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

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**Eighth Activity Report**  
**Covering the period 1 June 2010 – 31 May 2012**

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## I. INTRODUCTION

1. The Framework Convention for the Protection of National Minorities, which entered into force on 1 February 1998, is the most comprehensive treaty designed to protect the rights of persons belonging to national minorities. States party to the Framework Convention assume a legal obligation to promote the full and effective equality of persons belonging to minorities in all areas of economic, social, political and cultural life and to respect their rights, including linguistic rights, that will allow them to express, preserve and develop their culture and identity. Thirty-nine states are currently party to this treaty and a special monitoring agreement related to Kosovo<sup>1</sup> was signed with UNMIK. Four Council of Europe member states have not signed this treaty and four member states have signed but not yet ratified.<sup>2</sup>

2. The Framework Convention is monitored by the Advisory Committee set up in 1998 and composed of 18 independent experts appointed by the Committee of Ministers. Its task is to ensure that the rights contained in the Framework Convention in the various fields of relevance for persons belonging to national minorities are adequately implemented by all States Parties. The monitoring mechanism of the Framework Convention contributes to improved dialogue between governmental agencies and national minorities.

3. The monitoring procedure requires each state to submit a first report within one year of entry into force of the Framework Convention and additional reports every five subsequent years. Following a close examination of the State Report and a subsequent visit to the country in order to gather further information during meetings with government and minority representatives, the Advisory Committee adopts its Opinion on the level of implementation of the Convention in the country, based on an article-by-article approach. The Opinion is transmitted to the authorities concerned who provide their comments to the findings of the Advisory Committee. The Opinion is published upon its receipt by the government or four months later together with government comments. Based on the Advisory Committee's Opinion, the Committee of Ministers adopts a politically binding Resolution, containing conclusions and recommendations in respect of the state concerned.

4. This eighth Activity Report offers an overview of developments relating to the Framework Convention and the work of the Advisory Committee between 1 June 2010 and 31 May 2012. All documents and relevant information can be found on <http://www.coe.int/minorities>.

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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.

<sup>2</sup> The Framework Convention for the Protection of National Minorities was adopted by the Council of Europe in 1995 and entered into force in 1998. It has been ratified by Albania, Armenia, Austria, Azerbaijan, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, Georgia, Germany, Hungary, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Malta, Moldova, Montenegro, the Netherlands, Norway, Poland, Portugal, Romania, the Russian Federation, San Marino, Serbia, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, 'the former Yugoslav Republic of Macedonia', Ukraine and the United Kingdom. Four member States of the Council of Europe – Belgium, Greece, Iceland and Luxembourg – have also signed it but not yet ratified it. Andorra, France, Monaco and Turkey have not signed the Convention.

## **II. COUNTRY SPECIFIC MONITORING BY THE ADVISORY COMMITTEE**

5. In the course of the two years covered by the present report, the Advisory Committee held 6 plenary meetings during which it adopted 17 country-specific opinions. Members of the Advisory Committee's working groups took part in 17 country visits. In addition, ten follow-up activities were also organised in close partnership with the authorities concerned.

6. Over the same period, the Committee of Ministers adopted its Resolutions in respect of 15 States Parties to the Framework Convention. These resolutions completed the monitoring cycles in respect of countries that had submitted their State Reports prior to 1 June 2010.

7. In parallel to its country-by-country monitoring activities, the Advisory Committee has continued to pursue its thematic work with the adoption of its third thematic commentary on linguistic rights of persons belonging to national minorities. This text completes the thematic work already done in 2006 with the Commentary on education under the Framework Convention, and in 2008 with the Commentary on the effective participation of persons belonging to national minorities in cultural, social, economic life and in public affairs.

### **a. State Reports**

8. Between 1 June 2010 and 31 May 2012, the Advisory Committee received a total of 12 State Reports, commencing the 3<sup>rd</sup> monitoring cycle for the countries below, with the exception of Lithuania and Georgia which are in the 2<sup>nd</sup> cycle of monitoring:

- Norway in July 2010
- Austria and Spain in August 2010
- Albania in January 2011
- Romania in May 2011
- Sweden in June 2011
- Ireland in July 2011
- Lithuania in September 2011
- Azerbaijan in November 2011
- Malta<sup>3</sup> and Switzerland in January 2012
- Bosnia-Herzegovina and Georgia in May 2012

9. Four reports due in 2011 or early 2012 have not yet been received: Bulgaria (due in 2010), Latvia, the Netherlands, and Poland.

10. The Advisory Committee notes that most of the States Parties follow an inclusive approach in the preparation of their reports, and involve civil-society stakeholders – national-minority organisations, human rights NGOs, etc. – in related discussions or in the drafting process itself. Nevertheless, these consultations are sometimes inadequate and the views expressed by minority representatives are not systematically included in the final report. While the States Parties are responsible for the submission of the reports, in line with relevant Committee of Ministers Resolutions related to monitoring arrangements, the Advisory Committee hopes that the best practice of inclusiveness, now adopted by most States Parties to the Convention, will spread and serve as an example to those States Parties that do not yet adhere to it.

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<sup>3</sup> Statement by the Representative of Malta at the Rapporteur Group on Human Rights (GR-H) during its meeting on 19 January 2012 [Restricted]

11. Delays in the submission of State Reports make it very difficult to plan the Advisory Committee's monitoring activities and to act efficiently. Failure to receive national reports in time considerably delays the adoption of the respective Opinions and, consequently, adoption of the corresponding Resolutions by the Committee of Ministers. It equally affects subsequent monitoring cycles and jeopardises the Advisory Committee's role of 'guardian' of the Framework Convention in all member states.

## **b. Country visits**

12. It is now a well established practice for States Parties to invite the Advisory Committee to visit their country as part of the monitoring process. This allows the Advisory Committee to meet with government officials at central and regional level, representatives of parliament and relevant institutions including ombudsmen, as well as civil society organisations, including minority representatives.

13. Between 1 June 2010 and 31 May 2012, delegations of the Advisory Committee visited 17 countries:<sup>4</sup>

- Italy and Armenia in June 2010
- Denmark and Estonia in September 2010
- Slovenia in November 2010
- "the former Yugoslav Republic of Macedonia" in November 2010
- United Kingdom and Austria in March 2011
- Czech Republic in April 2011
- Norway in May 2011
- Albania and the Russian Federation in September 2011
- Romania in October 2011
- Spain in December 2011
- Ukraine in January 2012
- Ireland in February 2012
- Sweden in March 2012

14. Considering that the country visits are an important aspect of its monitoring work, the Advisory Committee continues to examine regularly how to improve the organisation of this activity, as well as the composition of the visiting delegations in order to maintain the high quality and efficiency of its work. The importance of careful advance planning and substantive preparation is emphasised by the two-fold objective of each visit: to collect concrete information from actors that are directly involved in or affected by the implementation of the Framework Convention to complement the State Report, and to enhance the ongoing dialogue between the Advisory Committee and relevant national actors. In addition to meetings with government and civil society representatives living or working in capital cities, the Advisory Committee continues to visit minority-populated areas to evaluate the situation experienced by the national minorities on the ground.

## **c. Country-specific Opinions**

15. Between 1 June 2010 and 31 May 2012, the Advisory Committee continued its 3<sup>rd</sup> monitoring cycle examination and adopted a total of 17 country-specific opinions concerning the following countries:

- Armenia, Finland and Italy in October 2010

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<sup>4</sup> Azerbaijan in July 2012 (outside the period covered by this report)

- “the former Yugoslav Republic of Macedonia”, Denmark, Estonia and Slovenia in March/April 2011
- Austria, Czech Republic, Norway and the United Kingdom in June/July 2011
- Albania and the Russian Federation in November 2011
- Romania, Ukraine and Spain in March 2012
- Sweden in May 2012

16. Third cycle opinions are focused on specific issues of concern. If no progress has been made regarding issues that have already been criticised before, the Advisory Committee usually strengthens its language. The fact that the recommendations of the Advisory Committee have overall become more specific in successive monitoring cycles lies in the very nature of monitoring. An invitation to take certain steps in the first cycle Resolution may turn into a recommendation to do so in the second cycle, which then evolves into a recommendation for immediate action after yet another cycle. At the same time, the Advisory Committee reiterates its previous concerns and urges that they be addressed. It also provides more detailed arguments for the recommendations. Third cycle Opinions contain three to five main recommendations that are for immediate action in order to signal to States Parties where the priority concerns lie and where their attention is most needed.

