

Strasbourg, 4 July 2011

Working document
Public

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

**COMPILATION OF OPINIONS OF THE ADVISORY COMMITTEE
RELATING TO ARTICLE 13 OF THE FRAMEWORK CONVENTION**

FIRST CYCLE

“Article 13

1. Within the framework of their education systems, the Parties shall recognise that persons belonging to a national minority have the right to set up and to manage their own private educational and training establishments.
2. The exercise of this right shall not entail any financial obligation for the Parties.”

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

Table of contents

1.	Albania	3
2.	Armenia	3
3.	Austria	3
4.	Azerbaijan.....	4
5.	Bosnia and Herzegovina.....	4
6.	Bulgaria	4
7.	Croatia	4
8.	Cyprus	5
9.	Czech Republic	5
10.	Denmark	5
11.	Estonia	5
12.	Finland.....	5
13.	Georgia	5
14.	Germany	6
15.	Hungary	6
16.	Ireland	6
17.	Italy	7
18.	Kosovo	7
19.	Latvia.....	7
20.	Liechtenstein.....	8
21.	Lithuania.....	8
22.	Malta	8
23.	Moldova.....	8
24.	Montenegro.....	8
25.	Netherlands.....	8
26.	Norway	9
27.	Poland.....	9
28.	Portugal	9
29.	Romania.....	9
30.	Russian Federation.....	9
31.	San Marino	10
32.	Serbia and Montenegro	10
33.	Slovak Republic	10
34.	Slovenia	10
35.	Spain.....	10
36.	Sweden	10
37.	Switzerland	11
38.	“The former Yugoslav Republic of Macedonia”	11
39.	Ukraine	12
40.	United Kingdom.....	12

1. ALBANIA

On the basis of the information currently at its disposal, the Advisory Committee considers that the implementation of this article does not give rise to any specific observations.

2. ARMENIA

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

3. AUSTRIA

The Advisory Committee notes that, although in principle the education system for national minorities forms part of the general state education system, the Czech minority and Slovak minority are in a specific situation. Indeed the only school providing a full course of bilingual education for these two minorities from kindergarten to upper secondary level is the Komensky school in Vienna, which is a private establishment.

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

As concerns educational opportunities in Vienna for persons belonging to other national minorities, the Advisory Committee notes that there are still needs that have not been met. The Austrian authorities should pay increased attention to this question, for example by providing more subsidies for private schools offering such forms of education, particularly to Hungarians, who are regarded as an autochthonous minority in Vienna, and to Croats.

In respect of Article 13

The Advisory Committee *finds* that the Czech minority and the Slovak minority are facing growing difficulties in covering on their own the ordinary operating costs of their only school providing a full course of bilingual education from kindergarten to upper secondary level in Vienna. Given the school's historical significance and its role in conveying the Czech and Slovak languages and cultures, the Advisory Committee *considers* that the Austrian authorities should continue their discussions with the representatives of the Czech and Slovak minorities to identify funding solutions that will help to secure the school's long-term future.

As regards educational opportunities in Vienna for persons belonging to other national minorities, the Advisory Committee *finds* that there are still needs that have not been met. It *considers* that the Austrian authorities should pay increased attention to this question, for example by providing more subsidies for private schools offering such forms of education, particularly to Hungarians, who are regarded as an autochthonous minority in Vienna, and to Croats.

4. AZERBAIJAN

The Advisory Committee welcomes the fact that, after some delays, the issue of registration of a private Jewish school in Baku has reportedly been solved in 2003. The Advisory Committee encourages the authorities to ensure support for the establishment and operation of such institutions based on clear and objective legal criteria.

5. BOSNIA AND HERZEGOVINA

According to Article 13 of the 2003 Law on the Protection of Rights of Persons Belonging to National Minorities, Entities and Cantons in the Federation shall within their legislation determine the possibilities for persons Belonging to national minorities to establish and maintain their own private institutions for education and professional training. Moreover, this provision foresees that financing of these institutions shall be secured by persons belonging to national minorities themselves.

The Advisory Committee wishes to make clear that the right granted by Article 13 of the Framework Convention may not be subject to undue restrictions and expects that the Entities will fully respect it when “determining the possibilities” for persons belonging to national minorities to set up and manage their own private educational and training establishments. In this context, it welcomes the fact that several associations of national minorities already organise additional classes in their language. The Advisory Committee also stresses that the wording of Article 13 of the 2003 Law on the Protection of Rights of Persons Belonging to National Minorities should not be interpreted in such a way as to limit the freedom of national minorities to seek resources to establish their own private institutions from domestic and international sources.

