously cited Declaration. It is important to underline that such an approach is in line with the spirit of the Framework Convention. The principle underlying this approach is confirmed, in national law, by Article 2 of the "Law on the status of those former USSR citizens who are not citizens of Latvia or any other state" (1995, subsequently amended in 2000), which provides, *inter alia*, that “non-citizens” shall be entitled to “preserve their native language and culture, within the limits of national cultural autonomy and traditions, provided that this is not in violation of the laws of the Republic of Latvia.”

The Advisory Committee regrets that the above-mentioned Declaration refers to specific exceptions prescribed by law. It notes that the exceptions resulting from national law have the effect of restricting “non-citizens” access to the rights enjoyed by citizens having the same ethnic affiliation and, thereby, create two categories of persons, afforded different degrees of protection, within the same ethnic group (in this connection see the observations in respect of Article 4 below). Since these exceptions affect a very large number of persons and cover key-sectors such as participation in public life and access to jobs and professions in the civil service, the Advisory Committee cannot but encourage the authorities to interpret the final phrase of the previously cited Declaration in accordance with the spirit of the Framework Convention. This would also be consistent with the current efforts, at European level, to develop a more nuanced approach to the application of the citizenship criterion in the protection of national minorities, in particular in the specific context resulting from the dissolution of a former larger multi-ethnic State.

The Advisory Committee also considers that relevant national legislation that may constitute the basis for such exceptions should be interpreted and applied so as not to entail any disproportionate restrictions, in respect of “non-citizens”, of the protection offered by the Framework Convention.

As to the real extent of the rights to which “non-citizens” of Latvia are entitled under the terms of the above-mentioned Declaration, a more detailed examination of the effects of this Declaration, in the light of the various provisions of the Framework Convention, is necessary. The Advisory Committee refers to its observations relating to the different articles, as set out below.

In addition to Article 114 of the Latvian Constitution, the domestic legal framework for the protection of national minorities in Latvia has its basis in the "Law on the unrestricted development and right to cultural autonomy of Latvia's nationalities and ethnic groups", which dates from March 1991 (hereinafter the law on national minorities). The State Language Law (1999), the Citizenship Law (1995) and the "Law on the status of those former USSR citizens who are not citizens of Latvia or any other state" (1995) are also of particular importance to the protection of persons belonging to national minorities.

According to official data, numerous national minorities currently live in Latvia, including four groups present in greater numbers - the Russians, Belarusians, Ukrainians and Poles - and other smaller groups: the Lithuanians, Jews, Roma, Germans, Estonians, etc. It should be pointed out that Latvia recognises the existence of numerous ethnic groups, including more recently settled groups such as the Tatars and the Armenians. In addition, associations of persons of African or Asian origin receive funds from the state budget and, although these persons are not recognised as national minorities, participate in events and consultation processes intended for the national minorities. The Advisory Committee welcomes this open approach, which shows that the Declaration on the

personal scope of application of the Framework Convention is interpreted in a flexible way, and encourages the authorities to pursue it in future.

At the same time, it can be noted that there are other groups in Latvia which are not deemed to be protected by the Framework Convention, such as the Latgalians (inhabitants of the Latgale region). This group's language, both spoken and written, is protected under Latvian law as a historical variant of Latvian (Article 3.4 of the State Language Law) and receives some state support. In view of the uncertainty as to whether these persons consider themselves different from the majority population in terms of their ethnic, cultural or religious identity, the authorities are encouraged to initiate consultations with them concerning the protection afforded by the Framework Convention. Similarly, the Advisory Committee takes note of the specific protection enjoyed in Latvia, as an indigenous people, by the Livonian/Liv group. No particular interest in the protection afforded by the Framework Convention has been expressed, during their dialogue with the Advisory Committee, by this group's representatives.

### **Collection of ethnic data**

A new census will be carried out in Latvia from 1 March to 31 May 2011, and the preparations are currently well underway. The competent authorities have already consulted various central and local authorities, scientific establishments and non-governmental organisations about the indicators to be obtained through this census.

In this connection, the Advisory Committee wishes to underline the importance of respect for the principles enshrined in Article 3 of the Framework Convention, namely free expression of ethnic affiliation and the optional nature of questions relating to such affiliation. Also, the authorities should take all the necessary measures to ensure timely public information and awareness-raising regarding the importance of the census, the issues at stake and the methodology used, as well as to train the census-takers so as to guarantee full respect for the above principles. It is essential to consult national minorities' representatives when selecting the methods and questionnaires to be used in collecting data relating to ethnicity. The inclusion of persons belonging to national minorities among the census-takers and the availability of census-forms in minority languages could also contribute to the reliability of the statistics obtained with regard to the ethnic composition of the population.

In the light of the above-mentioned principles set out in Article 3 of the Framework Convention, the Advisory Committee finds that the obligation, under Article 10 of the Law on the Population Register (1998), to record individuals' ethnic origin in the register, is not compatible with Article 3 of the Framework Convention. It notes in addition that, as the Register only provides a pre-established list of "nationalities" the persons concerned are not entirely free to indicate the ethnic origin of their choice. It should however be noted that the list includes the categories of 'undetermined' and 'unknown' and that this leaves a possibility for the individuals concerned not to choose one of entries available. The Advisory Committee also notes that each person's ethnic origin, which is, as a rule, determined by that of their parents, can be modified only once, in that the person concerned may choose either the other parent's ethnic origin or that of their grandparents, but solely on production of documentary evidence thereof. In the Advisory Committee's view, this situation raises issues of compatibility with Article 3 of the Framework Convention and requires adequate consideration by the authorities. At the same time, the Advisory Committee emphasizes the importance, during the collection, processing and distribution of information on individuals' ethnic origins, of upholding the guarantees laid down, inter alia, in the Committee of Ministers' Recommendation No. R (97) 18 concerning the protection of personal data collected and processed for statistical purposes.

The Advisory Committee is pleased to note that it is no longer compulsory for passports to indicate the holder's ethnic origin, which is mentioned only where the holder so requests. The Law on Personal Identification Documents (adopted in May 2002) indeed provides that individuals' ethnic origin may be entered in their passports at their request. According to official statistics, ethnic origin was entered in 85% of the passports issued to Latvian citizens between 2002 and 2007, and in 70% of passports issued to "non-citizens" at the request of the persons concerned.

The Advisory Committee nonetheless notes that the sole choice open to the persons concerned is whether to have their ethnic origin entered in their passport or not, since the ethnic origin will be that recorded in the population register. The Advisory Committee is concerned by this practice, which is not compatible with the principle of free self-identification, as ensuing from Article 3 of the Framework Convention and the Latvian law on national minorities. The Advisory Committee considers that the latter principle must be observed whatever the occasion or the circumstances of expression of an individual's ethnic affiliation are. It encourages the authorities to verify the legislation and the practice in question and take the necessary measures to bring them into line with this principle of key importance for the protection of national minorities (see also paragraph 28).

### **In respect of Article 3**

The Advisory Committee finds that Latvia has opted for a flexible approach of the personal scope of application of the Framework Convention, which includes also "non-citizens" who identify themselves with a national minority. In the light of the Declaration submitted by Latvia upon ratification of the Framework Convention, it considers that the relevant national legislation should be interpreted and applied so as not to entail any disproportionate restrictions of the protection offered by the Framework Convention in respect of "non-citizens".

The Advisory Committee finds the obligation, under Latvian legislation, to record individuals' ethnic origin in the population register particularly problematic from the perspective of the principle of self-identification. The Advisory Committee considers that the authorities should take the necessary measures to bring the legislation in question and the corresponding practice in line with this principle. The Advisory Committee finds it positive that it is no longer compulsory to state the ethnic origin of persons in passports.

## **20. LIECHTENSTEIN**

The Advisory Committee stresses that in the absence of a definition in the Framework Convention itself, the Parties must examine the personal scope of application to be given to the Framework Convention within their country. The position of the Government of Liechtenstein is therefore deemed to be the outcome of this examination.

Whereas the Advisory Committee notes on the one hand that Parties have a margin of appreciation in this respect in order to take the specific circumstances prevailing in their country into account, it notes on the other hand that this margin of appreciation must be exercised in accordance with general principles of international law and the fundamental principles set out in Article 3. In particular it stresses that the implementation of the Framework Convention should not be a source of arbitrary or unjustified distinctions.

For this reason the Advisory Committee considers that it is part of its duty to examine the personal scope given to the implementation of the Framework Convention in order to verify that no arbitrary or unjustified distinctions have been made.

The Advisory Committee notes with approval that the Government's written reply dated 11 May 2000 provides some information on other groups that the Government does not consider, at this stage, to be covered by the Framework Convention. The Advisory Committee is of the opinion that it would be possible to consider inclusion of persons belonging to these groups in the application of the Framework Convention on an article-by-article basis and it is of the opinion that the authorities of Liechtenstein should consider this issue in consultation with the persons concerned.

### **In respect of Article 3**

The Committee of Ministers *concludes* that, concerning persons belonging to an ethnic, linguistic or religious group other than the dominant one, it would be possible to consider inclusion in the application of the Framework Convention on an article-by-article basis. It *recommends* that the authorities of Liechtenstein consider this issue in consultation with the persons concerned.

## **21. LITHUANIA**

The Advisory Committee underlines that in the absence of a definition in the Framework Convention itself, the Parties must examine the personal scope of application to be given to the Framework Convention within their country. The position of the Lithuanian Government is therefore deemed to be the outcome of this examination.

Whereas the Advisory Committee notes on the one hand that Parties have a margin of appreciation in this respect in order to take the specific circumstances prevailing in their country into account, it notes on the other hand that this must be exercised in accordance with general principles of international law and the fundamental principles set out in Article 3. In particular, it stresses that the implementation of the Framework Convention should not be a source of arbitrary or unjustified distinctions.

For this reason the Advisory Committee considers that it is part of its duty to examine the personal scope given to the implementation of the Framework Convention in order to verify that no arbitrary or unjustified distinctions have been made. Furthermore, it considers that it must verify the proper application of the fundamental principles set out in Article 3.

The Advisory Committee notes that under Article 37 of the Lithuanian Constitution (of 25 October 1992) citizens belonging to "ethnic communities" are entitled to foster their language, culture and traditions. The Lithuanian legislation in force gives no legal definition of "ethnic community" and does not provide any indication of the groups of persons whom Lithuania considers to be covered by the protection afforded by the Framework Convention. The Advisory Committee notes in that regard that the terminology officially used to designate these persons is not uniform, and that other terms, such as "ethnic minority", "nationality" or "national minority", are used as alternatives to "ethnic community" in the legislation dealing with the protection of national minorities.

The State Report states that this situation reflects the choice of the Lithuania authorities that any linguistic or ethnic group should be automatically recognised as a national minority and thus afforded the protection to which it is entitled under the Framework Convention. The Advisory

Committee welcomes the open and flexible approach chosen by Lithuania as regards the personal scope of application of the Framework Convention and observes that the Lithuanian authorities have also taken care to ensure that the right of the individual, guaranteed by a number of legislative provisions, to be regarded as belonging to a national minority or not, is fully observed.

The Advisory Committee notes that it is apparent upon examining the legislation on the protection of national minorities that only Lithuanian citizens may be recognised as belonging to a national minority. In so far as, with the law on citizenship of 1989, Lithuania chose the “zero option”, a flexible approach which allowed those having their permanent residence in Lithuania to acquire Lithuanian citizenship simply by applying for it. The Advisory Committee considers that this condition has thus far had only a limited impact on the extent of the personal scope of application of the Framework Convention (see also related comments in paragraphs 24 and 30).

The Advisory Committee notes that the State Report indicates the existence of more than a hundred “different nationalities”, in varying numbers, to whom the provisions of the Framework Convention are applicable, and states that the majority of these live in the eastern and southern parts of Lithuania, and also, in particular, in the towns of Vilnius, Klaipeda and Visaginas.

As regards the legal basis for the protection of persons belonging to national minorities, the Advisory Committee notes that Article 45 of the Constitution, which states that ethnic communities of citizens shall independently administer the affairs of their ethnic culture, education, charities and mutual assistance, also calls upon the State to provide its support. Apart from the constitutional provisions referred to above, the protection of national minorities is governed by the law on national minorities (adopted in 1989, amended on 29 January 1991, the validity of which has been extended pending the adoption of an amended version or even of a new draft), and also by specific provisions in other laws, such as the law on education (of 25 June 1991) or the law on the State language (of 31 January 1995, amended in November 2001).

The Advisory Committee notes that in November 2002 a new draft law on national minorities was already being examined in Parliament. The Advisory Committee notes with interest that this draft proposes a definition of “(ethnic) national minority” and also of “person belonging to a national minority”. The Advisory Committee also notes that both definitions recognise the importance of the subjective choice of the person to belong to a particular ethnic group, but without referring to the objective elements which form the essential basis of that choice.

The Advisory Committee notes that these definitions place greater emphasis on an individual rather than a community approach and make no distinction connected with factors such as length of residence in Lithuania, historical links with the State or geographical location. The Advisory Committee finds that they reflect a flexible approach which does not make it possible to exclude persons belonging to national minorities *a priori* from the protection afforded by the Framework Convention. It is not clear from the draft law whether or not the authorities intend that citizenship (to which neither of the abovementioned definitions refers) is to remain as a condition for the granting of that protection. At the same time, the Advisory Committee notes that a new law on citizenship (adopted on 17 September 2002) entered into force on 1 January 2003. This law is more restrictive than the 1989 law and has been severely criticised by representatives of the national minorities. The Advisory Committee considers that the authorities should ensure, when examining and adopting the new law on national minorities, that this situation does not adversely affect the personal scope of application of the Framework Convention (see also the comments in paragraph 30). The Advisory Committee wishes moreover to express its regret that it was not able to obtain sufficient clarifications on the question of registration of nationality (ethnic origin) of persons in the

passports and of the connection between this registration and the recognition as a person belonging to a national minority.

The Advisory Committee emphasises that the draft law on national minorities does not appear at this stage to meet the consensus of all the parties concerned. In so far as certain rights guaranteed by the legislation in force, in particular those associated with the use of minority languages, are not afforded the same protection in the new draft, the representatives of certain national minorities informed the Advisory Committee that they would prefer not to change the existing legislation. Their preference can be all the better understood by the fact that their attempts to have the draft amended, by means of consultations as well as by written requests, have been unsuccessful.

Nonetheless, the discussions in respect of the draft law on national minorities represent only one aspect of the revision of the relevant legislation. The law on education, which also deals with the protection of national minorities, is currently being revised as well. In order to avoid any risk of legal uncertainty and to be able to provide a coherent legal framework for the Government's policy on the protection of national minorities, the Advisory Committee urges the authorities to ensure, before adopting these laws in a definitive form, the coherence of their provisions and the unambiguousness of their position in the Lithuanian legal system, in particular in relation to the law on the State language.