#### **d. Resolutions of the Committee of Ministers**

17. The Advisory Committee values its working relations with the Committee of Ministers. Its findings continue to be endorsed by the Committee of Ministers, even if the adoption of Resolutions during the period covered by this report proved overall more time consuming than in the past. The Committee of Ministers continues to encourage dialogue between the Advisory Committee and the states party to the Framework Convention. The latter have, on many occasions, expressed their satisfaction with the fruitful co-operation developed with the Advisory Committee.

18. In November 2011, the Advisory Committee invited the Chairman of the GR-H, the Committee of Ministers sub-committee on issues related to human rights, to an exchange of views during its plenary meeting. This occasion provided an excellent opportunity to discuss ways of improving mutual understanding and speeding up the monitoring process. In parallel, the GR-H has continued to invite the President of the Advisory Committee to its meetings to present country-specific opinions and express views and concerns on related developments. These meetings facilitate a direct assessment of how the opinions are perceived by States Parties, and also provide an opportunity to exchange information regularly on more general issues of special importance to the Framework Convention and its monitoring mechanism.

19. Between 1 June 2010 and 31 May 2012, the Committee of Ministers adopted a total of 15 Resolutions: two 1<sup>st</sup> cycle Resolutions on the Netherlands (January 2011) and Latvia (March 2011), five 2<sup>nd</sup> cycle Resolutions on Serbia (March 2011), Ukraine (March 2011), Portugal (June 2011), Kosovo (July 2011), and Bulgaria (February 2012), and eight 3<sup>rd</sup> cycle Resolutions on Liechtenstein (June 2010), Germany (June 2011), Croatia (July 2011), the Slovak Republic (July 2011), Hungary (July 2011), Cyprus (September 2011), and Armenia and Finland (February 2012).<sup>5</sup>

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<sup>5</sup> Resolutions on Austria, Denmark and Estonia were adopted in June 2012 and resolutions Italy, Norway, Slovenia and “the former Yugoslav Republic of Macedonia” were adopted in July 2012 (outside the period covered by this report)

20. The average time between adoption of an Opinion and adoption of the corresponding Committee of Ministers' Resolution has overall increased, due to some cases where considerable delays were experienced. In the case of some States Parties, it took over one year for the Resolution to be adopted. In this context, the Advisory Committee strongly regrets that the 1<sup>st</sup> cycle Resolution on Georgia (Opinion adopted in 2009) as well as the 2<sup>nd</sup> cycle Resolutions on Lithuania and Poland have not yet been adopted, while the respective Opinions date from 2008 and 2009, respectively.

21. In the opinion of the Advisory Committee, the multilateral monitoring mechanism provided for in the Framework Convention is of particular importance for minority protection in Europe. The joint evaluation process, including at the level of the Committee of Ministers, ensures that the implementation of minority rights is assessed beyond the scope of bilateral or inter-state relations, which resulted in insufficient protection of minority rights and tensions in the past. In this context, the Advisory Committee finds it essential to identify ways of improving co-operation between all parties concerned at the GR -H level in order to expedite the adoption of Resolutions as an important part of the monitoring procedure .

### III. TRANSPARENCY OF THE PROCESS AND DIALOGUE

#### a. Publicity of the Opinions

22. Since the entry into force of the new rules concerning the publication of the Advisory Committee opinions in April 2009,<sup>6</sup> opinions are made public automatically four months after having been sent to the State Party concerned, unless that State Party submits a reasoned objection to the publication to the Secretariat. Some States Parties also agreed to make the Opinions public immediately upon receipt which is welcomed by the Advisory Committee as it underlines the principle of transparency in the monitoring process.

23. Between 1 June 2010 and 31 May 2012, a total of 19 Advisory Committee opinions were published<sup>7</sup>:

- one 1st cycle Opinion on Latvia (March 2011)
- two 2nd cycle Opinions on Ukraine (March 2011) and Lithuania (July 2011)
- 16 3rd cycle Opinions on Hungary (September 2010), Cyprus (October 2010), Croatia and Germany (December 2010), Slovak Republic (January 2011), Finland and Armenia (April 2011), Italy (June 2011), Norway (August 2011), Slovenia (October 2011), Estonia (November 2011), Denmark, “the former Yugoslav Republic of Macedonia”, Austria and the United Kingdom (December 2011), and the Czech Republic (March 2012).

24. The above mentioned new rules concerning publication of Advisory Committee opinions four months after they have been transmitted to the authorities have been adhered to by all States Parties concerned so far. The Advisory Committee considers this a very positive development, which has improved significantly the transparency and the impact of the monitoring process. Since 2009, the timely publication of the Opinions and of the government comments has made it possible, in a number of countries, to start working on the implementation of the recommendations with the authorities and civil society at a very early stage. It has also ensured that the findings and recommendations are not outdated at the moment of their publication.

#### b. Publicity of the comments

25. In addition, States Parties still have the opportunity to submit their written comments on the Advisory Committee Opinion within four months of the receipt of the Opinion. These government comments constitute an important occasion to respond to the findings of the Advisory Committee and point out different views or developments that are considered of relevance by the authorities. The Opinion and the comments of the government are made public at the same time to ensure transparency. Some states have included into their comments the views and suggestions expressed by minority NGOs in response to the Advisory Committee Opinion. Such an approach has been welcomed by the Advisory Committee and is considered good practice.

#### c. Importance of follow-up activities

26. Monitoring does not end with the adoption of the Committee of Ministers' Resolution. The organisation of follow-up seminars is another key step in the process. The Advisory

<sup>6</sup> CM/Res (2009)3 on 16 April 2009 amending Resolution (97) 10 on the monitoring arrangements under Articles 24-26 of the Framework Convention for the Protection of National Minorities

<sup>7</sup> The 3<sup>rd</sup> cycle Opinion on Albania was published in July 2012 (outside the period covered by this report)



Committee has therefore always encouraged States Parties to organise ‘follow-up’ activities. These are usually one to two day conferences, gathering minority representatives, national and local authorities, and civil society organisations. Such meetings have proved an excellent way of examining the recommendations of the Advisory Committee and Committee of Ministers at national level and considering legal and practical arrangements for implementing them. They also constitute a useful way for the Advisory Committee to keep abreast of national developments and the viewpoints of various actors in between two cycles of monitoring. While all Opinions and Resolutions are available in English and French, the two official languages of the Council of Europe, the follow-up activities provide an opportunity to distribute the Opinions and Resolutions across the country in the official language(s) of the State Party concerned as well as – where possible – in minority languages, thus contributing to a better understanding of the Framework Convention in broader society.

27. Between 1 June 2010 and 31 May 2012, follow-up events were held in ten countries:<sup>8</sup>

- 2nd cycle: Albania (July 2010), Ireland (November 2010), and Bosnia and Herzegovina (June 2011), Lithuania (April 2012)
- 3rd cycle: Slovenia (May 2011), Moldova (November 2010), Norway (October 2011), Slovak Republic (February 2012), Germany (April 2012), Croatia (April 2012).

28. A number of States Parties have not agreed to hold such seminars. The Advisory Committee would like to stress in this context that follow-up activities are often the only opportunity for a domestic discussion of the monitoring findings by the parties concerned. They promote dialogue and encourage effective participation by the various stakeholders while making them more aware of the Framework Convention and its local relevance.