6. BULGARIA

Based on the information currently at its disposal, the Advisory Committee considers that implementation of this article does not give rise to any specific observation.

7. CROATIA

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

8. CYPRUS

See Article 12

9. CZECH REPUBLIC

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

10. DENMARK

See Article 12

11. ESTONIA

The Advisory Committee welcomes the private initiatives that have been taken to support education of persons belonging to national minorities, such as the Jewish secondary school in Tallinn. The Advisory Committee is of the opinion that initiatives in this sphere - which in some cases constitute the only forum for the teaching of the language of persons belonging to the numerically smaller minorities - merit increasing support.

In respect of Article 13

The Committee of Ministers *concludes* that the reform of the educational system may increase the need for private minority language education and *recommends* that initiatives in this sphere are given increasing support.

12. FINLAND

On the basis of the information currently at its disposal, the Advisory Committee considers that the implementation of this article does not give rise to any specific observations.

13. GEORGIA

Private education in minority languages

The Advisory Committee notes that many persons belonging to the Armenian minority would like an Armenian-language university to be set up in Akhalkalaki. Article 4 of the Law on higher education makes teaching in all higher education establishments (public and private) in languages other than Georgian possible only in the framework of an international agreement, or with the approval of the Ministry of Education. Depending on its interpretation, this provision could constitute an obstacle to the application of Article 13 of the Framework Convention.

The Advisory Committee has been informed of the various steps taken to obtain the Georgian authorities' permission for such a university to be set up, so far without success. It has also understood from its dialogue with the authorities that they were not opposed to the setting up of such an institution. It therefore expects the authorities to continue their discussions on this subject with the persons concerned and to ensure that no unjustified obstacle impedes the exercise by the persons belonging to national minorities of their right to set up and manage their own private educational establishments, as set out in Article 13 of the Framework Convention.

Concerning Article 13

The Advisory Committee *finds* that the various moves made to create an Armenian language university in Akhalkalaki have not succeeded for the time being. It *considers* that the authorities should carry on discussions in this regard with the persons concerned, and ensure that no unjustified obstacle impedes the exercise by persons belonging to national minorities of their right to set up and manage their own private educational facilities.

14. GERMANY

In the *Land* of Schleswig-Holstein, the education system for the Danish minority is totally private. It comprises a network of schools of varying levels, all managed by the Association of Danish Schools of southern Schleswig. The Advisory Committee welcomes the fact that the *Land* pays, for each child belonging to the Danish minority, a contribution equal to the costs that the child would have incurred in a state school the previous year. The Advisory Committee hopes that this commendable practice will continue. The Advisory Committee notes that this form of financial support by the *Land* authorities for private education may also be used to benefit other national minorities.

The Advisory Committee notes however that fears have been expressed that the freeze on the *Land's* financial contribution – said to be warranted in part by the new financial support granted to the Danish minority by the Federal authorities – intended to the Danish minority may threaten the existence of certain Danish primary schools despite the extra subsidies provided by Denmark. In this respect the Danish minority points out that, because of the smaller numbers of pupils, the average cost of a Danish minority class is higher than that of a class in an ordinary state school. The Advisory Committee therefore encourages the authorities to maintain a dialogue with the Danish minority to find an appropriate solution to the problem of funding its education system.

15. HUNGARY

On the basis of the information currently at its disposal, the Advisory Committee considers that implementation of this article does not give rise to any specific observations.

16. IRELAND

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

17. ITALY

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

18. KOSOVO¹

Article 13

The Advisory Committee notes that the right of persons belonging to national minorities to set up their own private educational and training establishments is guaranteed in Chapter IV of the Constitutional Framework, which also stipulates that financial assistance may be provided, including from public funds, in accordance with applicable law.

According to the figures contained in the UNMIK Report, enrolment in private educational institutions by minority communities is relatively low. The Advisory Committee is not aware of any request made by members of these communities to establish such institutions, and it therefore considers that implementation of this article does not give rise to any further specific observations.