The Advisory Committee notes that the Lithuanian authorities have not provided any information about any other language or ethnic groups which at the moment they do not regard as being protected by the Framework Convention. The Advisory Committee is of the view that it would be possible to consider the inclusion of persons belonging to other groups, including non-citizens, where they express such a desire, in the application of the Framework Convention on an article-by-article basis, and the Advisory Committee takes the view that the Lithuanian authorities should consider this issue in consultation with those concerned.

### **In respect of Article 3**

The Advisory Committee *finds* that the Lithuanian legislation does not provide at present a definition of the term “national minority”, and that Lithuania has chosen to recognise any linguistic or ethnic group of citizens as a national minority. It further *notes* that a draft for a new law on national minorities is being prepared and that from the draft law it is not clear whether or not citizenship is to remain as a condition for the granting of the protection provided by the Framework Convention. The Advisory Committee *finds* that it would be possible to consider the inclusion of other groups in the application of the Framework Convention, where such a desire is expressed, on an article-by-article basis and *considers* that Lithuania should examine this question in consultation with the persons concerned.

The Advisory Committee *finds* that important draft laws related to the protection of national minorities are under discussion, and that the changes envisaged are not accepted by all those concerned. The Advisory Committee *considers* it essential to ensure that, before the new laws are passed, provisions of relevance to national minorities are consistent and that their legal status is clear, especially in relation to the law on the State language.

## 22. MALTA

The Advisory Committee stresses that in the absence of a definition in the Framework Convention itself, the Parties must examine the personal scope of application to be given to the Framework Convention within their country. The position of the Maltese Government is therefore deemed to be the outcome of this examination.

Whereas the Advisory Committee notes on the one hand that Parties have a margin of appreciation in this respect in order to take the specific circumstances prevailing in their country into account, it notes on the other hand that this margin of appreciation must be exercised in accordance with general principles of international law and the fundamental principles set out in Article 3. In particular it stresses that the implementation of the Framework Convention should not be a source of arbitrary or unjustified distinctions.

For this reason the Advisory Committee considers that it is part of its duty to examine the personal scope given to the implementation of the Framework Convention in order to verify that no arbitrary or unjustified distinctions have been made.

As mentioned above, neither the Report nor the written reply provided by the Maltese authorities were comprehensive. Therefore the Advisory Committee expresses the hope that the Maltese authorities will provide specific figures on the composition of the population, including non-citizens, as is foreseen in the outline for state reports adopted by the Committee of Ministers on 30 September 1998. It is also hoped that information will be provided on the factual situation of religious groups and on the legal as well as factual position of such groups as foreigners residing in Malta.

In the absence of such information and given the limited information obtained from other sources, the Advisory Committee is not in a position to assess the statement of the Maltese authorities, according to which there are no national minorities in the sense of the Framework Convention in the territory of Malta. The Advisory Committee is of the opinion that, concerning persons belonging to an ethnic, linguistic or religious group other than the dominant one, it would be possible to consider inclusion in the application of the Framework Convention on an article-by-article basis. It is of the opinion that the Maltese authorities should consider this issue in consultation with the persons concerned.

### **In respect of Article 3**

The Committee of Ministers *concludes* that, concerning persons belonging to an ethnic, linguistic or religious group other than the dominant one, it would be possible to consider inclusion in the application of the Framework Convention on an article-by-article basis. It *recommends* that the Maltese authorities consider this issue in consultation with the persons concerned and provide specific figures on the composition of the population, including non-citizens. It *recommends* that the Maltese authorities provide information on the factual situation of religious groups and on the legal as well as factual position of such groups as foreigners residing in Malta.

## 23. MOLDOVA

The Advisory Committee underlines that in the absence of a definition in the Framework Convention itself, the Parties must examine the personal scope of application to be given to the Framework Convention within their country. The position of the Moldovan Government is therefore deemed to be the outcome of this examination.

Whereas the Advisory Committee notes on the one hand that Parties have a margin of appreciation in this respect in order to take the specific circumstances prevailing in their country into account, it notes on the other hand that this must be exercised in accordance with general principles of international law and the fundamental principles set out in Article 3. In particular, it stresses that the implementation of the Framework Convention should not be a source of arbitrary or unjustified distinctions.

For this reason the Advisory Committee considers that it is part of its duty to examine the personal scope given to the implementation of the Framework Convention in order to verify that no arbitrary or unjustified distinctions have been made. Furthermore, it considers that it must verify the proper application of the fundamental principles set out in Article 3.

The Advisory Committee notes that the right of every person belonging to a national minority to freely choose to be treated or not to be treated as such is guaranteed under Moldovan law, in particular the Law on the rights of persons belonging to national minorities and their associations (Law No. 382 of 28 August 2001, which entered into force on 4 September 2001, hereinafter referred to as the National Minorities Act).

The Advisory Committee welcomes the passing of this law by the Moldovan Parliament and takes note of the definition of the term “national minority” contained in it: “persons belonging to national minorities shall mean persons residing in the Republic of Moldova and of Moldovan nationality who have particular ethnic, cultural, linguistic and religious features which distinguish them from the - Moldovan - majority of the population and who consider themselves to be of different ethnic origin”. The Advisory Committee notes that the law provides no list of officially recognised national minorities, which implies that all persons who meet the criteria set out in the above definition are national minorities. Only the languages of the numerically largest national minorities are mentioned in the law by way of example, but the list is not exhaustive.

The State Report explains, on the strength of official statistics based on the 1989 census, that national minorities account for about 35.5 % of Moldova’s population, and lists the largest national minorities: Ukrainians – 13.8%; Russians – 13%; Gagauzians – 3.5%; Bulgarians – 2%; Jews – 1%; Belorussians – 0.5%; Roma – 0.3%; Germans – 0.2%; Poles – 0.1%.

The Advisory Committee appreciates that in passing this law the Moldovan authorities’ intention was to complete the legal framework for the protection of national minorities, which is now based, as stipulated in Article 3 of the law, on “the Constitution of the Republic of Moldova, the present law, other legislative acts and the international treaties and agreements to which the Republic of Moldova is party”.

The Advisory Committee takes note that this law is an organic law that requires, for its effective implementation, the subsequent introduction of other laws and the harmonisation of existing legislation with its provisions. The Advisory Committee considers that the authorities should make



every effort so that the legislative changes required by the aforementioned law (which were to be implemented within a period of 3 months which elapsed on the 4th of December 2001) are taken without any further delay. The Advisory Committee considers that the authorities should also ensure that the resulting body of legal provisions is effectively implemented, in consultation and co-operation with the persons concerned.

The Advisory Committee notes that several provisions of the law concern the use, protection and promotion of minority languages. The Advisory Committee notes that these provisions give Russian a privileged status as compared to other minority languages and provide for substantial state commitment for its teaching and use. The Advisory Committee encourages the Moldovan authorities to ensure that appropriate attention is paid to the needs of persons belonging to all national minorities living in Moldova, through policies and measures to apply the relevant legislation in accordance with the Framework Convention.

Concerning the right of persons belonging to national minorities to freely choose whether or not they wish to be treated as such, the Advisory Committee considers that a census is a good opportunity to enable people to express their identity. The Advisory Committee notes that the last census took place in Moldova in 1989. A new census was initially scheduled to be held first in 1999, then in April 2001, but was postponed on both occasions due to lack of resources. In view of this situation, the Advisory Committee considers that the Moldovan authorities should organise a new population census, as soon as possible, in order to obtain an up-to-date picture of the composition of the population of Moldova, and encourage persons belonging to national minorities to take advantage of the opportunity to state their affiliation (see also related comments under Article 4 below).

The Advisory Committee notes that the Moldovan authorities did not provide information on the existence of other linguistic or ethnic groups that the Government does not at present regard as being protected by the Framework Convention. The Advisory Committee believes it would be possible to consider, where appropriate, the inclusion of persons belonging to further groups in the application of the Framework Convention on an article-by-article basis, and is of the opinion that the Moldovan authorities should address this issue in consultation with those concerned.

### **In respect of Article 3**

The Advisory Committee *finds* that the implementation of the law on the rights of persons belonging to national minorities and their associations (Law 382 of 28 August 2001, which entered into force on 4 September 2001) requires, in order to be implemented, further laws to be passed and the existing legislation to be brought into line with it. The Advisory Committee *considers* that the authorities should, in consultation with those concerned, make every necessary effort to introduce these legislative changes without delay.

The Advisory Committee *finds* that the above law provides for substantial state commitment in favour of the Russian language. The Advisory Committee *considers* that when implementing the law, the authorities should make sure, through consultations with those concerned, that proper attention is paid to the needs of persons belonging to all national minorities living in Moldova.

The Advisory Committee *finds* that the last census dates back to 1989 and that there have been repeated postponements of the new census. The Advisory Committee *considers* that the Moldovan authorities should organize a new population census as soon as possible and should encourage persons belonging to national minorities to take advantage of the opportunity offered by the census to state their affiliation.

## 24. MONTENEGRO

### Personal scope of application

The Advisory Committee underlines that in the absence of a definition in the Framework Convention itself, the Parties must examine the personal scope of application to be given to the Framework Convention within their country. The position of the authorities of Montenegro is therefore deemed to be the outcome of this examination.

Whereas the Advisory Committee notes on the one hand that Parties have a margin of appreciation in this respect in order to take the specific circumstances prevailing in their country into account, it notes on the other hand that this must be exercised in accordance with general principles of international law and the fundamental principles set out in Article 3. In particular, it stresses that the implementation of the Framework Convention should not be a source of arbitrary or unjustified distinctions.

For this reason the Advisory Committee considers that it is part of its duty to examine the personal scope given to the implementation of the Framework Convention in order to verify that no arbitrary or unjustified distinctions have been made. Furthermore, it considers that it must verify the proper application of the fundamental principles set out in Article 3.

The Advisory Committee notes that the new Constitution of Montenegro endorses the principle of a civic state and refers in its Preamble to citizens, people and national minorities without establishing any hierarchical distinction. As far as the meaning of the term “national minorities” is concerned, the Advisory Committee refers, in the absence of a definition in the Constitution, to Article 2 of the 2006 Law on Minority Rights and Freedoms (hereafter: Minority Law) which contains the following definition of the term national minority:

*“For the purpose of the present law, minority shall mean any group of citizens of the Republic, numerically smaller than the rest of the predominant population, having common ethnic, religious or linguistic characteristics, different from those of the rest of the population, being historically tied to the Republic and motivated by the wish to express themselves and maintain their national, ethnic, cultural, linguistic and religious identity”.*

The Advisory Committee finds it regrettable that the above-mentioned definition contains a citizenship requirement. This is in spite of the recommendations made in its first Opinion on the then Serbia and Montenegro as well as the comments made by the experts of the Council of Europe, including the Venice Commission during the drafting process of the law.

Indeed, as was already explained in these two contexts, using a citizenship requirement in a general provision dealing with the scope of application of minority rights is not appropriate as these rights are human rights and not rights of citizens. In addition, when new entities emerge following the break up of larger multiethnic states, a citizenship requirement can only have a negative impact on those persons whose legal status is unclear, in particular the Roma who face difficulties in obtaining confirmation of their citizenship, notably due to a lack of personal documents. Bearing in mind the prevailing situation in Montenegro, such a requirement is particularly unsuitable (see related comments under Article 4 below).

In view of the foregoing, the Advisory Committee considers that Montenegro should make use of the planned harmonisation of the 2006 Minority Law with the Constitution to remove the citizenship criterion from Article 2 of the said law and limit the use of the citizenship requirement only to those provisions, such as in those relating to electoral rights at national level, where such a requirement is relevant.

### **Census and the right of self-identification**

The Advisory Committee takes note of the results of the 2003 census which were published progressively as from September 2004. The Advisory Committee welcomes the fact that this census was based on a sound legal framework but regrets that in practice, a number of weaknesses relating to both the general conduct of the census and the analysis of its results, were reported, including by the authorities themselves. Some of these weaknesses relate to the lack of awareness of the importance of the census amongst the general population and national minorities in particular. Concerns have been reported, including in the State Report, over the -recording and processing of twofold replies (for example, Bosniac/Muslim, Montenegrin/Serbian, etc.) to the question on “nationality” (ethnicity): it appears that only the first term specified in the reply was taken into account by the census-takers. Such a practice was reportedly carried out without the persons concerned being consistently informed of it.

The Advisory Committee is aware that this census was carried out at the time of the then State Union of Serbia and Montenegro. It acknowledges that at that time, the political context was marked by a lack of clarity about the future status of Montenegro. This, for example, may have had an impact on the self-identification as Serb or Montenegrin. In addition, the Advisory Committee acknowledges that it is difficult to encapsulate in statistical data the complexity of the ethnic picture in a country where inter-ethnic marriages are numerous and where labelling one’s identity has been fluctuating over time according to the prevailing political context. For example, with reference to the Bosniac/Muslim communities, the Advisory Committee notes that while some would strictly define themselves as one or the other, others find that the difference should not be overemphasised. The Advisory Committee finds it essential that whatever the position, the principles contained in Article 3 of the Framework Convention should be fully respected.

### **In respect of Article 3**

The Advisory Committee finds that the definition of national minorities included in the 2006 Minority Law includes a citizenship requirement and considers that the authorities should remove this requirement from the said general definition and limit its application only to those provisions where it is relevant, such as provisions on electoral rights at national level.

The Advisory Committee finds that some minorities’ identities have been fluctuating over time in Montenegro, and that the lack of clarity regarding the future status of Montenegro at the time when the national census was carried out, may have had an impact on the self-identification of some national minorities. The Advisory Committee considers that the authorities should ensure that whatever the position taken by the persons concerned, the principle of self-identification with a national minority is duly respected.

## 25. NETHERLANDS

### Personal scope of application

As mentioned above, the Advisory Committee notes that according to the Dutch authorities, the Framework Convention applies only to the Frisians. This position was formalised in the declaration made by the Dutch authorities at the time of the ratification of the Framework Convention. The Advisory Committee underlines that in the absence of a definition in the Framework Convention itself, the Parties must examine the personal scope of application to be given to the Framework Convention within their country. The position of the authorities of the Netherlands is therefore deemed to be the outcome of this examination.

Whereas the Advisory Committee notes on the one hand, that Parties have a margin of appreciation in this respect in order to take the specific circumstances prevailing in their country into account, it notes on the other hand that this must be exercised in accordance with general principles of international law and the fundamental principles set out in Article 3. In particular, it stresses that the implementation of the Framework Convention should not be a source of arbitrary or unjustified distinctions.

For this reason, the Advisory Committee considers that it is part of its duty to examine the personal scope given to the implementation of the Framework Convention in order to verify that no arbitrary or unjustified distinctions have been made. Furthermore, it considers that it must verify the proper application of the fundamental principles set out in Article 3.

The Advisory Committee notes that in its State Report, the Dutch authorities indicated that the Government in consultation with the Parliament have agreed a definition of a national minority that includes “groups of citizens who are traditionally resident within the territory of the State and who live in their traditional/ancestral settlement areas, but who differ from the majority population through their own language, culture and history, i.e. have an identity of their own and who wish to preserve that identity”. The Dutch authorities further explain that in the Netherlands, only Frisians fulfill these criteria and are therefore considered to benefit from the protection of the Framework Convention. The Advisory Committee notes that this approach has not been codified in Dutch law.