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<sup>8</sup> Armenia in June 2012 (outside the period covered by this report)

#### IV. THEMATIC WORK OF THE ADVISORY COMMITTEE

29. Language rights of persons belonging to national minorities, set out in particular in Articles 10 and 11 but also relevant in the field of education as reflected in Articles 12 and 14 of the Framework Convention, have re-emerged since 2009 as a challenging issue for consideration by the Advisory Committee. They have, for instance, been of particular importance in opinions on the Baltic States as well as some countries in Central and Eastern Europe, such as the Slovak Republic and Ukraine, as well as in Austria. Overall, the Advisory Committee has repeatedly stressed the need to strike an appropriate balance between the legitimate aim to promote the official language—and its learning by persons belonging to minorities—and, at the same time, the obligation to respect fully the language-related rights of persons belonging to national minorities. It has always emphasised that these are tightly intertwined and inseparable goals which need to be balanced carefully and proportionately, taking into account the specific country situation, and with due attention to the principles of non-discrimination and full and effective equality.

30. The Advisory Committee has in particular elaborated further on the relevance of linguistic rights for inter-ethnic relations and the overall climate of tolerance and inclusion prevailing in a country. Given the particular significance of language for the self-identification of persons belonging to national minorities, for their access to a number of other important rights, as well as for their integration and participation in society, the Advisory Committee has reiterated the necessity to consult very closely with all sectors of society, including minority communities, before political or legislative decisions are taken in the area of language policy. In addition to its jurisprudence on minority language rights related issues in its country-by-country work, the Advisory Committee has progressed with the preparation of its third Thematic Commentary on Language Rights of Persons Belonging to National Minorities.

31. A working group of the Advisory Committee prepared a first draft of the Commentary which was discussed at various stages by the Advisory Committee in plenary. In addition, the draft was shared with a number of external stakeholders, in particular representatives of minority associations, experts and academics, to obtain their comments and suggestions on the text. Subsequently, a broader consultation seminar with minority and other civil society representatives, as well as academia and international experts was organised in early 2012 in Bolzano/Bozen (Italy) to ensure that a wide range of views and concerns was duly taken into account before adopting the Commentary on 24 May 2012.

32. The Advisory Committee expects that this third Thematic Commentary will, similarly to the first two on education and effective participation of persons belonging to national minorities,<sup>9</sup> provide useful guidance to state authorities, decision makers, minority representatives, non-governmental organisations, and other relevant stakeholders. It offers advice and practical recommendations in order to assist the development of cohesive societies when drafting legislation and policies affecting linguistic rights of persons belonging to national minorities. The document is attached as appendix to this activity report.

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<sup>9</sup> See the Thematic Commentary on education under the Framework Convention (2006) and the Thematic Commentary on the effective participation of persons belonging to national minorities in cultural, social, economic life and in public affairs (2008).

## **V. CO-OPERATION WITH OTHER BODIES**

33. Since the beginning of its activities, the Advisory Committee has placed particular emphasis on co-operation with other bodies active in the field of minority protection both within and outside the Council of Europe. Maintaining and strengthening synergies with its traditional partners, including civil society, and developing good working relations with new bodies involved in minority protection, as well as academia in the States Parties, has been a constant feature of the Committee's work during the period covered by the present report. Throughout this period, the Advisory Committee and its Secretariat also provided support to a significant number of awareness-raising activities, round-table discussions and seminars, with an aim to promote knowledge of the Framework Convention among key audiences. In this context, the Advisory Committee is pleased to note that its findings have increasingly been taken into account by the European Court of Human Rights in relevant jurisprudence relating to minority rights protection as well as in the activities of the Human Rights Commissioner. In addition, members of the Advisory Committee and the Secretariat attended many minority-related events organised by national and international institutions in different countries.

### **a. Co-operation activities within the Council of Europe**

34. The various monitoring bodies of the Council of Europe have continued to increase their co-operation since 2010 to develop further synergies, avoid duplication and maximise the use of existing resources. For the Secretariat of the Framework Convention, this has in particular meant close co-operation with ECRI, as well as increased collaboration with the Secretariat of the Language Charter for Regional or Minority languages (hereinafter the Language Charter). In this context, during the reference period, the Advisory Committee Bureau took part in several joint meetings of the Bureaus of the main monitoring bodies of the Council of Europe as well as in joint Bureau meetings with the respective Committees of ECRI and the Language Charter.

35. The Advisory Committee's co-operation with ECRI has continued, in particular, through the active participation of experts who are at the same time members of the Advisory Committee and of the ECRI. Its Secretariat has also had the opportunity to participate in ECRI events relevant for the Advisory Committee's work. In its opinions, the Advisory Committee has also taken care to rely consistently on the findings of ECRI with regard to issues relating to discrimination, xenophobia and intolerance, including by cross-referencing recent ECRI reports.

36. A concrete example of this good co-operation is the joint country visit to Ireland, organised in February 2012. This is particularly significant, as it was the first such monitoring exercise organised jointly with ECRI, following the encouragement of member states. The visit to Ireland was chosen, as the respective visits of the two monitoring bodies were to take place roughly at the same period. The delegation was composed of representatives of both Committees and Secretariats. Each of the monitoring bodies will proceed to adopt its findings separately following the normal procedures. The joint visit allowed the authorities and civil society representatives in Ireland to address issues which were of interest to ECRI and the Advisory Committee during a single visit, which was considered an important saving of time and effort, and increasing the synergies between the two monitoring mechanisms. At the same time, it was felt during the visit, that delegate members had insufficient time to address the whole range of issues connected to minority rights protection, such as cultural and linguistic rights, as most of the discussions focused on discrimination and intolerance. Clearly one joint visit does not allow either the Committee or the Commission to draw general conclusions on

the advantages and disadvantages of such an approach. Each case of joint monitoring visits in the future will have to be considered on its own merits.

37. Another model of co-operation with ECRI resulted in a visit of the Advisory Committee to Sweden organised and assisted by an administrator working in the ECRI Secretariat, who had assisted with the elaboration of the ECRI report on that country. This approach may over time lead to a build up in the Secretariat of country specific expertise by dedicated “desk officers”. These experiences might pave the way for further developments in other countries in the future, also as regards the Language Charter. The organisation of joint follow-up seminars has also been an opportunity to develop further co-operation with the Language Charter, as for example two follow-up seminars organised jointly with the Language Charter in Slovenia in May 2011 and in Germany in April 2012.

#### **b. Co-operation with other international institutions**

38. In addition, co-operation with other international institutions involved in minority rights protection is a permanent aspect in the work of the Advisory Committee. The Office of the OSCE High Commissioner on National Minorities should be mentioned particularly in this context, but also other institutions, such as the Fundamental Rights Agency of the European Union or United Nations treaty bodies. In view of the 20<sup>th</sup> anniversary of the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities in 2012, joint activities to raise public awareness of the significance of minority rights protection in cohesive societies are under discussion. In addition, a three year joint programme between the Council of Europe and the European Union, aiming at promoting minority rights in South East Europe, was signed at the end of 2011, the Framework Convention figuring as its main benchmark document. Co-operation with the Office of the Commissioner for Human Rights also continues to be regular and fruitful. Co-operation with other international institutions will, no doubt, also remain an important part of the monitoring process under the Framework Convention in forthcoming years as well.

#### **c. Co-operation with civil society**

39. Co-operation with civil society organisations has remained a key priority for the Advisory Committee, which examined new ways to review co-operation with civil actors on several occasions. In addition to contacts and dialogue with minority associations and human rights NGOs in the context of the monitoring process (country visits and follow-up seminars, submission/reception of ‘shadow reports’ and replies to the Advisory Committee’s specific questions etc.), the Advisory Committee has continued to take an active part in capacity building activities, including through the organisation of training events as well as within the framework of the Global Advocacy Programme implemented by the Minority Rights Group. In addition, a particularly important role was played by civil society organisations and minority associations who were consulted extensively on draft versions of the third thematic commentary on the linguistic rights of persons belonging to national minorities.