19. LATVIA

Private teaching in minority languages

The Advisory Committee takes note with interest of the case-law of the Latvian Constitutional Court regarding the application of the non-discrimination principle when granting subsidies to private educational and training establishments. In its decision of 14 September 2005 the Court ruled that like all private schools, those set up by national minorities and accredited with the competent institutes are also eligible for state subsidies. Following this decision, Governmental Decree No. 498 of 27 November 2001 on the granting of subsidies to private schools was amended to include accredited national minority private schools among the beneficiaries of state subsidies. Consequently, the State Budget Law for 2006 was amended to include the requisite additional funds for implementing the Constitutional Court's decision in the budget of the Ministry of Education and Science.

The Advisory Committee nevertheless notes with concern that, at the time of its visit to Latvia, new draft legislation on higher education provided for compulsory use of Latvian as the teaching language in private universities. According to recent information, such measures would only concern, among private universities established by national minorities, the ones that benefit from state subsidies.

The Advisory Committee welcomes the fact that the authorities are granting subsidies to national minority private schools. Nevertheless, it is concerned about the trend towards extending the obligation to use Latvian in private education, and considers that the arguments put forward by the authorities in support of the envisaged measures – state subsidies – are insufficient to justify such interference in the private sphere. While it is legitimate for the minorities' private educational and training establishments to be supervised in order to ensure compliance with the harmonised educational standards established by legislation for the whole education system, it is also important,

¹ 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.

as pointed out in the Explanatory Report to the Framework Convention, that the provisions of this legislation be based on objective criteria and conform to the principle of non-discrimination.

The Advisory Committee therefore encourages the authorities to avoid any legislative measures which would not be in conformity with the right of persons belonging to national minorities to set up and administer their own private educational and training establishments as set out in Article 13 of the Framework Convention. Also, it considers it important that such measures do not hinder the efforts made by minorities, through the private education system, to meet their needs.

In respect of Article 13

The Advisory Committee *finds* it commendable that the state provides subsidies to private educational establishments set up by national minorities. Nevertheless, it *finds* that the reported trend towards extending the obligation to use Latvian in state-funded private universities that have been using minority languages as languages of instruction is a source of concern. It *considers* that the authorities should avoid undue interference in the private sphere and any measures which do not adequately respect the right of persons belonging to national minorities to set up and manage their own private educational establishments as set out in Article 13 of the Framework Convention.

20. LIECHTENSTEIN

See Article 7

21. LITHUANIA

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

22. MALTA

See Article 7

23. MOLDOVA

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

24. MONTENEGRO

The Advisory Committee welcomes the fact that Article 17 of the Minority Law recognises the right of persons belonging to national minorities to establish private educational and pedagogic institutions. This has led to the establishment of an Albanian high school in the municipality of Ulcinj in 2006.

25. NETHERLANDS

On the basis of the information currently at its disposal, the Advisory Committee considers that the implementation of this article does not give rise to any specific observations.

In respect of Articles 12 - 14

The Advisory Committee *finds* that Frisian language is a compulsory subject in primary schools and in the first level of secondary education in Fryslân and *finds* that, in the absence of specific regulation, the definition of what constitutes an adequate amount of teaching in Frisian is subject to disagreement between the authorities and representatives of the Frisian minority. The Advisory Committee *considers* that the authorities should pay due attention to the demands expressed by the Frisian minority.

The Advisory Committee *finds* that a model of trilingual education (Dutch, Frisian and English) has been introduced in a number of primary schools and *considers* that the authorities should continue their support to trilingual schooling.

The Advisory Committee *finds* that arrangements have been made for Frisian language teacher training but that they are not sufficiently used and *considers* that the authorities should envisage further incentives for primary and secondary school teachers to use the arrangements made. It further *finds* that teacher training in Frisian for pre-schools has not been regulated yet and it *considers* that the authorities should address this shortcoming.

26. NORWAY

On the basis of the information currently at its disposal, the Advisory Committee considers that the implementation of this article does not give rise to any specific observations.

27. POLAND

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

28. PORTUGAL

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

29. ROMANIA

On the basis of the information currently at its disposal, the Advisory Committee considers that the implementation of this article does not give rise to any specific observations.