The Advisory Committee notes with concern that this definition contains a territorial dimension which in practice leads to the exclusion of certain groups. In particular, the Advisory Committee notes that Roma and Sinti groups have been historically present in the Netherlands. In addition, although there is diversity within these groups, Roma and Sinti appear to be motivated by a common aim to preserve together what constitutes their shared identity, including their culture, their traditions and their language and have expressed an interest in benefiting from the protection of the Framework Convention. However, the Advisory Committee notes that persons belonging to these groups reside in different areas of the Netherlands and therefore, do not necessarily live in an “ancestral settlement”. The territorial criterion therefore *a priori* excludes them from the protection provided for by the Framework Convention.

In this context, the Advisory Committee is deeply concerned that the fact that some groups are territorially dispersed becomes a reason to entirely deny them the protection of the Framework Convention. It recalls that only some provisions of the Framework Convention contain a territorial dimension. These provisions concern the use of minority languages in relations with local administration, their use on topographical indications and their teaching. These are precisely areas

where Roma and Sinti have already been granted a certain level of protection under the European Charter for Regional or Minority Languages since the Netherlands declared that it applies its principles to Romani. However, most of the provisions of the Framework Convention, such as the prohibition of discrimination, the principles of full and effective equality, the need to promote tolerance as well as the right to participate in public, social and economic life, do not imply that the minorities concerned “live in their traditional or ancestral settlement areas”. The *a priori* exclusion of Roma and Sinti from the scope of application of the Framework Convention results, in fact, in depriving these persons from the protection of those provisions of the Framework Convention which are instrumental to achieving equality. The Advisory Committee considers that such an approach is not compatible with the Framework Convention.

The second problematic aspect of the criteria chosen by the Dutch authorities concerns the inclusion of a criterion of citizenship for access to the protection of the Framework Convention. The Advisory Committee considers that such a criterion is not in line with the current efforts aimed at developing a more nuanced approach to the use of the citizenship criterion in the protection of national minorities. The Advisory Committee indeed considers that, while citizenship may be a legitimate requirement in fields such as electoral rights at national level, general application of this criterion nevertheless remains problematic in relation to the guarantees associated with other important fields covered by the Framework Convention, such as non-discrimination and equality.

The Advisory Committee notes that, while adopting the position described above with regard to the scope of application of the Framework Convention, the Dutch authorities recognise the relevance of Article 6 of the Framework Convention with regard to other groups, and included some information, albeit limited, on the measures taken to address the situation of the Roma. While welcoming this more flexible approach to the personal scope of application when dealing with issues of racism (see below under Article 6), the Advisory Committee finds that there is a need for the authorities to re-examine their position of principle with regard to the scope of application of the Framework Convention and make the relevant provisions of this treaty applicable to those who are in need of them. The Advisory Committee therefore recommends that the authorities establish an institutionalised dialogue, with no further delay, with persons belonging to the Roma and Sinti minorities and possibly other groups who have expressed the wish to benefit from the protection of the Framework Convention in order to examine their needs and discuss their inclusion in the scope of application of the Framework Convention.

### **Collection of personal data and free self-identification with a minority**

The Advisory Committee notes that the Netherlands does not collect information on the ethnic affiliation of persons through population censuses. Instead, the available data on ethnic composition of the Dutch population is obtained through the matching of information from already existing data contained in administrative registers at municipal level and other surveys such as the household sample survey. On the basis of such data, the Dutch Statistics Agency (CBS) has developed a classification based on the country of birth of the person. Accordingly, information is classified alongside the category of *allochtoon* (person with a foreign background) and *autochtoon* (native). The category “persons with a foreign background” includes those persons who have at least one parent who was born abroad. The Advisory Committee notes that these persons may also include persons who are Dutch citizens. Within this group, a further distinction is made as to whether the country of birth is a Western or a non-Western country. The Advisory Committee notes that such a classification is not based on the self-identification of the person concerned (see also paragraph 52 under Article 6).

The Advisory Committee notes that according to Article 16 of the 1999 Personal Data Protection Act, processing personal data concerning a person's religion or philosophy of life, race, political convictions, health and sexual life or personal data concerning membership of a trade union, as well as data concerning a person's criminal behaviour, is prohibited. Exemptions to this prohibition are subject to strict conditions: such data may only be compiled and used by institutions that have been granted this possibility by law or with the explicit authorisation of the person concerned. The Advisory Committee further notes that Article 18 of the said Act provides for exemptions in cases where such data is meant to support positive measures, provided that it is necessary for the intended purpose, that the data only relate to criteria allowing for an objective determination as to whether the person belongs to a minority group and that the person has not indicated any objection in writing (see also the Advisory Committee comments under Article 6).

The Advisory Committee notes that some surveys have been made available regarding the command of the Frisian language. The most recent information available to the Advisory Committee in this respect is contained in a study of the *Fryske Akademy* released in 1994 on language proficiency, use, attitude and identity of a representative sample of the population in Fryslân. This research revealed a relatively stable position of the Frisian language between 1967 and 1994 with 94,3% of people from Fryslân understanding Frisian (97,2% in 1967), 74% speaking it (84,9% in 1967), 64,5% reading it (68,9% in 1967) and 17% writing it (11,5% in 1967). While welcoming this data, the Advisory Committee considers that further research could be undertaken on the issue, including data disaggregated by age, gender and location. In addition, the Advisory Committee notes that some Frisian representatives have expressed interest in collecting data on persons identifying themselves as Frisians. It considers that this should be further discussed with those who are supportive of collecting such data with a view to conducting a possible survey on the ethnic affiliation of persons living in Fryslân.

### **In respect of Article 3**

The Advisory Committee finds that the position taken by the authorities with regard to the personal scope of application of the Framework Convention leads in practice to the exclusion of certain groups, notably the Roma and the Sinti. It considers that the Netherlands should reconsider their approach to the scope of application of the Framework Convention. In this context, it should establish an institutionalised dialogue with the groups concerned.

The Advisory Committee finds that the Netherlands does not collect information on the ethnic affiliation of persons through population censuses but that information on the ethnic composition of the population, although not based on the self-identification of the person concerned is available through the matching of information contained in various administrative registers. It finds that interest was expressed by Frisian representatives in collecting data on persons identifying themselves as Frisians and it considers that this should be further discussed with those who are supportive of collecting such data.

## **26. NORWAY**

The Advisory Committee notes that, upon ratifying the Framework Convention, Norway did not make a declaration as to which groups it considers this treaty to apply and that the term “national minority” is not defined in the Norwegian legislation. However, the authorities conclude in the State Report that the Jews, Kvens, Romanies, Roma and Skogfinns fall within the scope of the Framework Convention and that the Sami are also a national minority “in the terms of international law”.

The Advisory Committee underlines that in the absence of a definition in the Framework Convention itself, the Parties must examine the personal scope of application to be given to the Framework Convention within their country. The position of the Norwegian Government is therefore deemed to be the outcome of this examination.

Whereas the Advisory Committee notes on the one hand that Parties have a margin of appreciation in this respect in order to take the specific circumstances prevailing in their country into account, it notes on the other hand that this must be exercised in accordance with general principles of international law and the fundamental principles set out in Article 3. In particular, it stresses that the implementation of the Framework Convention should not be a source of arbitrary or unjustified distinctions.

For this reason the Advisory Committee considers that it is part of its duty to examine the personal scope given to the implementation of the Framework Convention in order to verify that no arbitrary or unjustified distinctions have been made. Furthermore, it considers that it must verify the proper application of the fundamental principles set out in Article 3.

In the light of the above principles, the Advisory Committee notes that particular questions arise with respect to the position of the Sami in relation to the Framework Convention. These stem from the fact that the Sami Parliament has taken the view that the Government's policy in respect of national minorities should not encompass the Sami. Therefore, the Government, rather than addressing the protection of the Sami in detail in its State Report, has only appended to the State Report the reports it has previously submitted on the implementation of the ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries. The Advisory Committee understands that the authorities have taken into account the views of the Sami Parliament when formulating their approach. At the same time, the Advisory Committee recalls that the recognition of a group of persons as constituting an indigenous people does not exclude persons belonging to that group from benefiting from the protection afforded by the Framework Convention. Furthermore, the Advisory Committee underlines that the applicability of the Framework Convention does not necessarily mean that the authorities should in their domestic legislation and practice use the term "national minority" to describe the group concerned. Against this background, the Advisory Committee considers that the protection of the Framework Convention remains available to the Sami should persons belonging to this indigenous people wish to rely on the protection provided therein. The Advisory Committee encourages the authorities to continue their dialogue with the Sami Parliament and others concerned on this issue, with a view to ensuring that the Framework Convention and the treaties designed for indigenous peoples are not construed as mutually exclusive regimes and that the Sami can continue to rely on a wide range of international norms (see also related comments in paragraph 9 of the present opinion).

The Advisory Committee notes the existence in Norway of other ethnic and linguistic groups that the Government does not consider, at this stage, to be covered by the Framework Convention. The Advisory Committee is of the opinion that it would be possible to consider the inclusion of persons belonging to these groups, including non-citizens as appropriate, in the application of the Framework Convention on an article-by-article basis, and the Advisory Committee takes the view that the Norwegian authorities should consider this issue in consultation with those concerned. In this connection, the Advisory Committee notes with satisfaction that the Government considers that non-citizens belonging to the national minorities listed above in paragraph 13 can benefit from the general measures aimed at the protection of national minorities.

### **In respect of Article 3**

The Advisory Committee *finds* that the Sami Parliament has taken the view that the Government's policy in respect of national minorities should not encompass the Sami whereas the Government, while recognising them as an indigenous people, also considers that the Sami are a national minority in the terms of international law. The Advisory Committee *considers* that the protection of the Framework Convention remains available to the Sami should persons belonging to this indigenous people wish to rely on the protection provided therein and encourages the authorities to continue their dialogue with the Sami Parliament and others concerned on this issue, with a view to ensuring that the Framework Convention and the treaties designed for indigenous peoples are not construed as mutually exclusive regimes.

The Advisory Committee *finds* that it would be possible to consider, where appropriate, the inclusion of persons belonging to other groups in the application of the Framework Convention on an article-by-article basis and *considers* that Norway should consider this issue with those concerned.

## **27. POLAND**

The Advisory Committee notes that Poland made two declarations when it deposited its instrument of ratification of the Framework Convention. The first one reads as follows: "Taking into consideration the fact, that the Framework Convention for the Protection of National Minorities contains no definition of the national minorities notion, the Republic of Poland declares, that it understands this term as national minorities residing within the territory of the Republic of Poland at the same time whose members are Polish citizens". The second declaration pertains specifically to Article 18 and states the following: "The Republic of Poland shall also implement the Framework Convention under Article 18 of the Convention by conclusion of international agreements mentioned in this Article, the aim of which is to protect national minorities in Poland and minorities or groups of Poles in other States".

The Advisory Committee underlines that, in the absence of a definition in the Framework Convention itself, the Parties must examine the personal scope of application to be given to the Framework Convention within their country. The position of the Polish Government is therefore deemed to be the outcome of this examination.

Whereas the Advisory Committee notes on the one hand that Parties have a margin of appreciation in this respect in order to take the specific circumstances prevailing in their country into account, it notes on the other hand that this must be exercised in accordance with general principles of international law and the fundamental principles set out in Article 3. In particular, it stresses that the implementation of the Framework Convention should not be a source of arbitrary or unjustified distinctions.

For this reason the Advisory Committee considers that it is part of its duty to examine the personal scope given to the implementation of the Framework Convention in order to verify that no arbitrary or unjustified distinctions have been made. Furthermore, it considers that it must verify the proper application of the fundamental principles set out in Article 3.

In the State Report, the Polish authorities indicated that 13 national minorities resided in Poland, totalling around 1 million people and accounting for between 2% and 3% of the total population. The authorities added that the Kaszubs constituted neither a national nor an ethnic minority, but a



group of speakers using a regional language. Nevertheless, the authorities take the view that the Framework Convention's provisions on language rights can be applied to the Kaszubs *mutatis mutandis*. The Advisory Committee welcomes this approach since it seems in line with the wish of the persons concerned and considers it important that the authorities take into account not only the Kaszub language but also Kaszub culture as a whole in developing its policies and measures for this group.

Both the terms “national” and “ethnic” minorities are used in the Polish legal order. The Draft Law on National and Ethnic Minorities contains a list of national and ethnic minorities specifying the 13 groups mentioned in footnote 3 above, as well as the Kaszubs. While the Advisory Committee notes with satisfaction that both “national” and “ethnic” minorities under Polish law can benefit from the protection offered by the Framework Convention, it firmly believes that there should be no unjustified differences of treatment between them.

In reply to the Advisory Committee's questionnaire, the authorities stated that the legislation did not provide any specific procedure for recognising a group as a national minority. The Advisory Committee notes, however, that some Polish authorities seem to use the registration procedure of the Law on Associations as a means to determine whether or not a group can be considered a national minority and encourage the Polish Government to examine whether this practice is the most appropriate.

As regards the Lemks, the Advisory Committee notes with satisfaction that, for some years now, the authorities have taken care to respect their identity better, in particular by designating them as Lemks. In the past Lemks were systematically assimilated to Ukrainians and it is therefore particularly important to pay proper attention to the calls from many of their representatives for the distinctive elements of the Lemk identity to be recognised.

The representatives of the Russian minority located in the province (*voivodship*) of Podlaskie indicated that, contrary to their wishes, they were sometimes designated collectively as “Orthodox Poles” or “Old-Rite Poles”. Members of some local authorities of this province seem themselves to use these terms occasionally in referring to persons belonging to the Russian minority. In view of the strong objections to these terms by a number of those concerned, the Advisory Committee urges the authorities to refrain from using them in the future to designate persons belonging to the Russian minority.

For the first time for several decades, the 2002 census contained a question about the ethnic origin (“nationality”) of the respondent and another about the language used at home. Under section 8 paragraph 1 of the General Census of Population and Households Act, replies to these two questions were compulsory. While recognising the need for quality data in this area, the Advisory Committee considers that the right not to be treated as a person belonging to a minority also extends to a census and that a compulsory answer to a question on ethnic origin or a question on language used is not compatible with that principle.

The Advisory Committee finds it essential that the resulting census data is protected in an appropriate manner and that the ethnicity data is processed, as a rule, in such a manner that data subjects are not identifiable, bearing in mind the principles contained in the Committee of Minister's Recommendation 97(18) concerning the protection of personal data collected and processed for statistical purposes. In this respect the Advisory Committee welcomes the Government's assurances that all individual and personal data collected are treated as confidential and are given special protection for the purposes of the Public Statistics Act, with its provisions on data protection.