#### **d. Participation in events related to the protection of minority rights**

- ECMI Board, Berlin, Germany, 7 May 2012,
- Parliamentary Assembly Committee on Legal Affairs and Human Rights: Reinforcing the selection processes of experts of the monitoring mechanisms of the Council of Europe, Strasbourg, 26 April 2012,
- Seminar on “Syrians in Turkey: Why a minority status in the new constitution?”, Swedish Parliament, Stockholm, Sweden, 24 April 2012,

- Seminar on National Minorities and International Law, Vilnius, Lithuania, 20 April 2012,
- Consultation Seminar on the Draft Commentary on Linguistic Rights of Persons belonging to National Minorities, Bolzano/Bozen, Italy, 21-22 February 2012,
- ECMI Board, Flensburg, Germany, 5 December 2011,
- Fourth session of the United Nations Forum on Minority Issues on "Guaranteeing the rights of minority women", Geneva, Switzerland, 29 -30 November 2011,
- Conference "Building a child-friendly Europe: turn a vision into reality", Monaco, 20 - 21 November 2011,
- 5th Warsaw Seminar on Human Rights, Warsaw, Poland, 29 September - 1 October 2011,
- Conference on the prevention of Human Rights Violations, Kyiv, Ukraine, 20 - 21 September 2011,
- International Conference "National, ethnic and language minorities in the European Union", 14 September 2011, Lublin, Poland,
- Seminar on FCNM Implementation and Reporting Procedures, Georgia, 12 - 13 September 2011,
- International Protection of Human Rights - Rights of National Minorities, Poznan, Poland, 29 August - 7 September 2011,
- Seminar on "Ensuring respect for and protection of national minorities: the example of Vojvodina", Novi Sad, Serbia, 20 - 21 June 2011,
- Presidents of monitoring bodies meeting (CPT, GRETA, GRECO, MONEYVAL, European Social Charter, FCNM, Language Charter, ECRI), Paris, 13 May 2011,
- Conference on Travellers, Bern, Switzerland, 7 April 2011,
- Third session of the United Nations Forum on Minority Issues on "Minorities and effective participation in economic life", Geneva, Switzerland, 14 - 15 December 2010,
- 'The Council of Europe Minority Conventions as Advocacy Tools', Flensburg, Germany, 17 - 19 November 2010,
- 60th Anniversary of the ECHR, Strasbourg, 19 October 2010,
- EBLUL/Intergroup Meeting, Strasbourg, 23 September 2010,
- International Protection of Human Rights - Protection of National Minorities, Poznan, Poland, 30 August - 7 September 2010,
- Conference on National Minorities, Lublin, Poland, 15 - 17 September 2010,
- "Creating Synergies and Learning from Each Other: Strengths and Weaknesses of Council of Europe Expert Bodies Monitoring Human Rights", University of Graz, Austria, 18 - 19 June 2010,
- "Strengthening the Cohesion of European Societies: Effective Participation of Persons belonging to National Minorities in the Decision-Making Process, Skopje, "the former Yugoslav Republic of Macedonia", 7 - 8 June 2010
- United Nations fellow training on the Framework Convention, Strasbourg, 1 - 4 June 2010.

## **VI. ORGANISATIONAL ISSUES**

### **a. Advisory Committee**

40. At its 39<sup>th</sup> meeting in October 2010, the Advisory elected a new Bureau: Mr Rainer Hofmann (member in respect of Germany) was elected as the President, Ms Lidija Basta Fleiner (member in respect of Serbia) as the First Vice-President and Ms Barbara Wilson (member in respect of Switzerland) as the Second Vice-President.

41. Following the resignation of Ms Laryst Loiko on 10 June 2010, Ms Olga Butkevych was appointed as an ordinary member in respect of Ukraine.

42. Following the Parliamentary Assembly meeting on the selection processes of experts of the monitoring mechanisms in April 2012 and in view of the next elections of nine experts in May 2012 in accordance with the rotation system provided by CM Resolution (97) 10, the Advisory Committee has underlined that independence, impartiality, experience and expertise on minority issues are pre-conditions for the appointment as an Advisory Committee member. In addition, it is beneficial if a variety of expertise, ranging from the legal field and political science to history, and anthropological and linguistic studies is represented in the Committee. Persons belonging to minority and majority communities, those with experience in academia, civil society, or previous government positions, serve in the Committee and contribute to its knowledge base. Proficiency in at least one of the Council of Europe's official languages (English and French) is a pre-requisite for serving on the Committee and other factors such as gender balance within the Committee may also need to be considered. The Secretariat and Bureau stand ready to offer further advice on this as appropriate.

### **b. Staff issues**

43. Lack of human resources is still an issue of particular concern to the Advisory Committee. The resources allocated to the Secretariat of the Advisory Committee have been reduced since 2010, as two administrators, who had departed, were not replaced. While recognising that this situation reflects general developments in the Council of Europe, the Advisory Committee wishes to underline that insufficient human resources constitute a serious threat to the prompt and efficient monitoring of the Framework Convention.

### **c. Council of Europe's reform**

44. As a result of the reform which took place in October 2011, the Secretariat of the Framework Convention is now part of the Directorate General II Democracy, as the Directorate of Monitoring ceased to exist. The Secretariat is in a newly created department comprising the three monitoring bodies, FCNM, ECRI and Language Charter. This department is part of the Directorate of National Minorities and Antidiscrimination within the General Democracy Directorate.

45. The Advisory Committee has been informed that the aim of the process is to improve the efficiency of the three mechanisms by enhancing synergies between them where possible. The Advisory Committee considers that this new structure might result in increased co-operation between the three monitoring bodies and their Secretariats and is fully prepared to engage in all efforts to create such synergies. However, the Advisory Committee has repeatedly emphasised that the fundamentally different legal bases, mandates and working methods of the three monitoring mechanisms involved must not be overlooked. The Advisory Committee insists on the fact that the recent reform must not alter either the effectiveness or the independence of the monitoring system under the Framework Convention.

46. As regards the recent decision to include the FCNM Secretariat in the Democracy Directorate rather than Human Rights, the Advisory Committee refers to the explicit statement in Article 1 of the Framework Convention according to which minority rights form an integral part of the international protection of human rights. This is in fact what sets the Framework Convention of the Council of Europe aside from other organisations and their activities in this regard. It is therefore considered the most important achievement, indeed the added value of the Framework Convention, since it came into force. Minority protection within the Council of Europe has always been understood as an essential aspect of general human rights involving much more than mere non-discrimination. Apart from the general principles of non-discrimination and integration of cohesive societies that underpin the Convention, it also contains a catalogue of specific minority rights related to identity protection, effective equality, cultural support, media and education, as well as provisions related to the use of minority languages and effective participation in social, economic and public life. Therefore, and notwithstanding the new organisational structure, the Advisory Committee is confident that the Council of Europe will continue to consider minority rights as an integral part of the protection of human rights.

## **Appendix 1: Composition of the Advisory Committee**

### **Composition of the Bureau**

**President** : Mr Rainer HOFMANN (Germany) - term expires in May 2012

**First Vice-President**: Ms Lidija BASTA FLEINER (Serbia) - term expires in May 2014

**Second Vice-President**: Ms Barbara WILSON (Switzerland) - term expires in May 2012

Mr Gáspár BÍRÓ (Hungary) - term expires in May 2012

Ms Aleksandra BOJADJIEVA (“the former Yugoslav Republic of Macedonia”) - term expires in May 2014

Ms Olga BUTKEVYCH (Ukraine) - term expires in May 2012

Ms Anastasia CRICKLEY (Ireland) - term expires in May 2014

Mr Tonio ELLUL (Malta) - term expires in May 2012

Mr Zdzisław W. GALICKI (Poland) - term expires in May 2012

Ms Aliona GROSSU (Moldova) - term expires in May 2014

Ms Milena KLAJNER (Croatia) - term expires in May 2014

Mr Giorgi MELADZE (Georgia) - term expires in May 2012

Ms Iulia MOTOC (Romania) - term expires in May 2012

Mr Einar NIEMI (Norway) - term expires in May 2014

Ms Marieke SANDERS-TEN HOLTE (The Netherlands) - term expires in May 2012

Mr Gjergj SINANI (Albania) - term expires in May 2014

Ms Athanasia SPILIOPOULOU ÅKERMARK (Sweden) - term expires in May 2014

Ms Edita ŽIOBIENE (Lithuania) - term expires in May 2014



**Appendix 2: Third thematic commentary**



Strasbourg, 5 July 2012

**Public**  
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## **ADVISORY COMMITTEE ON THE FRAMEWORK CONVENTION FOR THE PROTECTION OF NATIONAL MINORITIES**