30. RUSSIAN FEDERATION

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

31. SAN MARINO

See Article 7

32. SERBIA AND MONTENEGRO

The Advisory Committee welcomes the fact that Article 15 of the federal Law on the Protection of Rights and Freedoms of National Minorities recognises the right of persons belonging to national minorities to establish private educational institutions, schools and universities. The Advisory Committee stresses, however, that this right should also be better reflected in other pertinent legislation, notably in the Law on Elementary Schools of the Republic of Serbia, which at present excludes the establishment of regular private primary schools.

In respect of Article 13

The Advisory Committee *finds* that the right of persons belonging to national minorities to establish private educational institutions, schools and universities should be better reflected in the Law on Elementary Schools of the Republic of Serbia and *considers* that the authorities should address this issue.

33. SLOVAK REPUBLIC

On the basis of the information currently at its disposal, the Advisory Committee considers that the implementation of this article does not give rise to any specific observations.

34. SLOVENIA

The Advisory Committee notes the conflicting indications given by different authorities, sometimes implying that a prerequisite for the establishment of private schools offering teaching of a foreign language would be a bilateral agreement with the country concerned providing for reciprocal facilities, sometimes that there would be no such prerequisite. The Advisory Committee regrets that clarification could not be obtained from the authorities on this issue prior to the adoption of the current opinion. The Advisory Committee is of the opinion that if such a requirement is indeed provided for by Slovene legislation, it constitutes an obstacle not in full compliance with the Framework Convention. At any rate, the Slovene Government should clarify its position on this issue and find ways and means of developing teaching of minority languages in consultation with the persons concerned (see also related comments under Article 6).

35. SPAIN

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

36. SWEDEN

The Advisory Committee notes that private schools (“*fristående skolor*”) have played a particularly central role in Sweden in terms of providing teaching in minority languages, notably in Finnish, and encourages the authorities to support further developments of initiatives in this sphere.

In respect of Article 13

The Advisory Committee *finds* that private schools have played a particularly central role in Sweden in terms of providing teaching in minority languages and *considers* that the authorities should support further developments of initiatives in this sphere.

37. SWITZERLAND

Whilst the right to set up a private school is guaranteed in part by Article 27 of the Federal Constitution on economic freedom, the scope of the freedom to set up and manage a private school of a minority language depends on cantonal law. All the cantons recognise the freedom to set up and manage private schools, either expressly or implicitly. The Advisory Committee notes, however, that the legislation of certain cantons sets out limits as to the language of instruction in private schools. This is for example the case in Canton Bern, where Section 66(1) of the Act on Compulsory Education provides that the choice of the language of instruction in private schools offering compulsory education is governed by the principle of the territoriality of languages and that, exceptionally, teaching may be provided in the other official language.

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

In respect of Article 13

The Advisory Committee *finds* that the legislation of certain cantons sets out limits as to the language of instruction in private schools. The Advisory Committee *considers* that such limitations are problematic from the point of view of Article 13 of the Framework Convention insofar as they seem to prevent the establishment of private schools providing instruction in a minority language outside its area of traditional establishment. It *considers* that the competent authorities should ensure that the legal provisions of the cantons concerned do not constitute a barrier to satisfying any needs in this respect, in particular for Italian-speakers living in large cities such as Bern.

38. “THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA”

The Advisory Committee notes that under Article 45 of the Constitution, citizens have a right to establish private schools at all levels of education, except at primary levels. The Advisory Committee also notes that the establishment of private institutions of this kind is subject to the conditions prescribed by law.

The Advisory Committee finds that, even though it does not apply exclusively to minorities, the prohibition on establishing private primary schools is not compatible with Article 13 of the Framework Convention. While the Advisory Committee notes that under Article 44 of the Constitution, everyone has a right to education on an equal basis, the prohibition on establishing private primary schools could nevertheless put persons belonging to minorities at a disadvantage as

regards primary education in minority languages (see also comments in respect of Article 14 below). The Advisory Committee therefore considers that the situation should be reviewed in such a way as to allow private primary education.

In respect of Article 13

The Advisory Committee *finds* that domestic legislation does not allow private primary education and that this situation could put persons belonging to national minorities at a disadvantage regarding primary education in minority languages. The Advisory Committee *considers* that the authorities should review the situation so as to allow private primary education.

39. UKRAINE

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

40. UNITED KINGDOM

On the basis of the information currently at its disposal, the Advisory Committee considers that the implementation of this article does not give rise to any specific observations.