Information from representatives of several minorities as well as from various other sources point to irregularities in the conduct of the latest census. Some enumerators allegedly omitted to ask the questions about national affiliation and language used, replied *ex officio* in some cases with “Polish”, questioned the replies which some people gave, or entered the replies to these questions in pencil. The Government acknowledges that there were isolated occurrences of this kind but states that the enumerators involved were immediately reprimanded and the errors identified were rectified. The Ombudsman twice made representations to the General Commissioner of the census, the first time to report minorities’ fears that the census results would not reflect their actual numbers, and a second time to draw attention to certain irregularities committed by enumerators that might affect the credibility of the census.

In view of these elements, which raise some doubt on the reliability of the latest census results as to the numbers of persons having declared their belonging to a national minority and those having stated that they spoke Kaszub, the Advisory Committee believes that the authorities should interpret these results with caution, particularly for purposes of developing policies and measures and allocating subsidies to national minorities. Caution is all the more required as the results of the latest general census, published after submission of the State Report, indicate a drastic fall in the number of persons belonging to national minorities and that a large percentage of respondents did not declare any ethnic belonging despite the compulsory nature of this question. The drop is evident not only from the estimates put forward by minorities’ representatives but also from those which the authorities gave in the State Report, in many cases three to four times larger than the figures produced by the census. 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. It is therefore important that the authorities bear such discrepancies in mind when discussing policies and other measures with representatives of national minorities.

The results of the latest census also show that large numbers of people stated “Silesian” in reply to the question on national affiliation – more, indeed, than stated belonging to any of the 13 national minorities, and more than the number of Kaszubs. The Polish authorities consider that Silesians cannot be treated as a national minority nor be protected by the Framework Convention. Whatever the approach ultimately adopted, the Advisory Committee urges the Polish authorities to continue their dialogue with the Silesians on this matter and to take care that persons claiming to belong to the Silesian group are able to express their identity (see also related comments below under Article 7).

In addition to the Silesian group, the Advisory Committee notes the existence in Poland of other ethnic or linguistic groups which the Government does not at this stage consider to be covered by the Framework Convention. The Advisory Committee is of the opinion that it should be possible to consider the inclusion of persons belonging to these groups, including non-citizens as appropriate, in the application of the Framework Convention on an article-by-article basis, and takes the view that the Polish authorities should consider this issue in consultation with those concerned.

### **In respect of Article 3**

The Advisory Committee *finds* that it should be possible to consider the inclusion of persons belonging to other groups, including non-citizens as appropriate, in the application of the Framework Convention on an article-by-article basis, and *considers* that the Polish authorities should consider this issue in consultation with those concerned.

The Advisory Committee *finds* that the 2002 census contained a question about the ethnic origin (“nationality”) of the respondent and another about the language used at home, whose replies were compulsory. While recognising the need for quality data in this area, the Advisory Committee *considers* that the right not to be treated as a person belonging to a national minority also extends to a census and that a compulsory answer to a question on ethnic origin or a question on language used is not compatible with that principle.

The Advisory Committee *finds* that there have been allegations of irregularities in the conduct of the latest census, which raise some doubt on the reliability of its results as to the numbers of persons having declared their belonging to a national minority and those having stated that they spoke Kaszub. The Advisory Committee *considers* that the authorities should interpret these results with caution, particularly for purposes of developing policies and measures and allocating subsidies to national minorities.

## 28. PORTUGAL

The Advisory Committee underlines that in the absence of a definition in the Framework Convention itself, the Parties must examine the personal scope of application to be given to the Framework Convention within their country. The position of the Government of Portugal is therefore deemed to be the outcome of this examination.

Whereas the Advisory Committee notes, on the one hand, that Parties have a margin of appreciation in this respect in order to take the specific circumstances prevailing in their country into account, it notes, on the other hand, that this must be exercised in accordance with general principles of international law and the fundamental principles set out in Article 3 of the Framework Convention. In particular, it stresses that the implementation of the Framework Convention should not be a source of arbitrary or unjustified distinctions.

For this reason, the Advisory Committee considers that it is part of its duty to examine the personal scope given to the implementation of the Framework Convention in order to verify that no arbitrary or unjustified distinctions have been made. Furthermore, it considers that it must verify the proper application of the fundamental principles set out in Article 3 of the Framework Convention.

The Advisory Committee notes in the State Report that the concept of “national minorities” does not exist in the Portuguese constitutional order. The Advisory Committee also notes that the authorities take the view in the State Report that no groups are to be protected under the Framework Convention in Portugal. They state that persons belonging to different ethnic, cultural or linguistic groups (see paragraph 19 below) are excluded from the personal scope of application of the Convention. Portugal’s ratification of the Framework Convention was, according to the Portuguese State Report, conceived “as an act of political solidarity”, although no declaration in this respect was made by Portugal at the time of ratification.

The Advisory Committee welcomes the fact that, while adopting the position described above with regard to the scope of application of the Framework Convention, the Portuguese authorities expressed a more open approach in further dialogue with the Advisory Committee, and recognised the relevance of Article 6 of the Framework Convention in respect of Portugal, in view of the growing cultural diversity of Portuguese society resulting from immigration.

Notwithstanding the official position expressed by the Portuguese authorities with regard to the scope of application of the Framework Convention, the Advisory Committee notes that in the State Report, as well as in further dialogue with the authorities, extensive information was provided on various ethnic and cultural groups living in Portugal and designated in the State Report as “ethnic”, “linguistic” or “cultural minorities”, such as the Roma minority, the Mirandese-speaking persons and groups resulting from immigration in Portugal. The Advisory Committee further observes that institutions have been set up to meet the specific needs of these groups, such as the Office of the High Commissioner for Immigration and Ethnic Minorities (ACIME in Portuguese, set up in 1996 and hereinafter referred to as ACIME). A number of national and local programmes, which reflect many of the principles contained in the Framework Convention, have also been developed to tackle problems facing persons belonging to these ethnic or cultural minorities.

The Advisory Committee acknowledges the official position of the Portuguese authorities in respect of the concept of national minority. However, throughout its practice, the Advisory Committee has stressed that the application of the Framework Convention does not require the formal recognition or use of the term “national minority” in the domestic legal order. The Framework Convention was in fact conceived as a pragmatic tool, to be implemented in very diverse legal, political and practical situations. The Advisory Committee therefore believes that the non-recognition of the concept of national minorities should not prevent the Portuguese authorities from considering extending the protection of the Framework Convention to persons belonging to ethnic, linguistic and cultural minorities in Portugal. The Advisory Committee also considers that it is its duty to examine, in the light of the Framework Convention, the existing policies and measures designed to improve the situation of the ethnic, linguistic and cultural minorities living in Portugal.

Moreover, the Advisory Committee notes that the reluctance of the Portuguese authorities to consider applying the Framework Convention to persons belonging to ethnic, cultural or linguistic minorities stems from the belief that the Convention is essentially addressing the needs of minorities residing in substantial numbers on specific territories, whereas such minorities do not, according to the authorities, exist in Portugal. The Advisory Committee wishes to draw attention to the fact that the application of most of the provisions of the Convention, such as the prohibition of discrimination, the principles of full and effective equality and of effective participation and the need to promote tolerance, does not imply a territorial dimension or require that the minorities concerned live compactly. Therefore, it believes that the Portuguese authorities should not consider the fact that minorities are dispersed as a reason to entirely deny them the protection of the Framework Convention.

As mentioned in the General Remarks, the Advisory Committee underlines that, in the absence of a visit to Portugal, it did not have an opportunity to meet with persons belonging to ethnic, cultural or linguistic minorities in Portugal, including in particular Roma and Mirandese-speaking persons, and therefore it was not able to exchange views on whether they would wish to benefit from the Framework Convention. Moreover, the authorities informed the Advisory Committee that they did not consult persons belonging to minorities on this issue either. Therefore, it is not possible for the Advisory Committee to conclude whether it would be appropriate or inappropriate for persons belonging to these groups to be included in the scope of application of the Convention, although information at the Advisory Committee’s disposal suggests that the situation of Roma merits particular attention in this respect.

The Advisory Committee is of the opinion that, if persons belonging to minorities were to express interest in the protection afforded by the Framework Convention in the context of a dialogue with the authorities, this possibility should not be ruled out and the protection of the Convention should not be denied to them *a priori*. Consequently, the Advisory Committee urges the Portuguese authorities to engage in consultations with those potentially concerned by the protection of the Framework Convention.

Despite the absence of information regarding the position of persons belonging to minorities with regard to the protection of the Framework Convention, as described in paragraph 22 above, the Advisory Committee notes that the authorities have provided extensive information on measures to combat discrimination and to promote multiculturalism. As a consequence, the Advisory Committee finds it appropriate to examine measures taken by the Portuguese authorities in respect of such persons in the light of articles 4 and 6 of the Convention.

### **In respect of Article 3**

The Advisory Committee finds that, according to the authorities, there are no national minorities in Portugal and that, therefore, persons belonging to ethnic, cultural or linguistic minority groups cannot benefit from the protection of the Framework Convention, although the situation of some of them, and in particular of the Roma, merits particular attention in this respect. The Advisory Committee stresses that the application of the Framework Convention does not require the formal recognition or use of the term “national minority” in the domestic legal order. Therefore, the Advisory Committee considers that the authorities should further examine the question of the personal scope of application of the Framework Convention and engage in consultations with those potentially concerned on the relevance of the Framework Convention, in particular with the groups considered ethnic, linguistic and cultural minorities by the authorities.

## **29. ROMANIA**

On the basis of the 1992 census, the Romanian Government considers that the following minorities are covered by the Framework Convention (the names are those used in the State Report): Magyars/Szeklers, Gypsies, Germans/Swabians/Saxons, Ukrainians, Russians/Lipoveni, Turks, Serbs, Tatars, Slovaks, Bulgarians, Jews, Croats, Czechs, Poles, Greeks, Armenians.

The Advisory Committee underlines that in the absence of a definition in the Framework Convention itself, the Parties must examine the personal scope of application to be given to the Framework Convention within their country. The position of the Romanian Government is therefore deemed to be the outcome of this examination.

Whereas the Advisory Committee notes on the one hand that parties have a margin of appreciation in this respect in order to take the specific circumstances prevailing in their country into account, it notes on the other hand that this must be exercised in accordance with general principles of international law and the fundamental principles set out in Article 3. In particular, it stresses that the implementation of the Framework Convention should not be a source of arbitrary or unjustified distinctions.

For this reason the Advisory Committee considers that it is part of its duty to examine the personal scope given to the implementation of the Framework Convention in order to verify that no arbitrary or unjustified distinctions have been made. Furthermore, it considers that it must verify the proper application of the fundamental principles set out in Article 3.

The Advisory Committee welcomes that the State Report and the governmental reply to its questionnaire refer to the existence of other groups that the Government does not consider, at this stage, to be covered by the Framework Convention. In fact, the Advisory Committee notes that one of the headings in the 1992 census was “other nationalities”, covering 8,420 persons. According to the Romanian authorities, this heading covers several groups of 10 to 200 persons, including non-citizens.

It has been suggested that the Csangos are to be found among those “other nationalities”. Since Romanian law says nothing about the conditions for recognition of minorities, it appears that some authorities take the view that the Csangos do not constitute a minority, and are not therefore entitled to the same rights as the minorities listed earlier. During its visit to Romania and in the light of information made available to it, the Advisory Committee noted that some representatives of the Csango community were most interested in benefiting from the measures taken by the state in favour of minorities. The Advisory Committee takes the view that, given the historic presence of the Csangos in Romania and the specific elements of their identity, the Romanian authorities should favourably consider the extension of the Framework Convention to persons stating that they are members of this community and should explore this question in consultation with the representatives of the Csangos.

As concerns the situation of other groups, the Advisory Committee is also of the opinion that it would be possible to consider inclusion of persons belonging to them in the application of the Framework Convention on an article-by-article basis and takes the view that the Romanian authorities should consider this issue in consultation with those concerned.

Article 3 of the Framework Convention guarantees persons belonging to national minorities the right to choose freely whether or not to be treated as such. Freedom to identify, or not to identify, with the name used to designate a minority is one essential aspect of this right.

In the context of the census of 2001, 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, persons belonging to national minorities should be encouraged to make use of the possibility to identify themselves (see also below the comments under Article 4). In this context, the Advisory Committee notes that many members of the Roma community refuse to be called “Gypsies” (“țigani”), because of the name's pejorative associations with the period of bondage. The forms used in the next census should also ensure that there is no confusion between Turks and Tatars, and permit a clear choice of one identity or the other. The Advisory Committee is of the opinion that the Government should consult minorities - especially through the Council of National Minorities, which has already shown an interest - on the organisation of the census, and particularly the content of the forms. It also favours the idea of recruiting and training observers from minority groups, who could play a useful role in making minorities understand the importance of the census.

### **In respect of Article 3**

The Committee of Ministers *concludes* that it would be possible to consider the inclusion of persons belonging to other groups in the application of the Framework Convention on an article-by-article basis and *recommends* that Romania consider this issue in consultation with those concerned.

Furthermore, the Committee of Ministers *concludes* that, given the historic presence of Csangos in Romania and the specific elements of their identity, persons belonging to this community cannot be *a priori* excluded from the personal scope of application of the Framework Convention. The Committee of Ministers therefore *recommends* that the examination mentioned above should extend to these persons as well.

## **30. RUSSIAN FEDERATION**

The Advisory Committee underlines that in the absence of a definition in the Framework Convention itself, the Parties must examine the personal scope of application to be given to the Framework Convention within their country. The position of the Government of the Russian Federation is therefore deemed to be the outcome of this examination.

Whereas the Advisory Committee notes on the one hand that Parties have a margin of appreciation in this respect in order to take the specific circumstances prevailing in their country into account, it notes on the other hand that this must be exercised in accordance with general principles of international law and the fundamental principles set out in Article 3. In particular, it stresses that the implementation of the Framework Convention should not be a source of arbitrary or unjustified distinctions.

For this reason the Advisory Committee considers that it is part of its duty to examine the personal scope given to the implementation of the Framework Convention in order to verify that no arbitrary or unjustified distinctions have been made. Furthermore, it considers that it must verify the proper application of the fundamental principles set out in Article 3.

The Advisory Committee notes that the Russian Federation has not established a list of national minorities and that it takes no firm position as to which groups are to be covered by the Framework Convention or what kind of definition of the term national minority should be applied. Indeed, the declaration submitted by the Russian Federation upon ratifying the Framework Convention demonstrates that the authorities of the Russian Federation consider the State Parties' margin of appreciation to be clearly limited in this respect.

The Advisory Committee notes that in practice the federal authorities of the Russian Federation adopt an inclusive approach to the question of the personal scope of application of the Framework Convention, and they have apparently not objected in principle to any claims to be protected by the Framework Convention. The federal authorities appear to be ready to apply the Framework Convention also to minorities that have arrived relatively recently to the Russian Federation and to provide also non-citizens belonging to these groups the possibility to rely on the protection of the Framework Convention. This approach is to be welcomed in so far as it is applied in a manner that respects the principles contained in Article 3 of the Framework Convention.