### **THEMATIC COMMENTARY No. 3**

#### **THE LANGUAGE RIGHTS OF PERSONS BELONGING TO NATIONAL MINORITIES UNDER THE FRAMEWORK CONVENTION**

*Adopted on 24 May 2012*

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## PART I INTRODUCTION

1. In view of the central importance of linguistic rights for the effective protection of all rights of persons belonging to national minorities and the importance of language as an expression of individual and collective identity, the Advisory Committee on the Framework Convention for the Protection of National Minorities is devoting its Third Thematic Commentary to the linguistic rights of persons belonging to national minorities.
2. The Framework Convention requires states to promote full and effective equality for persons belonging to national minorities in all areas of economic, social, political and cultural life. This implies the right to equal protection through law and before the law and the right to be protected against all forms of discrimination based on ethnic origin and other grounds, including language. Full and effective equality also implies the need for the authorities to take special measures in order to overcome past or structural inequalities and to ensure that all persons, including those belonging to a national minority, have equal opportunities. In addition, the Framework Convention includes an obligation for States Parties “to promote the conditions necessary for persons belonging to national minorities to maintain and develop their culture and to preserve the essential elements of their identity, namely their religion, language, traditions and cultural heritage”.<sup>1</sup>
3. Although the Framework Convention protects the rights of individual persons belonging to national minorities, the enjoyment of certain rights has a collective dimension.<sup>2</sup> In fact, some rights, including the right to use a minority language in public, can be effectively enjoyed only in community with others. While nearly all minority rights are interlinked, this is especially the case of language rights. Language being a central form of expression and communication, the protection of linguistic rights must be guaranteed in connection with other rights, including, *inter alia* the right to education, access to the media, and participation in cultural, social and economic life and in public affairs.
4. The Commentary focuses first on the key importance of language rights for the preservation of a person’s identity or identities (Part II - Articles 3 and 5 of the Framework Convention). Part III explores language rights with regard to the equally central principles of non-discrimination and the promotion of full and effective equality (Articles 4 and 6 of the Framework Convention). Parts IV to VII of the Commentary then cover relevant clusters of linguistic rights concerning media, public and private use of languages, education and effective participation (Articles 9 – 17 of the Framework Convention).
5. Following a close comparative and analytical reading of the Opinions adopted by the Advisory Committee so far, the Commentary presents its key findings on language rights as developed in its country-specific first, second and third -cycle Opinions.<sup>3</sup> It is thus based on the close monitoring of the implementation of the Framework Convention in the States Parties since 1998, and builds on two previous thematic commentaries adopted by the Advisory Committee: the First Thematic Commentary on Education under the Framework Convention of 2 March 2006,<sup>4</sup> and the Second Thematic Commentary on the Effective Participation of

<sup>1</sup> See Article 5 paragraph 1 of the Framework Convention.

<sup>2</sup> See also Article 3 paragraph 2 of the Framework Convention: “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”. This joint exercise of the rights and freedoms is, according to paragraph 37 of the Explanatory Report, H(1995)010, February 1995, distinct from the notion of collective rights.

<sup>3</sup> The Commentary makes frequent reference to first, second or third cycle country-specific Opinions where particular findings were made. These references are illustrative only. Efforts have been made to provide a broad view of findings made in the different States Parties. However, as language rights are not an issue everywhere, only 34 out of the 39 States Parties are referred to.

<sup>4</sup> See ACFC First Commentary on Education under the Framework Convention for the Protection of National Minorities, ACFC/25DOC(2006)002, adopted on 27 February 2008, [www.coe.int/minorities](http://www.coe.int/minorities).

Persons Belonging to National Minorities in Cultural, Social and Economic Life and in Public Affairs of 27 February 2008.<sup>5</sup> Valuable input has also been collected from national minority and civil society representatives,<sup>6</sup> academics and other interlocutors, including in the course of broader consultations held in the final drafting process.

6. The terminology used in the Commentary is in line with the flexible approach adopted by the Advisory Committee in its work so far. 'Minority language' within this Commentary thus means any of the different terms used by member states such as 'language of the national minority', 'language used by the national minority', 'language of persons belonging to national minorities', 'native language' or 'mother tongue'.<sup>7</sup> It does not imply official recognition as a 'minority language' by the authorities.

7. Increasing mobility and migration are current social phenomena that have also diversified means of communication. As a result, sociolinguistic approaches to the notion of language, which was long considered intimately linked to static concepts such as territory and belonging to a group, are changing as well. The Framework Convention is based on an individual rights approach. It is thus not focused on language itself, nor on a language community, but on the speakers. Their communicative repertoire, which may encompass a range of linguistic resources (standard and non-standard forms of languages, dialects, etc.) often develops throughout life as a result of interaction and mobility.

8. While states continue to play an essential role in defining the legal regime governing the use of languages, other entities are gaining momentum, such as local, regional or transnational bodies in which the functionality and prestige of languages are influenced by different actors. Unequal power relations between different groups of speakers may lead to social hierarchies that can also be reflected in language practices and political discourse on languages. This influences the way in which speakers of certain languages are perceived by others and, to some extent, perceive themselves. Language policies aiming at valuing linguistic resources at the individual and social level therefore also have to address the question of hierarchy in language and society, and the issue of unequal access to full participation in society.

9. The protection of national minorities and of the rights and freedoms of persons belonging to national minorities, as laid down by the Framework Convention, forms an integral part of the international protection of human rights.<sup>8</sup> Hence, the right of every person belonging to a national minority to use freely and without interference his or her minority language, in private and in public, orally and in writing, as enshrined in Article 10.1 of the Framework Convention, also forms part of international human rights standards.

10. In addition to the Framework Convention, other international instruments are relevant for the protection of linguistic rights of persons belonging to national minorities and have been taken into account by the Advisory Committee when drafting this Commentary. They range from legally binding standards to recommendations and guidelines. Legally binding standards include those contained in the European Convention for the Protection of Human Rights and Fundamental Freedoms and the related case-law of the European Court of Human Rights, as well as the revised European Social Charter. In addition, the Oslo Recommendations regarding the Linguistic Rights of National Minorities, published by the OSCE High Commissioner on National Minorities, as well as the linguistic dimension of his

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<sup>5</sup> See ACFC Second Commentary on the Effective Participation of Persons belonging to National Minorities in Cultural, Social and Economic Life and in Public Affairs, ACFC/31DOC(2008)001, 5 May 2008, [www.coe.int/minorities](http://www.coe.int/minorities).

<sup>6</sup> The term 'minority representative' throughout the text does not contain a legal notion but rather refers to advocates or spokespersons who have come forward to share their views.

<sup>7</sup> The term 'mother tongue' does not necessarily imply an ethnic connotation but rather reflects the language that is freely chosen to be spoken at home, be it a minority or official language.

<sup>8</sup> See Article 1 of the Framework Convention.

other recommendations such as The Hague Recommendations Regarding the Education Rights of National Minorities, have been carefully considered by the Advisory Committee. Various instruments of the United Nations have also contributed to developing norms in the field of linguistic rights, notably the Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities, as well as the Commentary of the Working Group on Minorities to the Declaration, the Declaration on the Rights of Indigenous Peoples, and relevant recommendations from the UN Minority Forum, in particular related to education and participation. On a more general level, the International Convention on the Elimination of all Forms of Racial Discrimination, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and the Convention on the Rights of the Child have also been taken into account. The Advisory Committee has also considered the practice of the European Commission against Racism and Intolerance (ECRI), as well as - where relevant and applicable - the EU *acquis* on language rights.