Despite the aforementioned inclusive stance of the authorities, the Advisory Committee notes that some of the pertinent legislative norms have been formulated in a more restrictive manner. This is the case with respect to a number of federal norms as well as some legislative acts adopted by the subjects of the federation. In particular, the Advisory Committee notes that the 1996 Law on National-Cultural Autonomy restricts, in its Article 1, the notion of national-cultural autonomy to citizens of the Russian Federation only, and this approach is reflected also in other provisions of the said law as well as in the relevant provision of the 1996 Concept of the State National Policy. Bearing in mind that the Law at issue is considered by the authorities of the Russian Federation to be a central normative element in the implementation of the Framework Convention, the Advisory Committee finds it important that its personal scope of application is brought in line with the aforementioned inclusive approach under the Framework Convention so as to ensure that also non-citizens belonging to the minorities concerned can benefit from the said law (see also related comments under Article 5 in the present opinion). More generally, the Advisory Committee is of the opinion that the Russian Federation should re-examine, in consultation with the persons concerned, its approach as concerns the personal scope of application of normative acts pertaining to the implementation of the Framework Convention and consider the inclusion of additional groups, in particular non-citizens, in their scope of application on an article-by-article basis.

The Advisory Committee also notes that in the context of the discussions in the State Duma on a draft law on the rights of persons belonging to national minorities, a definition of the term national minority that would seriously restrict the prevailing inclusive approach of the authorities has been proposed. In the view of the Advisory Committee, the drafting of the said law should be pursued with the aim of strengthening rather than limiting the existing domestic principles in this field.

At the same time, the Advisory Committee acknowledges that the asymmetrical federal structure and the fact that minorities fall within various categories with different legal regimes, ranging from “forced migrants” to “numerically small indigenous peoples of the north”, raise particular challenges when determining the applicability of the Framework Convention in the context of the Russian Federation (see also comments with respect to the latter term under Article 5).

In this connection, the Advisory Committee notes that the protection of the Framework Convention can be made available to persons belonging to the groups concerned regardless of whether or not they have their own “national territorial formations” and whether they reside therein. This would include even those belonging to the “titular nations” of the Republics of the Russian Federation (most of whom are numerically a minority in the respective Republics). At the same time, bearing in mind the reservations expressed by the representatives of the latter category, it needs to be underlined that the possibility to rely on the protection of the Framework Convention should be offered only as an option and it should be applied only to the extent this is accepted by the persons concerned.

The same principle applies to the indigenous peoples of the Russian Federation, whose representatives have certain hesitations about the use of the term “national minority” to describe the population concerned. The Advisory Committee shares the view, held by the Government and a number of representatives of the indigenous peoples, that the recognition of a group of persons as constituting an indigenous people does not exclude persons belonging to that group from benefiting from the protection afforded by the Framework Convention. Furthermore, the Advisory Committee underlines that the applicability of the Framework Convention does not necessarily mean that the authorities should in their domestic legislation and practice use the term “national minority” to describe the group concerned. This point is particularly relevant in States such as the Russian Federation where the term “national minority” has not been widely employed and where it may for historic reasons have negative connotations for some persons concerned.



The Advisory Committee believes that the principles of Article 3 of the Framework Convention merit particular attention in the forthcoming census in October 2002, including in the process of drawing up a list of “ethnic origin” categories to be used in this context and in the collection and processing of the relevant data. The Advisory Committee understands that, pursuant to Article 6 of the 2002 Law on All-Russian Population Census, there will be a question pertaining to individuals’ “ethnic origin” in the census forms, but this will be an optional question to which individuals may freely choose to answer or not to answer. This, in the view of the Advisory Committee, is a suitable way to reconcile the need to have quality data in this field with the right not to be treated as a person belonging to a national minority. At the same time, not all the authorities concerned are aware of the optional nature of the question at issue, and it is therefore important that this is clearly stipulated in the envisaged Government regulations on the implementation of the census and that persons carrying out, or participating in, the census are fully informed about the applicable principles.

The Advisory Committee is aware of the controversies that have arisen around the draft list of ethnic origin categories that have been drawn up for the purpose of the census by the Institute of Anthropology and Ethnology. These controversies pertain in particular to some of the proposals of the said Institute to include a number of ethnic origin categories not included in the similar list used in the last census of the Soviet Union conducted in 1989. The Advisory Committee believes that, while no artificial groups should be created in this connection, particular attention should be paid to the question whether the persons concerned seek the recognition of a separate identity in the context of the census. It therefore encourages the continuation of the consultation on this issue, including with the representatives of the minorities concerned. At the same time, the Advisory Committee considers that the aforementioned list, once finalised, should not be treated as the exclusive factor in determining which minorities fall within the scope of the protection of the Framework Convention and can thereby, for example, seek support pursuant to Article 5 of the Framework Convention.

The Advisory Committee finds it essential that the census data that has been collected is protected in an appropriate manner and that the ethnicity data is processed, as a rule, in such a manner that data subjects are not identifiable, bearing in mind the principles contained in the Committee of Ministers’ Recommendation No. (97) 18 concerning the protection of personal data collected and processed for statistical purposes. It is important that the relevant principles, including the confidentiality of the data guaranteed in Article 8 of the 2002 Law on All-Russian Population Census, are also highlighted in the training of the persons needed to carry out the census and that the exceptions to the confidentiality rule contained in Article 8 are interpreted narrowly.

The Advisory Committee notes that there have been extensive debates following the decision of the authorities of the Russian Federation, in 1997, to eliminate the ethnicity entry in the internal passports. The Advisory Committee considers that an obligatory ethnicity entry in internal passports, in particular when coupled with limitations on persons’ right freely to choose which ethnicity should be indicated therein, is not compatible with the principles contained in Article 3 of the Framework Convention, notably as concerns the right not to be treated as a person belonging to a national minority. Therefore, the Advisory Committee considers that a reform of the previous system, based on Soviet-era regulations, was warranted. The Advisory Committee understands that the internal passports issued under the Soviet-era regulations, which provided for an obligatory ethnicity entry, are still widely in use in the Russian Federation. It is important that the authorities’ plans to have all such passports replaced by 2004 are pursued decisively and this procedure is made increasingly accessible to the persons concerned.

At the same time, the Advisory Committee is aware of the fact that in some circles the said entry has been seen as an important way to manifest one's identity and that its elimination has raised some concerns. While stressing that the full implementation of the Framework Convention by no means necessitates such ethnicity entries, the Advisory Committee understands that access to specific programmes designed to protect national minorities may require persons concerned to indicate their ethnicity and therefore it may be necessary to create new procedures for this purpose. The Advisory Committee notes that in 2001 the Federal Authorities and the subjects concerned reached an agreement aimed at addressing this issue, envisaging a specific insert in the internal passport in the language of the "titular nation" concerned and an indication of ethnicity of persons in their birth certificates. The Advisory Committee underlines that any ethnicity entry in birth certificates must be completely optional and that both regulations and practice must be designed in a manner that contain no elements of pressure towards stating one's ethnicity. Considering that the choice of ethnicity is in such circumstances to be made by others than the person concerned, the system would have to provide the possibility for persons to amend or eliminate that entry in their birth certificates in order for the system to be compatible with Article 3 of the Framework Convention. The Advisory Committee is of the opinion that the authorities should review the system from the point of view of these principles and introduce changes if necessary.

### **In respect of Article 3**

The Advisory Committee *finds* that it would be possible to consider the inclusion of persons belonging to additional groups in the application of normative acts pertaining to the implementation of the Framework Convention on an article-by-article basis and *considers* that the Russian Federation should examine this issue in consultation with those concerned.

The Advisory Committee *finds* that the questionnaires on the basis of which the 2002 census will be conducted contain a question on individuals' ethnic origin and *considers* that the optional nature of this question should be made clear in the implementation of the census.

The Advisory Committee *finds* that the old internal passports with obligatory ethnicity entries, which are not compatible with Article 3 of the Framework Convention, are still in use in the Russian Federation. It *considers* that the authorities should pursue decisively their plans to have all such passports replaced by 2004 and ensure that any other collection of persons' ethnicity data - including in birth certificates - is fully in line with the principles laid down in Article 3 of the Framework Convention.

## **31. SAN MARINO**

The Advisory Committee stresses that in the absence of a definition in the Framework Convention itself, the Parties must examine the personal scope of application to be given to the Framework Convention within their country. The position of the San Marinese Government is therefore deemed to be the outcome of this examination.

Whereas the Advisory Committee notes on the one hand that Parties have a margin of appreciation in this respect in order to take the specific circumstances prevailing in their country into account, it notes on the other hand that this margin of appreciation must be exercised in accordance with general principles of international law and the fundamental principles set out in Article 3. In particular it stresses that the implementation of the Framework Convention should not be a source of arbitrary or unjustified distinctions.

For this reason the Advisory Committee considers that it is part of its duty to examine the personal scope given to the implementation of the Framework Convention in order to verify that no arbitrary or unjustified distinctions have been made.

As mentioned above, neither the Report nor the written reply provided by the San Marinese authorities were comprehensive. Therefore the Advisory Committee expresses the hope that the San Marinese authorities will provide specific figures on the composition of the population, including non-citizens, as is foreseen in the outline for state reports adopted by the Committee of Ministers on 30 September 1998. It is also hoped that information will be provided on the factual situation of religious groups and on the legal as well as factual position of such groups as foreigners residing in San Marino.

In the absence of such information and given the limited information obtained from other sources, the Advisory Committee is not in a position to assess the statement made by the San Marinese authorities, according to which there are no national minorities in the territory of San Marino. The Advisory Committee is of the opinion that, concerning persons belonging to an ethnic, linguistic or religious group other than the dominant one, it would be possible to consider inclusion in the application of the Framework Convention on an article-by-article basis. It is of the opinion that the San Marinese authorities should consider this issue in consultation with the persons concerned.

### **In respect of Article 3**

The Committee of Ministers *concludes* that, concerning persons belonging to an ethnic, linguistic or religious group other than the dominant one, it would be possible to consider inclusion in the application of the Framework Convention on an article-by-article basis. It *recommends* that the San Marinese authorities consider this issue in consultation with the persons concerned and provide specific figures on the composition of the population, including non-citizens. It *recommends* that the San Marinese authorities provide information on the factual situation of religious groups and on the legal as well as factual position of such groups as foreigners residing in San Marino.

## **32. SERBIA AND MONTENEGRO**

The Advisory Committee underlines that in the absence of a definition in the Framework Convention itself, the Parties must examine the personal scope of application to be given to the Framework Convention within their country. The position of the authorities of Serbia and Montenegro is therefore deemed to be the outcome of this examination.

Whereas the Advisory Committee notes on the one hand that Parties have a margin of appreciation in this respect in order to take the specific circumstances prevailing in their country into account, it notes on the other hand that this must be exercised in accordance with general principles of international law and the fundamental principles set out in Article 3. In particular, it stresses that the implementation of the Framework Convention should not be a source of arbitrary or unjustified distinctions.

For this reason the Advisory Committee considers that it is part of its duty to examine the personal scope given to the implementation of the Framework Convention in order to verify that no arbitrary or unjustified distinctions have been made. Furthermore, it considers that it must verify the proper application of the fundamental principles set out in Article 3.

The Advisory Committee notes that Article 2 of the federal Law on the Protection of Rights and Freedoms of National Minorities contains the following definition of the term national minority:

*“Under the terms of this Law, a national minority is a group of citizens of the Federal Republic of Yugoslavia sufficiently representative, although in a minority position on the territory of the Federal Republic of Yugoslavia, belonging to a group of residents having a long term and firm bond with the territory and possessing some distinctive features, such as language, culture, national or ethnic belonging, origin or religion, upon which it differs from the majority of the population, and whose members should show their concern over preservation of their common identity, including culture, tradition, language or religion.*

*Under the terms of this Law, all groups of citizens who consider or define themselves as peoples, national and ethnic communities, national and ethnic groups, nations and nationalities, and who fulfil the conditions specified in paragraph 1 of this Article, shall be deemed national minorities for the purpose of this Law.*

The Advisory Committee finds it positive that this definition covers a large number of groups residing in Serbia and Montenegro, including numerically smaller ones. However, it notes that limiting the scope of the term national minority to citizens only may have a negative impact for example on the protection of those Roma or other persons whose citizenship status, following the break-up of Yugoslavia and conflict in Kosovo, has not been regularised, including those displaced persons from Kosovo who, in the absence of personal documentation, have had difficulties in obtaining confirmation of their citizenship (see related comments under Article 4 below).

The Advisory Committee considers that there remains room for covering further groups within the scope of the Framework Convention and legislation pertaining to its implementation. The Advisory Committee is of the opinion that it would be possible to consider the inclusion of persons belonging to these groups, including non-citizens as appropriate, in the application of the Framework Convention on an article-by-article basis, and the Advisory Committee takes the view that the authorities should consider this issue in consultation with those concerned. It also calls on the authorities of Montenegro to ensure that the personal scope of application of the forthcoming law on the protection of national minorities will not contain any undue citizenship or other restrictions.

The Advisory Committee further considers that the flexible approach taken in Article 47 of the Union Charter of Human Rights and Minority Rights and Civil Freedoms and Article 2, paragraph 2, of the federal Law on the Protection of Rights and Freedoms of National Minorities as to the terminology used is in line with the principles of the Framework Convention. It notes that the issue of terminology is currently topical in Montenegro in the context of the drafting of a new law on the protection national minorities and urges the authorities to seek a solution that would reflect the wishes of the minorities concerned as well as international standards.

The Advisory Committee notes that there have been debates in Serbia and Montenegro on the interrelation between Romanian and Vlach identities and between Croatian and Bunjevtsi identities as well as between Bosniac and Muslim identities. The Advisory Committee underlines that this issue should be approached with full respect to the principles contained in Article 3 of the Framework Convention, and that there should be no attempts to impose one or the other identity on the persons concerned. In this respect, the Advisory Committee welcomes the fact that the census of 2002 in Serbia recognised the identities concerned on an equal footing. Similarly, the Advisory Committee calls on the authorities to pay full attention to these principles with respect of Ashkali, Egyptians and Roma. The authorities should avoid unduly treating them as one indivisible minority, bearing in mind that, despite certain similarities, the persons belonging to the minorities concerned perceive

themselves as being distinct minorities, with differences in various elements of their respective identity.

The Advisory Committee notes that, in Serbia and Montenegro, ethnicity data is collected in various contexts, ranging from education to employment. While agreeing that there is a need to obtain quality data in these fields, the Advisory Committee emphasises that the collection of data on individuals' affiliation with a particular national minority needs to be coupled with adequate legal safeguards. It is also important to ensure that the right not to be treated as a person belonging to a national minority is protected and that the persons concerned are informed that the provision of ethnicity data is voluntary. The Advisory Committee welcomes the fact that the authorities of Serbia and Montenegro agree with these principles and that they are reflected also in Article 48 of the Union Charter of Human Rights and Minority Rights and Civil Freedoms and in the Constitutions of the two constituent states and that Article 18 of the federal Law on the Protection of Personal Data provides that personal data on racial origin, national belonging or religious and other beliefs may be gathered, processed and released for use only with the person's written consent.

The Advisory Committee is, however, concerned about reports according to which some pupils in Montenegro have been requested by their teacher to declare their ethnicity in front of their class. As such practices would not be compatible with Article 3 of the Framework Convention, the Advisory Committee urges the relevant authorities to look into these reports with a view to ensuring that the above-mentioned principles concerning data collection are consistently honoured in education and other fields.

The Advisory Committee considers that the population census conducted in Serbia in April 2002 marked clear progress in terms of the implementation of Article 3 of the Framework Convention despite certain criticism expressed by persons belonging to national minorities (see further comments under Article 4 below). For example, it is significant that replying to the question on "nationality" (ethnicity) was optional and that, unlike in the previous census, persons belonging to the Bosniac minority could freely declare themselves as such, while the category "Muslims" was also maintained as an option (see footnote 3 above).

The Advisory Committee has been informed that the Republican Statistical Bureau of Montenegro is also attaching great importance to the principles contained in Article 3 in the census of November 2003 and in the recording and processing of the optional replies to questions on "nationality" (ethnicity), language and religion. The Advisory Committee is of the opinion that one possible challenge is the treatment of twofold replies to the ethnicity questions (for example "Montenegrin of Albanian origin"). The Advisory Committee understands that in such cases, only the first part of the reply will be recorded by the census takers. The Advisory Committee finds that, in order for such a practice to respect the principles of Article 3 of the Framework Convention, it is essential that the persons concerned are clearly informed of this practice by census-takers, and the Advisory Committee encourages the authorities to analyse whether this practice affected the efforts to obtain accurate data on the numbers of national minorities.

### **In respect of Article 3**

The Advisory Committee *finds* that it would be possible to consider the inclusion of persons belonging to additional groups in the application of the Framework Convention on an article-by-article basis, and *considers* that the authorities should examine this issue in consultation with those concerned.

The Advisory Committee *finds* that there have been debates in Serbia and Montenegro on the inter-relation between different identities that have certain similarities and *considers* that the authorities should continue their efforts to exclude all attempts to impose a specific identity on the persons concerned.

The Advisory Committee *finds* that ethnicity data is collected in various contexts and *considers* that the authorities should ensure that the right not to be treated as a person belonging to a national minority is protected, including in schools.

### **33. SLOVAK REPUBLIC**

The 1991 census contains information on the following groups, all of which are considered by the Government to be covered by the Framework Convention: Bulgarians, Croatians, Czechs, Germans, Hungarians, Jews, Moravians/Silesians, Poles, Roma, Ruthenians, Ukrainians. In addition, the Government considers Russians to constitute a "newly developing national minority". The Advisory Committee is of the opinion that it would be possible to consider also the inclusion of persons belonging to other groups in the application of the Framework Convention on an article-by-article basis, and the Advisory Committee takes the view that Slovakia should consider this issue in consultation with those concerned.

In the context of the census of 2001, 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, persons belonging to national minorities should be encouraged to make use of the possibility to identify themselves (see also below the comments under Article 4).

The Advisory Committee notes that it has received conflicting information from different governmental sources as to whether governmental bodies, in particular the Police operating under the authority of the Ministry of Interior, continue to collect regularly personal data on the ethnicity of alleged offenders, in particularly those considered to be Roma. The Advisory Committee acknowledges that collection of ethnicity data may under certain circumstances contribute to programmes aimed at ensuring full and effective equality. However, the Advisory Committee finds the reports suggesting that such collection continues in Slovakia disconcerting, especially since such a practice would appear to have no clear legal basis. Indeed, it appears to be incompatible with Order No. 50 of the Ministry of Interior, issued on 31 December 1999, on "Measures for Implementing the Slovak Government's Strategy for Dealing with Issues Relating to the Roma National Minority within the Sector of the Ministry of the Interior and the Police Corps in 2000" as well as with the "Strategy for the Solution of the Problems of the Roma National Minority", approved by the Government on 27 September 1999 (hereinafter: the Strategy).

An additional factor that makes these reports disconcerting is that this collection is said to be carried out, not solely on the basis of voluntary identification by the persons concerned, but also, in some cases, at the discretion of the officials concerned and on the basis of what these officials consider to be "visible characteristics" of a person belonging to a particular national minority.

Finally, in addition to the aforementioned situation in the field of law-enforcement, the Advisory Committee is concerned about the reports suggesting that such non-voluntary collection of ethnicity data is carried out, to a varying degree, also in a number of other areas, including in governmental employment offices and in the military forces, again without clear legal basis. The Advisory Committee is of the opinion that collection of personal data on individuals' affiliation with a

particular national minority without their consent and without adequate legal safeguards would not be in compliance with Article 3 of the Framework Convention, which also contains the right not to be treated as a person belonging to a national minority. (It should be noted that this issue also raises questions with regard to the implementation of Article 4 of the Framework Convention.)

### **In respect of Article 3**

The Committee of Ministers *concludes* that it would be possible also to consider the inclusion of persons belonging to other groups in the application of the Framework Convention on an article-by-article basis, and the Committee of Ministers *recommends* that Slovakia consider this issue in consultation with the persons concerned.

The Committee of Ministers *concludes* that governmental sources have given conflicting information as to whether law-enforcement officials continue to collect ethnicity data on alleged offenders. The Committee of Ministers *concludes* that collection of personal data on individuals' affiliation with a particular national minority without their consent and without adequate legal safeguards is contrary to Article 3 of the Framework Convention and *recommends* that Slovakia ensure that its law-enforcement bodies and other agencies fully respect this principle.

## **34. SLOVENIA**

The Advisory Committee notes that Slovenia made the following declaration when depositing its instrument of ratification of the Framework Convention: “Considering that the Framework Convention for the Protection of National Minorities does not contain a definition of the notion of national minorities and it is therefore up to the individual Contracting Party to determine the groups which it shall consider as national minorities, the Government of the Republic of Slovenia, in accordance with the Constitution and internal legislation of the Republic of Slovenia, declares that these are the autochthonous Italian and Hungarian National Minorities. In accordance with the Constitution and internal legislation of the Republic of Slovenia, the provisions of the Framework Convention shall apply also to the members of the Roma community, who live in the Republic of Slovenia”.

The Advisory Committee underlines that in the absence of a definition in the Framework Convention itself, the Parties must examine the personal scope to be given to the Framework Convention within their country. The position of the Slovene Government is therefore deemed to be the outcome of this examination.

Whereas the Advisory Committee notes on the one hand that Parties have a margin of appreciation in this respect in order to take the specific circumstances prevailing in their country into account, it notes on the other hand that this must be exercised in accordance with general principles of international law and the fundamental principles set out in Article 3. In particular, it stresses that the implementation of the Framework Convention should not be a source of arbitrary or unjustified distinctions.

For this reason the Advisory Committee considers that it is part of its duty to examine the personal scope given to the Framework Convention in order to verify that no arbitrary or unjustified distinctions have been made. Furthermore, it considers that it must verify the proper application of the fundamental principles set out in Article 3.

In their reply to the questionnaire, the Slovene authorities explain that “ethnically mixed areas” are areas of autochthonous settlement by Hungarian and Italian national minorities, these areas being defined in the statutes of the municipalities concerned. The purpose of this regulation, based on the principle of territoriality, is to ensure special protection for Hungarian and Italian minorities in “ethnically mixed areas”, irrespective of the number of persons belonging to these minorities. In this context, Article 64 of the Constitution refers to “autochthonous Italian and Hungarian ethnic communities” and specifically mentions the geographical criterion with regard to compulsory bilingual (Hungarian/Slovenian) education.

The Slovene authorities also pointed out that although persons belonging to the Hungarian or Italian minorities who live outside “ethnically mixed areas” may not exercise the same rights as those established in the “ethnically mixed areas”, they can nevertheless rely on their status as persons belonging to a national minority. As such, they may enjoy certain rights, particularly with regard to financial support for cultural activities (see related comments under Article 5), to education (see related comments under Article 14) and to election to Parliament (see related comments under Article 15). The Advisory Committee welcomes that these persons keep their status and encourages the Slovene authorities to ensure this approach is fully implemented in practice as persons belonging to the Hungarian or Italian minorities living outside “ethnically mixed areas” have specific needs to be catered for.

The Advisory Committee notes that pursuant to their declaration, the Slovene authorities also undertake to apply the provisions of the Framework Convention to “members of the Roma community who live in the Republic of Slovenia”, even though the domestic legal status of this community is not the same as the one enjoyed by the Hungarian and Italian minorities. In this context, mention should be made of Article 65 of the Constitution which provides that “the status and special rights of the Roma community living in Slovenia shall be regulated by law”. Although neither the declaration nor the Slovene Constitution refers to the “autochthonous” character of the Roma community, it appears that the Government considers that only “autochthonous” Roma are in principle eligible to benefit from measures taken to protect the Roma community. However, the Advisory Committee’s attention was drawn to the lack of any legal definition of the “autochthonous” character of persons belonging to the Roma community and to the fact that this criterion is in practice extremely difficult to use (see related comments under Article 15). The Advisory Committee also observed that interpretation of this criterion varied considerably, depending on the ministries or departments concerned, especially regarding the required period of presence on Slovene territory and the question of citizenship. In view of the legal and practical uncertainties raised by use of the notion of “autochthonous” character and the risks of arbitrary exclusion inherent in it, the Advisory Committee is of the opinion that the Slovene authorities should review its relevance and the justification for retaining it. In this context it welcomes that the authorities seem to adopt a far more inclusive approach to support for Roma cultural activities whereby measures are not restricted to so-called “autochthonous” Roma and it urges widespread application of this approach.

The Advisory Committee finds that, according to the most recent available official figures, the most numerically significant “nationalities” are made up of people from Serbia, Croatia and Bosnia and Herzegovina. According to the Slovene authorities, most of these persons migrated from other Republics of former Yugoslavia between the mid-1960s and the early 1980s, although some traditional settlements of Serbs and Croats have existed in Slovenia for quite a long period of time.

The Advisory Committee notes that when Slovenia became independent in 1991, citizens of other Republics of former Yugoslavia who were resident in Slovenia found themselves overnight foreigners in the territory where they were living. Although no relevant official statistics exist, the



authorities indicate that the great majority of them took advantage of the opportunity they were offered to acquire Slovene citizenship during the months following the declaration of independence. The fact remains, however, that many previously existing facilities, especially concerning education in languages other than Slovene, were abolished or significantly reduced after independence, with a considerable impact on the situation of non-Slovenes from former Yugoslavia, whether or not these persons acquired Slovene citizenship in the meantime. The Advisory Committee also notes that certain sources mention the removal of a significant number of persons from the register of permanent residents in Slovenia in 1991 due to their non-Slovene or mixed ethnic origin, a point of view contested by the authorities.

Although some statutory provisions, e.g. Article 61 of the Constitution, guarantee a degree of protection for persons belonging to “ethnic communities”, a term that also includes non-Slovenes from former Yugoslavia, these persons do not have equivalent status to that of the Hungarian, Italian and Roma minorities and the Government does not consider them to be covered by the Framework Convention. However, the Advisory Committee welcomes the fact that in practice some authorities seem to adopt a more inclusive approach in respect of steps taken in favour of non-Slovenes from former Yugoslavia, especially with regard to financial support for cultural activities and with regard to education (see related comments under Article 6). In this context, the Advisory Committee notes with satisfaction that, during its conversations with the Government on the implementation of the Framework Convention, the Government openly addressed the question of the status of persons belonging to minorities originating from former Yugoslavia and of their needs as regards protection. The Advisory Committee urges the Government to adopt an even more inclusive approach to the question in order to cater more effectively for the needs of these persons, especially Croats and Serbs.

As regards the German-speaking minority living in Slovenia, the Advisory Committee notes that the Government acknowledges its historical presence but does not consider it as a national minority protected by the Framework Convention. While welcoming the signature on 30 April 2001 of a bilateral agreement with Austria (in this context see related comments under Article 18), the Advisory Committee urges the Slovene Government to continue its dialogue with representatives of the German-speaking minority with a view to meeting the needs of this group more fully, especially in the fields of education and culture.

As concerns the situation of other groups as well as the one from the German-speaking minority and from the groups made up of non-Slovenes from former Yugoslavia, the Advisory Committee is of the opinion that it would be possible to consider the inclusion of persons belonging to them, including non-citizens where appropriate, in the application of the Framework Convention on an article-by-article basis, and takes the view that the Slovene authorities should consider this matter in consultation with those concerned.

### **In respect of Article 3**

The Advisory Committee *finds* that the use of the apparently not legally defined notion of “autochthonous character” of persons belonging to the Roma community raises legal and practical uncertainties and carries a risk of arbitrary exclusion. The Advisory Committee *considers* that the Slovene authorities should review its relevance and the justification for retaining it.

The Advisory Committee *finds* that it would be possible to consider the inclusion of persons belonging to other groups in the application of the Framework Convention on an article-by-article basis and *considers* that Slovenia should consider this issue in consultation with those concerned.

## **35. SPAIN**

The Advisory Committee underlines that in the absence of a definition in the Framework Convention itself, the Parties must examine the personal scope of application to be given to the Framework Convention within their country. The position of the Spanish Government is therefore deemed to be the outcome of this examination.

Whereas the Advisory Committee notes on the one hand that Parties have a margin of appreciation in this respect in order to take the specific circumstances prevailing in their country into account, it notes on the other hand that this must be exercised in accordance with general principles of international law and the fundamental principles set out in Article 3. In particular, it stresses that the implementation of the Framework Convention should not be a source of arbitrary or unjustified distinctions.

For this reason the Advisory Committee considers that it is part of its duty to examine the personal scope given to the implementation of the Framework Convention in order to verify that no arbitrary or unjustified distinctions have been made. Furthermore, it considers that it must verify the proper application of the fundamental principles set out in Article 3.

The Advisory Committee notes that the term “national minority” is not defined in law in Spain, which has no legislation specifically on the protection of national minorities. The Advisory Committee also notes that there is no list of officially recognised national minorities and that no declaration or reservation was lodged by Spain when depositing its instrument of ratification of the Framework Convention.

The Advisory Committee notes that in law, the Roma are not recognised either as a Spanish “people” or as a national minority, although some of them have submitted requests to the authorities to that end. By way of example, the “Toledo Manifesto”, a declaration presented to the various political parties by a Roma political and social movement founded in February 2000, called on the authorities to recognise the Roma as a “people” and embodied the main expectations of those Roma who stand to gain from such legal recognition. In particular, the document called for recognition of their linguistic identity, the establishment among Roma of an elected democratic structure able to promote and defend their rights, the granting to Roma of appropriate access to the public media in order to promote their image and their interests, and the creation of a cultural institute for Roma. This appeal, like other similar initiatives, does not appear to have received the full attention of the authorities. More recently, in the context of the written exchanges occasioned by the monitoring under the Framework Convention, the Spanish authorities have provided clarification on their official position in this regard, stating that the Spanish Roma community does not constitute a national minority. Moreover, this position was borne out at domestic level by the Spanish Senate’s rejection of a recent motion calling for such recognition.