11. The European Charter for Regional or Minority Languages has special relevance in the field of language. While placing the emphasis on the obligation of the state to protect and promote regional or minority languages as part of cultural heritage, rather than granting linguistic rights to the speakers of these languages, the Charter represents a unique international instrument of great importance in this field and plays a complementary role to the Framework Convention. Significant similarities between the provisions of the Framework Convention and the Charter can be found particularly in the detailed provisions of Part III of the Charter. However, Part III applies only to those minority languages that the State Party has specified at the time of ratification of the Charter. Moreover, States Parties enjoy a margin of discretion in determining which of the Part III obligations, that are often more comprehensive than the language rights contained in the Framework Convention, they will undertake for each language. While the nature and scope of application of the two instruments may thus diverge, the individual rights approach of the Framework Convention and the broader approach to cultural protection and promotion contained in the Charter result in a strengthening of the overall legal framework relevant for the protection of the linguistic rights of persons belonging to national minorities.

12. This Commentary is meant to serve as a comprehensive tool for States Parties to the Framework Convention as well as for persons belonging to national minorities, civil society and academia. While portraying the varying roles of language as a crucial and identifying minority attribute on the one hand, and as an important tool for promoting full and effective equality and integration of multicultural and linguistically diverse societies on the other hand, this Commentary aims at reflecting the main challenges faced by persons belonging to national minorities with regard to their language rights today. As such, it should be understood as a living document whose interpretation will be developed as the monitoring process under the Framework Convention evolves.

## **PART II LANGUAGE RIGHTS AND IDENTITIES**

13. Language is an essential component of individual and collective identity. For many persons belonging to national minorities, language is one of the main factors of their minority identity and identification. However, language, like identity, is not static but evolves throughout a person's life. The full and effective guarantee of the right to use one's (minority) language(s) implies that authorities allow free identification of persons through language, and abstain from constraining personal identities into rigid language categories. The choice of each person belonging to a national minority to choose freely to be treated or not to be treated as such, must be respected in line with Article 3.1 of the Framework Convention. This Chapter deals with the dimension of language rights that is linked to personal/individual identity and identities, and with the rights connected thereto.

### **1. LANGUAGE AND PERSONAL IDENTITIES**

#### **1.1. Inclusive approach**

14. States party to the Framework Convention enjoy a margin of discretion in determining its personal scope of application. However, the designation as a national or linguistic minority must not lead to arbitrary or unjustified differentiation in the treatment of such groups.<sup>9</sup>

15. Requests have been made in several States Parties by groups who wish to be recognised as a national minority and to benefit from the protection of the Framework Convention. The Advisory Committee encourages the authorities concerned to pursue an open and inclusive approach and to consider extending the protection of the Framework Convention to groups that are not covered.<sup>10</sup> The personal scope of application should, where appropriate, also extend to non-citizens, particularly where exclusion on grounds of citizenship may lead to unjustified and arbitrary distinctions, such as when such exclusion concerns stateless persons belonging to national minorities who permanently reside on a given territory.<sup>11</sup> This is consistent with broader efforts at European level to develop a more nuanced approach to the application of the citizenship criterion in the protection of national minorities.<sup>12</sup>

#### **1.2. Freedom of choice, multiple and situational affiliation**

16. Article 3.1 of the Framework Convention stipulates 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". Respect for the principle of free self-identification is thus of paramount importance in the interpretation and implementation of the Framework Convention.<sup>13</sup> While language is generally perceived as an essential marker of identity, language competence or lack thereof, as well as the mere use of a language, must not automatically be linked to affiliation with a particular group.<sup>14</sup> Conversely, the enjoyment of

<sup>9</sup> See, for instance, Second Opinion on Poland; First Opinion on Albania.

<sup>10</sup> First Opinion on Bosnia and Herzegovina; Second Opinion on Croatia.

<sup>11</sup> See, for instance, Second Opinion on the Russian Federation; Third Opinion on Croatia.

<sup>12</sup> See also Venice Commission, Report on Non-Citizens and Minority Rights, CDL-AD(2007)001, 18 January 2007, adopted by the Venice Commission at its 69th plenary session on 15–16 December 2006.

<sup>13</sup> See also ACFC First Thematic Commentary on Education.

<sup>14</sup> While persons belonging to national minorities may often affiliate themselves with a particular minority based on linguistic criteria, this Commentary does not discuss the rights of persons belonging to linguistic minorities but rather the linguistic rights of persons belonging to national minorities.

linguistic or cultural rights must not be made dependent on a person's proficiency in his or her minority language, nor on the person's skills in other languages.<sup>15</sup>

17. Affiliation with a minority group is a matter of personal choice, which must, however, be based on some objective criteria relevant to the person's identity.<sup>16</sup> No disadvantage shall result from the choice to affiliate with a given group. Due attention must be paid to freedom of choice, especially when the declaration of affiliation with a minority is not anonymous, when it remains unchangeable for a long period, and when the refusal to declare, for instance, one's linguistic affiliation to one of the pre-established language categories leads to exclusion from certain political or civil rights.<sup>17</sup> The association of persons with a specific group based on visible or linguistic characteristics or on presumption without their consent is not compatible with the Framework Convention.<sup>18</sup>

18. Moreover, a person might wish to identify herself or himself with several groups. The phenomenon of multiple affiliation is in fact quite common, due to mixed marriages, for instance, or cases of state succession. A person may also identify himself or herself in different ways for different purposes, depending on the relevance of identification for him or for her in a particular situation. The Advisory Committee considers that the principle of self-identification, as contained in Article 3 of the Framework Convention, also guarantees the possibility of multiple affiliation. This implies that, in principle, a person may claim linguistic rights with regard to several minority languages, as long as the relevant conditions, such as demand and/or traditional residence, contained in the respective articles of the Framework Convention are fulfilled.<sup>19</sup>

### 1.3. Data collection

19. The Advisory Committee emphasises the importance of collecting reliable disaggregated data to draw up, implement and evaluate effectively policies that respect and promote the linguistic needs and rights of persons belonging to different groups. The collection, storage and use of such data must fully respect existing standards on personal data protection.<sup>20</sup> Importantly, states are encouraged to collect data from a variety of sources, in addition to the population census, such as formal and informal household or school surveys, as well as independent research. When interpreting the collected data, authorities must be aware that past experience and fear of discrimination can prompt persons to hide their linguistic affiliation and identity.<sup>21</sup> Quantitative data must therefore not be regarded as the sole means of obtaining reliable information for the design of language policies, but must be supplemented with qualitative sociological, ethnographic and other scientific studies, especially when trends reveal a decreasing number of speakers of a particular language or when statistical data differs from estimations made by minority representatives.

20. Language as a marker for ethnic belonging was introduced in the scope of the population censuses in the 19<sup>th</sup> century. Following the assumption that every person has a dominant language, all persons indicating more than one language were nevertheless usually treated as monolingual for census purposes. However, in order for language policies to respond to current challenges, they must acknowledge individual multilingualism as well as the social and linguistic diversity of contemporary societies. Speakers of minority languages

<sup>15</sup> Second Opinion on Sweden; Second Opinion on Ukraine.

<sup>16</sup> Framework Convention for the Protection of National Minorities and Explanatory Report, H(1995)010, February 1995, paragraph 35.

<sup>17</sup> First Opinion on Italy; Third Opinion on Cyprus.

<sup>18</sup> First Opinion on Germany; First Opinion on the Slovak Republic.

<sup>19</sup> Second Opinion on Armenia.

<sup>20</sup> See, for example, the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108) and the Committee of Ministers' Recommendation Rec(97)18 concerning the protection of personal data collected and processed for statistical purposes.

<sup>21</sup> Second Opinion on Croatia.



may use the official language(s) frequently and often have higher literacy skills in this language. However, this should not prevent them from also identifying themselves as native speakers of the minority language. In order not to reduce minority language speakers to a single language category, including for statistical purposes, questionnaires must allow respondents to indicate more than one language. Optional questions and open lists of alternative answers, with no obligation to affiliate to a set category, are essential to ensure that the results reflect the individual's choice.<sup>22</sup>

21. The Advisory Committee encourages authorities to collect data in strict conformity with the principle of self-identification and with the recommendations of the Conference of European Statisticians.<sup>23</sup> The Advisory Committee encourages the authorities to take specific initiatives to include among the census enumerators persons belonging to minorities, and persons speaking relevant minority languages. In addition, questionnaires and other data collection tools should be translated into minority languages, and minority representatives should be consulted in the preparatory phases concerning the methods used during data collection, including questions relating to a person's ethnic or linguistic affiliation. These principles apply to all forms of data collection, such as those related to the provision of public services, social surveys, as well as other relevant research related to national minorities, including in the private sphere.