The Advisory Committee nonetheless welcomes the fact that, even though Roma are not formally recognised at national level as a national minority, the authorities intend to give them the protection accorded by the Framework Convention. This approach is implicitly confirmed by the fact that the State Report is devoted to the measures taken to improve the situation of the Roma.

In connection with the information provided under Article 3 of the Framework Convention, the State Report refers to the Preamble to the Spanish Constitution of 1978, which recognises and protects “all Spaniards and all the peoples of Spain in the exercise of human rights, of their cultures and traditions, and of their languages and institutions”. Several terms are used in the Constitution to

designate the country's population in its entirety ("the Spanish people" in Article 1.2, "all Spaniards" in the Preamble, "the Spanish Nation" in the Preamble and Article 2) and its components ("the peoples of Spain" in the Preamble, "the nationalities" in Article 2).

The Advisory Committee notes that, when ratifying the European Charter for Regional or Minority Languages in April 2001, the authorities entered a declaration stating which languages were considered in Spain as regional or minority languages. In the absence of any express indication concerning the groups which the Government regards as national minorities and in so far as the linguistic dimension is a fundamental factor in identity for the "peoples" or "nationalities" of Spain, the Advisory Committee wonders what is the status of the groups so designated in relation to the Framework Convention.

Certainly the Advisory Committee has recently taken note of the fact that the Spanish authorities do not accept any inclusion of "nationalities" of Spain in the scope of application of the Framework Convention. That being the case, in the absence of in-depth discussions with the authorities and contacts with the persons concerned, it is not possible, or even desirable, for the Advisory Committee to conclude whether it would be appropriate or inappropriate to treat these groups as national minorities. Moreover, since they are recognised as "peoples" by the Spanish Constitution, it may be that they would not wish to be designated nor treated as national minorities.

However, the Advisory Committee is of the opinion that, if these persons were to evince interest in the protection afforded by the Framework Convention in the context of a dialogue with the authorities, that this possibility should not be ruled out and that this protection should not be denied to them *a priori*. Consequently, the Advisory Committee invites the authorities to envisage consultations with the groups potentially concerned in order to discuss these matters. As linguistic boundaries do not always coincide with territorial divisions, it might be helpful also to consider as part of this dialogue, and if the parties concerned show the relevant interest, the situation of Catalans, Basques, Galicians or Valencians living in areas outside those where they are present traditionally or in large numbers, as well as Spanish speakers living in the Autonomous Communities with special linguistic status.

The Advisory Committee finds that there are in Spain, apart from the linguistic groups mentioned above, other groups, such as the Jews, which the Government does not seem to regard at this stage as being protected by the Framework Convention. The Advisory Committee also notes the lack of any reference, either in the State Report or in the authorities' reply to its questionnaire, to the population of Berber origin (of Muslim religion and *Tamazight* language) living in the autonomous towns of Ceuta and Melilla, two Spanish enclaves in northern Africa. According to various sources, this population shares identity features which distinguish it from the majority population and is said to have already voiced its desire to preserve its own cultural identity. In view of the above, the Advisory Committee is of the opinion that it would be possible to consider the inclusion of persons belonging to additional groups, including non-citizens as appropriate, in the application of the Framework Convention on an article-by-article basis, and the Advisory Committee takes the view that the Spanish authorities should consider this issue in consultation with those concerned.

### **In respect of Article 3**

The Advisory Committee *finds* that, even though no groups are formally recognized as national minorities in Spain, the protection afforded under the Framework Convention is available to Roma. The Advisory Committee further *finds* that the question of the scope of application of the Framework Convention should be examined more closely by the authorities and *considers* that consultations with the groups potentially concerned could provide the necessary clarifications.

## 36. SWEDEN

The Advisory Committee underlines that in the absence of a definition in the Framework Convention itself, the Parties must examine the personal scope of application to be given to the Framework Convention within their country. The position of the Swedish Government is therefore deemed to be the outcome of this examination.

Whereas the Advisory Committee notes on the one hand that Parties have a margin of appreciation in this respect in order to take the specific circumstances prevailing in their country into account, it notes on the other hand that this must be exercised in accordance with general principles of international law and the fundamental principles set out in Article 3. In particular, it stresses that the implementation of the Framework Convention should not be a source of arbitrary or unjustified distinctions.

For this reason the Advisory Committee considers that it is part of its duty to examine the personal scope given to the implementation of the Framework Convention in order to verify that no arbitrary or unjustified distinctions have been made. Furthermore, it considers that it must verify the proper application of the fundamental principles set out in Article 3.

The Advisory Committee notes that, upon ratifying the Framework Convention, Sweden made a declaration according to which the national minorities in Sweden are Sami, Swedish Finns, Tornedalers, Roma and Jews. In their dialogue with the Advisory Committee, the Swedish authorities have confirmed that the provisions of the Framework Convention are to be implemented in the same way for all persons belonging to these particular minorities regardless of whether or not they are Swedish citizens. The Advisory Committee strongly welcomes this inclusive approach with respect to the minorities concerned. Bearing in mind that a large number of persons concerned are not Swedish citizens, this inclusive approach contributes to the impact of the Framework Convention and helps to avoid any arbitrary or unjustified distinctions within these minorities.

The Advisory Committee emphasises that, in parallel with public efforts aimed at improved integration, specific measures are needed to address the particular needs of persons belonging to national minorities. It is indeed important that protection of national minorities is not perceived, by local authorities or others concerned, to encompass only those measures that the authorities pursue in the framework of their integration initiatives although there are in some areas interlinkages between the two.

The Advisory Committee strongly welcomes the fact that both the Swedish Government and the Sami Parliament have taken the view that the recognition of a group of persons as constituting an indigenous people does not exclude persons belonging to that group from benefiting from the protection afforded by the Framework Convention and that Sami are therefore covered by this treaty.

The Advisory Committee notes that representatives of certain organisations from Scania and Gotland have made efforts to obtain from the Government a fuller recognition of, and support for, the specific linguistic and other concerns of the people residing in these regions, including in the context of the implementation of the Framework Convention. At the same time, the authorities are of the opinion that the persons residing in these areas do not constitute a national minority since they only speak dialects of the Swedish language. The Advisory Committee considers that the issue

could be addressed through dialogue between persons belonging to the groups concerned and the authorities.

More generally, the Advisory Committee notes the existence in Sweden of a large number of ethnic and linguistic groups that the Government does not consider to be covered by the Framework Convention. Nonetheless, the Advisory Committee is of the opinion that it would be possible to consider the inclusion of persons belonging to additional groups in the application of the Framework Convention on an article-by-article basis, and the Advisory Committee takes the view that the Swedish authorities should consider this issue in consultation with those concerned.

### **In respect of Article 3**

The Advisory Committee *finds* that it would be possible to consider the inclusion of persons belonging to other groups in the application of the Framework Convention on an article-by-article basis and *considers* that Sweden should examine this issue with those concerned.

## **37. SWITZERLAND**

The Advisory Committee notes that at the time when it deposited the instrument of ratification of the Framework Convention, Switzerland made the following declaration: "Switzerland declares that in Switzerland national minorities in the sense of the framework Convention are groups of individuals numerically inferior to the rest of the population of the country or of a canton, whose members are Swiss nationals, have long-standing, firm and lasting ties with Switzerland and are guided by the will to safeguard together what constitutes their common identity, in particular their culture, their traditions, their religion or their language. Switzerland declares that the provisions of the Framework Convention governing the use of the language in relations between individuals and administrative authorities are applicable without prejudice to the principles observed by the Confederation and the cantons in the determination of official languages."

The Advisory Committee underlines that, in the absence of a definition in the Framework Convention itself, the Parties must examine the personal scope of application to be given to the Framework Convention within their country. The position of the Swiss Government is therefore deemed to be the outcome of this examination.

Whereas the Advisory Committee notes on the one hand that Parties have a margin of appreciation in this respect in order to take the specific circumstances prevailing in their country into account, it notes on the other hand that this must be exercised in accordance with general principles of international law and the fundamental principles set out in Article 3. In particular, it stresses that the implementation of the Framework Convention should not be a source of arbitrary or unjustified distinctions.

For this reason the Advisory Committee considers that it is part of its duty to examine the personal scope given to the implementation of the Framework Convention in order to verify that no arbitrary or unjustified distinctions have been made. Furthermore, it considers that it must verify the proper application of the fundamental principles set out in Article 3.

It emerges from the State Report and from the reply to the questionnaire that the Swiss authorities consider that persons belonging to national linguistic minorities, that is to say, the French-, Italian- and Romanche-speaking minorities, are protected by the Framework Convention. The Swiss authorities further consider that such protection is open to persons belonging to the Jewish

community and to Travellers. In the light in particular of the talks which it had with representatives of those communities during its trip to Switzerland, the Advisory Committee notes the evident interest in such protection shown by the Travellers, of whom the very great majority consider themselves to be of Jenish descent, although some belong to the Sinti or Roma. For their part, the representatives of the Jewish community did not show any such interest, although they did not rule out all possibility of benefiting from protection under the Framework Convention.

Furthermore, according to the Swiss authorities, persons belonging to the German-speaking minority residing in certain cantons, such as Fribourg or Valais, may also be protected by the Framework Convention. The Advisory Committee observes that the Swiss legal order confers a high level of autonomy on the cantons, given that Article 3 of the Federal Constitution lays down the principle of cantonal sovereignty. This principle is reflected in particular in the fields of education and culture, where the cantons have very wide powers. The Advisory Committee notes that numerous German-speakers living in those two cantons feel that they belong to a linguistic minority at cantonal level and clearly show a willingness to conserve their culture. Consequently, in view of these various factors, the Advisory Committee is of the opinion that persons belonging to the German-speaking minority resident in Cantons Fribourg and Valais can be given the possibility to rely on the protection provided by the Framework Convention, as far as the issues concerned fall within cantonal competence. Similarly, it is to be stressed that the protection offered by the Framework Convention is also available for other linguistic minorities at cantonal level, for example for the French-speakers of the Canton Bern. The Advisory Committee notes that such an approach is perfectly in keeping with the spirit of the Framework Convention.

The Advisory Committee notes that the declaration made by Switzerland at the time of depositing the instrument of ratification refers to the principles observed by the Confederation and the cantons in determining the official languages. It observes that the territoriality of languages is among those principles. Although it leads to certain restrictions in relationships between individuals and administrative authorities, the territoriality of languages does not result in denying persons belonging to the French-speaking, Italian-speaking or Romanche-speaking minorities living outside their regions of traditional settlement their status of persons belonging to a minority. Consequently, the principle of territoriality does not eliminate all protection under the Framework Convention, which the Advisory Committee welcomes. Insofar as some provisions of the Framework Convention are likely to be helpful in determining the scope of the principle of territoriality, the practical implementation of which is not an easy task, the Advisory Committee can only encourage the authorities concerned not to interpret the second sentence of the declaration in question in a too rigid manner.

Given that a very high proportion of persons belonging to the Italian- and Romanche-speaking minorities have left their areas of traditional settlement in order to take up openings for training or to find a job and notwithstanding the extensive legislative and other measures already taken to give effect to Article 70, paragraphs 4 and 5 of the Federal Constitution, the Advisory Committee encourages the Swiss authorities to pay special attention to those persons, who may have specific needs, in particular in the field of education (see related comments under Article 13, paragraph 66 and Article 14, paragraph 72).

Apart from the groups identified by the Swiss authorities as being covered by the Framework Convention, the Swiss authorities also mention, in answer to the aforementioned questionnaire and in the talks which they had with the Advisory Committee, the existence of other linguistic, ethnic or religious groups which they do not consider to be protected by the Framework Convention on the ground, in particular, that the persons belonging to those groups do not have Swiss nationality and/or do not have firm, long-standing and lasting ties with Switzerland. The Advisory Committee

is of the opinion, however, that it would be possible to consider the inclusion of persons belonging to other groups, including non-citizens as appropriate, in the application of the Framework Convention on an article-by-article basis, and takes the view that the Swiss authorities should consider this matter in consultation with those concerned at some appropriate time in the future.

### **In respect of Article 3**

The Advisory Committee *finds* that it would be possible to consider the inclusion of persons belonging to other groups in the application of the Framework Convention on an article-by-article basis and *considers* that Switzerland should consider this issue in consultation with those concerned.

The Advisory Committee *finds* that persons belonging to the German-speaking minority resident in Cantons Fribourg and Valais can be given the possibility to rely on the protection provided by the Framework Convention, as far as the issues concerned fall within cantonal competence. It *finds* that the protection offered by the Framework Convention is also available for other linguistic minorities at cantonal level, for example for the French-speakers of the Canton Bern. The Advisory Committee *considers* that such an approach is perfectly in keeping with the spirit of the Framework Convention.

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

The Advisory Committee notes that the instrument of ratification deposited on 10 April 1997 by “the former Yugoslav Republic of Macedonia” contains the following declaration:

*“1. The term “national minorities” used in the Framework Convention for the Protection of National Minorities is considered to be identical to the term “nationalities” which is used in the Constitution and the laws of the Republic of Macedonia.*

*2. The provisions of the Framework Convention for the Protection of National Minorities will be applied to the Albanian, Turkish, Vlach, Roma and Serbian national minorities living on the territory of the Republic of Macedonia.”*

The Advisory Committee underlines that in the absence of a definition in the Framework Convention itself, the Parties must examine the personal scope of application to be given to the Framework Convention within their country. The position of the Government of “the former Yugoslav Republic of Macedonia” is therefore deemed to be the outcome of this examination.

Whereas the Advisory Committee notes on the one hand that Parties have a margin of appreciation in this respect in order to take the specific circumstances prevailing in their country into account, it notes on the other hand that this must be exercised in accordance with general principles of international law and the fundamental principles set out in Article 3 of the Framework Convention. In particular, it stresses that the implementation of the Framework Convention should not be a source of arbitrary or unjustified distinctions.

For this reason the Advisory Committee considers that it is part of its duty to examine the personal scope given to the implementation of the Framework Convention in order to verify that no arbitrary or unjustified distinctions have been made. Furthermore, it considers that it must verify the proper application of the fundamental principles set out in Article 3 of the Framework Convention.

The Advisory Committee notes that in accordance with the terms of Annex A of the Ohrid Agreement, some constitutional amendments have been adopted and that the Preamble to the Constitution of “the former Yugoslav Republic of Macedonia” now reads as follows: “The citizens of the Republic of Macedonia, the Macedonian people, as well as citizens living within its borders who are part of the Albanian people, the Turkish people, the Vlach people, the Serbian people, the Roma people, the Bosniac people and others, assuming responsibility for the present and future of their homeland [...], equal in rights and obligations towards the common good – the Republic of Macedonia, in accordance with the Krushevo Republic [...] and the Referendum of September 8, 1991, they have decided to establish the Republic of Macedonia as an independent sovereign state [...]”.