## **2. PROMOTING THE ESSENTIAL ELEMENTS OF MINORITY IDENTITY, INCLUDING LANGUAGE**

22. The Advisory Committee considers that the authorities should, in close co-operation with national minority representatives, develop balanced and coherent strategies to promote the conditions necessary for persons belonging to national minorities to maintain and develop their culture, and to preserve the essential elements of their identity, including language. The particular link between language and the preservation of culture is underlined by the Advisory Committee in a variety of country-specific Opinions, particularly when concerning numerically small minorities and indigenous peoples whose traditions and cultures are preserved, among others, through the continued use of their languages.<sup>24</sup> The rights of persons belonging to national minorities to use their languages should therefore be clearly defined and adequately protected by legislation, and its implementation monitored regularly.<sup>25</sup>

23. The authorities should continue to support projects for the preservation and development of minority cultures and languages, in consultation with representatives of national minorities, and to allocate support in accordance with the needs of the various groups, in line with fair and transparent allocation procedures.<sup>26</sup> In addition, the concerns of persons belonging to national minorities regarding their right to the preservation and development of their specific identity and culture must be listened to and effectively taken into account when funding allocation decisions are made.<sup>27</sup> Programmes and projects related to the cultural activities of national minorities should, wherever possible, be managed with the involvement of minority representatives, and justification should be provided whenever the recommendations from minority associations or consultative bodies are not followed.

<sup>22</sup> See, for instance, Third Opinion on Finland where the (single) language affiliation indicated in the population registry also determined the language of available daycare.

<sup>23</sup> UN Economic Commission for Europe, Conference of European Statisticians Recommendations for the 2010 Census of Population and Housing. Prepared in co-operation with the Statistical Office of the European Communities (EUROSTAT). UN economic commission for Europe, Geneva (2006): §430-436 on language.

<sup>24</sup> See, for instance, Third Opinion on the Russian Federation.

<sup>25</sup> Third Opinion on the United Kingdom; Second Opinion on Switzerland.

<sup>26</sup> Third Opinion on Armenia; Third Opinion on Cyprus.

<sup>27</sup> See also ACFC Second Commentary on Effective Participation.

24. The Advisory Committee notes that preventing assimilation requires not only abstaining from policies clearly aimed at assimilating persons belonging to national minorities into mainstream society.<sup>28</sup> It also implies, as stated in Article 5.1 of the Framework Convention, positive action in order to “promote the conditions necessary for persons belonging to national minorities to maintain and develop their culture, and to preserve the essential elements of their identity”, including their language. With regard to numerically smaller minorities in particular, this obligation requires the active promotion and encouragement of the use of minority languages, and the creation of an overall environment that is conducive to the use of these languages, in order to prevent their disappearance from public life. While assimilation may be a voluntary individual process, it is often preceded by a period of cultural, social or political inequality between the majority and minority population which then leads persons belonging to national minorities to consent to assimilate.

25. Integration, as opposed to assimilation, is considered a legitimate aim to which both the majority and minority cultures contribute. It is understood, in this context, as a process of social cohesion that respectfully accommodates diversity while promoting a positive sense of belonging for all members of society. The creation of suitable conditions for persons belonging to minority groups to preserve and develop their cultures and to assert their respective identities is thus considered essential for an integrated society.<sup>29</sup> As a two-way process, integration requires recognition and respect on both sides and may often lead to changes within both the majority and the minority cultures. This implies an open attitude and readiness for change on the part of the majority population, in order to welcome the enrichment provided by minority cultures.

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<sup>28</sup> First Opinion on Norway.

<sup>29</sup> First Opinion on Bulgaria; First Opinion on Denmark; Third Opinion on Finland.

### **PART III LANGUAGE RIGHTS AND EQUALITY**

26. According to Article 3.2 of the Framework Convention, the rights contained in the Convention may be exercised individually or in community with others. While minority rights under the Framework Convention are not considered collective rights, some of the rights, including notably language rights, hold a collective dimension. Furthermore, as the term ‘in community with others’ may also include members of other minorities or the majority population, the exercise of these rights has an intercultural dimension which presupposes a general climate of equality and tolerance in society (Articles 4 and 6). This particular social dimension of language rights, which relies on the implementation of the principle of non-discrimination and the promotion of effective equality, is analysed in this Chapter.

#### **1. EQUALITY BEFORE THE LAW AND EQUAL PROTECTION OF THE LAW, EFFECTIVE EQUALITY IN ALL AREAS OF LIFE**

27. Many of the principles raised in other sections of the present Commentary relate to the effective implementation of the principles of equality before the law, equal protection of the law, and effective equality in all areas of life, contained in Article 4 of the Framework Convention. The Advisory Committee encourages all States Parties to adopt a clear legislative framework related to the protection of national minorities which should, apart from raising awareness of the authorities’ commitment towards the protection and promotion of the rights of persons belonging to national minorities, entail specific provisions aimed at promoting effective equality. Article 4.2 clarifies that the principle of equality does not presuppose identical treatment of and approaches to all languages and situations. On the contrary, measures to promote equality must be targeted to meet the specific needs of the speakers of various minority languages. Separate provisions may be necessary for the speakers of languages of numerically smaller minorities to ensure the revitalisation of the language in public life, while other, more widely spoken minority languages, may require other methods of promotion.

28. A variety of methods may be applied by states to promote equality and supervise the implementation of equality legislation, including the creation of specific anti-discrimination bodies, ombudspersons, or other specialised institutions. Persons belonging to national minorities must have access to information, where possible in their own language, about their rights, the work of the anti-discrimination institutions and the remedies against any form of discrimination available to them, including indirect forms of discrimination, as well as cases of multiple discrimination.

29. In addition, the Advisory Committee considers that in order to achieve equal protection before the law, discriminatory treatment should also be considered punishable by law and sanctioned in all States Parties. Criminal legislation should include provisions that expressly provide for discriminatory motivations based on language, culture, ethnicity or religion to be taken into account by courts as an aggravating circumstance for all offences.<sup>30</sup> Hate speech and incitement to any form of hostility based on ethnic, cultural, linguistic or religious identity must also be included in criminal law provisions to ensure adequate sanctioning for such offences.

30. The Advisory Committee has often observed particular forms of prejudice and discrimination faced by persons belonging to vulnerable groups, such as Roma communities. In order to help combat such discrimination, specific measures to promote full and effective equality for persons belonging to vulnerable groups should be developed, implemented and monitored regularly in close co-operation with representatives of the groups concerned. Since

<sup>30</sup> See, among others, First Opinion on Albania.

obstacles to the enjoyment of full and effective equality normally stretch far beyond language, the Advisory Committee invites the authorities to address comprehensively the propagation of stereotypes, discriminatory treatment and factual inequality of persons belonging to vulnerable groups, such as the Roma, in all fields of life in order to attempt to alter social attitudes vis-à-vis such groups. Such efforts may include, for instance, the promotion of the use of Romani where appropriate.

31. Language requirements stipulated by some States Parties to gain access to public employment, or in some cases even citizenship, may constitute a disproportionate obstacle for persons belonging to national minorities to the enjoyment of equal opportunities, and may thus have an indirect discriminatory effect. Efforts must be made to ensure that such requirements are designed and implemented in a non-discriminatory and transparent way and include mechanisms for their periodic review and evaluation, including as regards their impact on equal opportunities for persons belonging to national minorities. In this context, the Advisory Committee considers that easy access to quality language training in the official language(s) for persons belonging to national minorities can serve as a useful instrument for reducing disparities and for promoting more effective equality.<sup>31</sup>

## **2. TOLERANCE, INTERCULTURAL DIALOGUE AND NON-DISCRIMINATION**

32. Article 6 of the Framework Convention is applicable to all persons living on the territory of a State Party. This provision addresses societies as a whole, calling for policies that reflect and promote diversity, eliminate barriers, and encourage contacts and co-operation between persons belonging to different groups, particularly in the fields of education, culture and the media. The obligation to promote tolerance and mutual understanding and to combat any form of discrimination thus underpins all linguistic rights. Consequently and in line with the general spirit of individual bilingualism and plurilingualism found in the Framework Convention,<sup>32</sup> the work of the Advisory Committee is based on the recognition and appreciation of the benefits of multilingualism to promote tolerance and respect for diversity in societies.