The Advisory Committee notes that prior to the dissolution of the Socialist Federative Republic of Yugoslavia (SFRY), all citizens held both the citizenship of the SFRY and a Republican level citizenship. While at the time of the SFRY, the Republican level citizenship was not important to access social rights and many did not change the latter when moving to a different Republic, it became decisive upon State succession. As a consequence, those citizens who moved to a different Republic and did not change their Republican level citizenship were not included in the register of citizens of the country in which they had all their ties and therefore had to seek citizenship through naturalisation under the 1992 citizenship law. The Advisory Committee notes that the 1992 law was amended in December 2003 and relaxed the naturalisation requirement. This law defines citizenship as “a legal link between the persons and the state and does not indicate the ethnic origin of the person” and provides for facilitated acquisition of citizenship for nationals of the other Republics of the former SFRY and nationals of the former SFRY. In practice, however, some problems may remain for some minority groups (see also under Article 4 below, paragraphs 37 and 38).

The Advisory Committee further notes that the Preamble to the Constitution specifically includes the Bosniac people and mentions another category, “others”. A similar approach can be found in the State Report which refers to the case of groups other than those included in the 1997 declaration entered upon ratification of the Framework Convention. The Advisory Committee welcomes this development, indicating as it does a more inclusive approach. It also notes, from its discussions with the authorities, that the latter intend to make this *de facto* policy official through a revised declaration that would extend the protection afforded by the Framework Convention to include Bosniacs.

The Advisory Committee learnt from members of the Egyptian community that the authorities tend to equate them with the Roma whereas they themselves, because of their ethnic background, history, traditions and culture, wish to be treated as a distinct community and to enjoy the protection of the Framework Convention. The Advisory Committee notes that, according to representatives of the Egyptian community, attempts to assert themselves as a separate community have met with a negative response at various levels of government. The Advisory Committee urges the Government to ensure that the identity of these people is respected by the authorities and to examine the possibility of them being granted protection under the Framework Convention in their own right.

Besides the Egyptians, the Advisory Committee is of the opinion that consideration could be given to including persons belonging to other groups, including non-citizens as appropriate, within the scope of the Framework Convention on an article-by-article basis, and urges the Government to consider this matter in due course, in consultation with those concerned.

The Advisory Committee welcomes the fact that the population census carried out in 2002, and the results of which were published on 1 December 2003, was based on a sound legal framework. The Advisory Committee notes in particular that under the census law of 2002, respondents can choose



whether to answer the question on ethnic affiliation that appears in the forms. It also notes with approval that under this same law, the said forms must be printed not only in Macedonian but also in Albanian, Turkish, Vlach, Romani and Serbian and that respondents have the right to complete the forms in the language of their choice. The Advisory Committee welcomes that in practice, the census seems to have been carried out in a manner broadly consistent with the principles laid down in Article 3 of the Framework Convention (see also General remarks above).

### **In respect of Article 3**

The Advisory Committee *finds* that the persons belonging to the Egyptian community are dissatisfied with the lack of recognition of their distinct identity by the authorities and expressed the wish to enjoy the protection of the Framework Convention. The Advisory Committee *considers* that the Government should ensure that the distinct identity of this community is respected and examine the possible inclusion of this group in the coverage of the Framework Convention.

The Advisory Committee *finds* that it would be possible to consider the inclusion of persons belonging to additional groups in the application of the Framework Convention on an article-by-article basis, and *considers* that the authorities should examine this issue in consultation with those concerned.

## **39. UKRAINE**

The Advisory Committee underlines that in the absence of a definition in the Framework Convention itself, the Parties must examine the personal scope of application to be given to the Framework Convention within their country. The position of the Government of Ukraine is therefore deemed to be the outcome of this examination.

Whereas the Advisory Committee notes on the one hand that Parties have a margin of appreciation in this respect in order to take the specific circumstances prevailing in their country into account, it notes on the other hand that this must be exercised in accordance with general principles of international law and the fundamental principles set out in Article 3. In particular, it stresses that the implementation of the Framework Convention should not be a source of arbitrary or unjustified distinctions.

For this reason the Advisory Committee considers that it is part of its duty to examine the personal scope given to the implementation of the Framework Convention in order to verify that no arbitrary or unjustified distinctions have been made. Furthermore, it considers that it must verify the proper application of the fundamental principles set out in Article 3.

The Advisory Committee notes that Ukraine has not established a list of national minorities. The State Report implies that all 130 “nationalities” residing in Ukraine, except the Ukrainians, are covered by the Framework Convention. At the same time, the State Report employs the term “ethnographic (sub-ethnic) groups of the Ukrainian people” - a term that is not defined in any legislation pertaining to national minorities - to describe e.g. the Boikos, Hutsuls and Rusyns, without giving comprehensive information on their situation and without indicating whether it considers that persons belonging to these groups are protected by the Framework Convention. The Advisory Committee is aware of the fact that in particular Rusyns have made extensive efforts to obtain from the Government a fuller recognition of, and support for, their specific identity. The Advisory Committee believes that these concerns merit attention and it is therefore pleased to note that the authorities have taken certain steps to address them. In particular, the Advisory Committee

welcomes the fact that, unlike in the census of 1989, the Rusyns and other “sub-ethnic groups” are treated as a separate category under “ethnic origin” in the census of December 2001. This recognition of their separate identity is however limited: in contrast to 130 other groups, Rusyns and the other seven “sub-ethnic groups” will not be considered a separate “nationality” category in the census but a part of the Ukrainian “nationality”. The Advisory Committee nevertheless expects that the numerical data concerning various “ethnic origin” categories will also be made public and that, thereby, the results of the census will provide a basis for an improved dialogue between persons belonging to the groups concerned and the authorities, covering also issues pertaining to the implementation of the Framework Convention.

The Advisory Committee notes that certain legislation pertaining to national minorities, notably the 1992 Law on National Minorities, applies only to citizens of Ukraine. The Advisory Committee notes that this limitation affects also persons belonging to groups addressed in the State Report, bearing in mind the difficulties that the formerly deported people have had in obtaining the citizenship of Ukraine (see also related comments under Article 15).

With a view to the preceding paragraphs, the Advisory Committee considers that there remains scope for covering further groups within the scope of the Framework Convention. The Advisory Committee is of the opinion that it would be possible to consider the inclusion of persons belonging to these groups, including non-citizens as appropriate, in the application of the Framework Convention on an article-by-article basis, and the Advisory Committee takes the view that the Ukraine authorities should consider this issue in consultation with those concerned.

The Advisory Committee further notes that the State Report deals with persons belonging to groups whose representatives have certain hesitations about the use of the term “national minorities” to describe the population concerned. This is the case in particular for the Crimean Tatars, whose representatives prefer the term “indigenous people”. The Advisory Committee shares the view, held by the Government and a number of representatives of the Crimean Tatars, that the recognition of a group of persons as constituting an indigenous people does not exclude persons belonging to that group from benefiting from protection afforded by the Framework Convention. This conclusion is of particular importance in view of the fact that, although the term “indigenous people” is featured in Article 11 of the Constitution, this concept has not been developed in the legislation or practice of Ukraine and there exist no specific legislative guarantees for the protection of indigenous peoples as such in the domestic legislation.

The Advisory Committee also notes that amongst persons belonging to the Russian minority in Ukraine there is a certain reluctance to employ the term national minority. Furthermore, it needs to be noted that, in addition to the ethnic Russians, there is a large number of ethnic Ukrainians whose mother tongue is Russian. These factors need to be taken into account when the authorities take measures to implement the Framework Convention and they also need to be reflected in the terminology used.

The Advisory Committee notes that there have been extensive debates in Ukraine on the interrelation between the Romanian and Moldovan identities. The Advisory Committee underlines that this issue should be approached with full respect to the principles contained in Article 3 of the Framework Convention, and that there should be no attempts to impose one or the other identity on the persons concerned. In this respect, the Advisory Committee welcomes the fact that the census of 2001 recognised both identities concerned on an equal footing.

The Advisory Committee notes that the questionnaire on the basis of which the December 2001 census was conducted contained a mandatory question on individuals' "nationality/ethnic origin". While appreciating the need to have quality data in this field, the Advisory Committee considers that the right not to be treated as a person belonging to a national minority also extends to census situations and that a mandatory question on one's ethnicity is not compatible with this principle, even if, as is reportedly the case in Ukraine, the authorities concerned have no plans to impose sanctions for violations of this rule. The Advisory Committee is of the opinion that, pursuant to Article 3 of the Framework Convention, if a census form contains a question on one's ethnicity, answering such a question should be optional and that Ukraine should revise its practice accordingly.

The Advisory Committee has been informed that, in some circumstances, law-enforcement officials collect information on persons' ethnicity. They have, for example, collected "operational statistics" pertaining to the criminal convictions related to specific national minorities. These include detailed statistics concerning criminal proceedings against Crimean Tatars and Roma in various regions. The Advisory Committee is deeply concerned about this situation, especially since such practices would appear to have no clear legal basis and they are not carried out solely on the basis of voluntary identification by the persons concerned. The Advisory Committee is of the opinion that collection of personal data on individuals' affiliation with a particular national minority without their consent and without adequate legal safeguards is not compatible with Article 3 of the Framework Convention. The Advisory Committee considers it essential that Ukraine revise its practice and pay careful attention to this principle when collecting data in the future.

Bearing in mind the foregoing, the Advisory Committee finds it essential that the data that has been collected is protected in an appropriate manner and that the ethnicity data is processed, as a rule, in such a manner that data subjects are not identifiable, bearing in mind the principles contained in the Committee of Ministers' Recommendation No. (97) 18 concerning the protection of personal data collected and processed for statistical purposes. In this respect, the Advisory Committee considers it important that Ukraine pursues its plans to improve its legislation in this sphere.

Finally, the Advisory Committee underlines that, bearing in mind the right of equality before the law and of equal protection of the law contained in Article 4 of the Framework Convention, there should be no undue differences between the treatment of persons belonging to different national minorities as far as the collection of ethnicity data by the law-enforcement bodies or other authorities is concerned.

### **In respect of Article 3**

The Advisory Committee *finds* that it would be possible to consider the inclusion of persons belonging to other groups in the application of the Framework Convention on an article-by-article basis and *considers* that Ukraine should consider this issue in consultation with those concerned.

The Advisory Committee *finds* that the questionnaire on the basis of which the December 2001 census was conducted contained a mandatory question on individuals' "nationality/ethnic origin", which is not compatible with Article 3 of the Framework Convention. It *considers* that Ukraine should revise this practice with a view to making answering such a question optional.

The Advisory Committee *finds* that law-enforcement officials collect information on persons' ethnicity in a manner that is not compatible with the Framework Convention. It *considers* that Ukraine should revise such practices in order to ensure that they are fully compatible with the principles laid down in Article 3 of the Framework Convention.

## 40. UNITED KINGDOM

The Advisory Committee underlines that in the absence of a definition in the Framework Convention itself, the Parties must examine the personal scope of application to be given to the Framework Convention within their country. The position of the United Kingdom is therefore deemed to be the outcome of this examination.

Whereas the Advisory Committee notes on the one hand that Parties have a margin of appreciation in this respect in order to take the specific circumstances prevailing in their country into account, it notes on the other hand that this must be exercised in accordance with general principles of international law and the fundamental principles set out in Article 3. In particular, it stresses that the implementation of the Framework Convention should not be a source of arbitrary or unjustified distinctions.

For this reason the Advisory Committee considers that it is part of its duty to examine the personal scope given to the implementation of the Framework Convention in order to verify that no arbitrary or unjustified distinctions have been made. Furthermore, it considers that it must verify the proper application of the fundamental principles set out in Article 3.

The Advisory Committee strongly welcomes the inclusive approach of the United Kingdom in its interpretation of the term “national minority”. The Advisory Committee notes that the term “national minority” is not a legally defined term within the United Kingdom, but that the State Report is based on the broad “conventional” definition of “racial group” as set out in the Race Relations Act (1976). Under this Act “racial group” is defined as “a group of persons defined by colour, race, nationality (including citizenship) or ethnic or national origin”. This includes the ethnic minority communities. The Courts have furthermore interpreted the term and found it to include the Scots, Irish and Welsh by virtue of their national origin. On a case-by-case basis the Courts have also included Roma / Gypsies as well as Irish Travellers (also defined as a racial group for the purposes of the Race Relations (Northern Ireland) Order (1997)), Sikhs and Jews.

The Advisory Committee notes that the Courts have the possibility of defining which groups amount to a “racial group” under the Race Relations Act (1976). The Advisory Committee however notes that there are certain groups that have not (or not yet) been included within the definition while others have and that this may raise issues of inequalities between groups. In this respect it is noted in particular that Jews and Sikhs have been so included, while Muslims and other religious groups have not.

The Advisory Committee notes that the Government does not consider the people of Cornwall to constitute a national minority. The Advisory Committee however notes that a number of persons living in Cornwall consider themselves to be a national minority within the scope of the Framework Convention. In this, the Advisory Committee has received substantial information from them as to their Celtic identity, specific history, distinct language and culture.

Notwithstanding that the Courts have an important role to play through defining a “racial group” under the Race Relations Act (1976), the Advisory Committee considers that there remains scope for covering further groups within the scope of the Framework Convention. The Advisory Committee is of the opinion that it would be possible to consider the inclusion of persons belonging to these groups in the application of the Framework Convention on an article-by-article basis and

takes the view that the United Kingdom authorities should consider this issue in consultation with those concerned.

The Advisory Committee notes that a new census was held in the United Kingdom in 2001. The Advisory Committee notes that a census provides an important opportunity for persons to express an identity. The Advisory Committee is however aware that some persons concerned in the 2001 census regretted not having the possibility to declare their affiliation with a particular group (including the Welsh, Cornish, Ulster-Scots and Roma / Gypsies). While the possibility of writing in an affiliation to an “other” group existed for certain census categories to mitigate the problem, and for example in the case of the Welsh a publicity campaign was organised to explain this possibility, the Advisory Committee considers that in the future there should be greater clarity on the possibilities for affiliating to other particular groups.

The Advisory Committee notes that the Bailiwick of Jersey has requested that the United Kingdom’s ratification of the Framework Convention be extended to include them and that this can be taken forward once draft legislation has been adopted by the Island Legislature. The Advisory Committee also notes that the territorial extension of the Framework Convention remains a possibility for other territories for whose international relations the United Kingdom is responsible.

### **In respect of Article 3**

The Advisory Committee *finds* that it would be possible to consider the inclusion of persons belonging to other groups in the application of the Framework Convention on an article-by-article basis and *considers* that the United Kingdom should examine this issue in consultation with those concerned.