33. Language policies should ensure that all languages that exist in society are audibly and visibly present in the public domain so that every person is aware of the multilingual character of society and recognises him- or herself as an integral part of society. In order to create respect for lesser-used languages, language policies should encourage the use of different languages in public places, such as local administrative centres, as well as in the media. In addition, it is not only important for speakers of minority languages to learn majority languages but also vice versa. In line with the principles contained in Article 6 of the Framework Convention, inclusive language policies should cater for the needs of everybody, including persons belonging to national minorities living outside their traditional areas of settlement, immigrants and non-citizens.<sup>33</sup>

### **2.1. Reflecting cultural and linguistic diversity**

34. The Advisory Committee has repeatedly criticised situations in which minority cultures and languages are not being promoted as an integral part of mainstream society but rather presented as “marginal”. This can lead to the isolation of minority cultures and languages and can result in the assimilation of persons belonging to minorities into the majority culture, which may be perceived as more ‘advanced’. The Advisory Committee therefore recommends including minority cultures as an integral part of general cultural development with due regard to their specific characteristics and positive contribution to

<sup>31</sup> First Opinion on Latvia.

<sup>32</sup> See First Thematic Commentary on Education, part 2.1.2.

<sup>33</sup> See, for instance, Third Opinion on Austria.

society. In particular, the Advisory Committee has called on the authorities to take measures to improve public awareness of the languages and cultures of persons belonging to national minorities through school curricula. This should be done throughout the territory of the State Party rather than only in areas of traditional minority settlement. The Advisory Committee urges authorities to continue awareness-raising efforts developed through the media and in schools in order to promote and highlight the cultural and linguistic diversity of societies.<sup>34</sup> This should include training of teachers and public officials, including the police, through the offer of inter- and multicultural as well as human-rights related training.<sup>35</sup>

## **2.2. Inter-relations between majority and minority language speakers**

35. The Advisory Committee is concerned by increasing tensions and divisions on language-related issues, which can occur even in societies that are generally characterised by peaceful relations between persons belonging to different groups. The Advisory Committee finds it particularly worrying when linguistic divisions are used for political purposes and presented as a root cause for cleavages in society, and when intolerance based on linguistic affiliation is stirred up in political discourse. Such developments can harm good community relations for decades.<sup>36</sup>

36. Discriminatory policies and measures, namely in the field of education, are frequently justified by insufficient knowledge of the official language(s). In this context the Advisory Committee has condemned racially -motivated discrimination and segregation of Roma, and has called for measures that promote equal access to the learning of Romani as well as the majority languages for persons belonging to the Roma minority. The Advisory Committee also invites the authorities to take a more flexible approach with regard to persons belonging to the Roma minority who do not hold the citizenship of the state. They should consider, as relevant, allowing them to benefit from measures taken in respect of persons belonging to the Roma minority who are citizens, especially in the field of education.<sup>37</sup>

37. Special attention should be paid to the linguistic obstacles of persons belonging to some minorities regarding access to services which can in some instances amount to indirect discrimination. This can be the case for numerically small groups of speakers of languages without official status, for national minorities within the scope of the Framework Convention outside of their traditional settlement areas, as well as for speakers of languages without legal protection.

38. The Advisory Committee welcomes measures taken by the authorities in favour of the integration of migrant and refugee children in schools, particularly the promotion of mother tongue learning and inter-cultural teaching, and has encouraged them to step up such measures.<sup>38</sup> The Advisory Committee notes that migrant children, due, *inter alia* to language barriers, can face difficulties in accessing education; this often leads to an over-representation in lower-level secondary schools and an under-representation in advanced levels of secondary and higher education. To improve the access and effective integration of these children in school, additional support measures are needed, such as intensive language classes, extra tuition and information, as well as awareness-raising measures for families. The Advisory Committee also welcomes the support of migrant families, and in particular of women with migrant background, through the provision of courses in the official language, counselling services and information.

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<sup>34</sup> Third Opinion on Hungary.

<sup>35</sup> First Opinion on Liechtenstein.

<sup>36</sup> Third Opinion on Moldova; Third Opinion on the United Kingdom; Third Opinion on the “former Yugoslav Republic of Macedonia.”

<sup>37</sup> Third Opinion on Germany; Third Opinion on Italy. Such practice was welcomed by the Advisory Committee in its third Opinions on Norway and Austria.

<sup>38</sup> Third Opinion on Finland.

39. The Advisory Committee also notes that some states have introduced integration contracts with foreign-language migrants. While acknowledging the importance of language as a tool for integration, it stresses that integration involves both the majority and the minority communities and should not rely disproportionately on efforts made by the migrants.<sup>39</sup> In this regard, the Advisory Committee has criticised in particular the use of sanctions in the context of integration contracts, such as the cutting of social benefits or the non-renewal of residence permits and the threat of expulsion, as it considers coercion an inappropriate measure to promote integration.<sup>40</sup> In addition, all steps taken must allow the individual to preserve and develop his or her entire linguistic repertoire, including the native language. The preservation and development of the identity and culture of a person – including multiple identity affiliation and multilingual repertoires – must be respected and supported not only because of their significant cognitive benefits for the individual concerned but as an important pre-condition to successful integration of society.

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<sup>39</sup> Third Opinion on Liechtenstein.

<sup>40</sup> Third Opinion on Austria.

## PART IV: LANGUAGE RIGHTS AND MEDIA

40. The media play an important role with regard to the linguistic rights of national minorities. The right to receive and impart information and ideas in a minority language, as stipulated in Article 9 of the Framework Convention, depends on effective opportunities for access to the media. Furthermore, the possibility to receive and impart information in a language one can fully understand and communicate in, is a precondition for equal and effective participation in public, economic, social, and cultural life. Moreover, in order for the language to develop in all domains and serve the speaker as an all-encompassing means of communication, it needs to be present in the public sphere, including in public media. The presence of minority languages in public media further strengthens social cohesion, as it reflects an overall inclusive policy towards minorities, based on recognition and the encouragement of self-recognition.

### 1. PUBLIC SECTOR MEDIA

41. In order for public service broadcasting to reflect the cultural and linguistic diversity existing within society, it must guarantee an adequate presence of persons belonging to minorities and their languages, including numerically smaller national minorities. This entails granting support to the media and programmes for, by, and about national minorities in minority and majority languages, as well as in bi- or multilingual formats. Minority interests and concerns should also be mainstreamed into regular broadcasts rather than singled out in occasional programmes and mainstream media should engage in broader political discourse of interest to persons belonging to minorities.<sup>41</sup> To this end, efforts should be made to recruit and retain journalists with minority backgrounds into mainstream media programmes, and to ensure that minorities are also represented in broadcasting councils. In addition, persons belonging to national minorities should participate in the development of minority language broadcasts to ensure that these programmes adequately reflect the interests and concerns of minority communities. Care should be taken to produce quality minority language programmes that are attractive to a wide audience, and to ensure that they are broadcast at convenient times.<sup>42</sup>

42. As broadcasting in minority languages often requires supplementary efforts for translation and the development of adequate terminology, budget allocations for such programmes must be adjusted.<sup>43</sup> Access of minority organisations and media outlets to public funding must be facilitated by ensuring that exemptions from general criteria may apply, such as minimum area of distribution or broadcast, or specific conditions for participation in tenders.<sup>44</sup> Special attention should be paid to the needs of numerically smaller minorities or particularly vulnerable groups such as Roma communities that usually have very limited access to media in their own languages and suffer from a lack of qualified journalists trained to work in a minority language. When the media play a central role in an ongoing process of linguistic revitalisation, resolute public support is needed. Authorities should provide increased funding to organisations or media outlets representing these minorities in order to bring their identity, language, history and culture to the attention of the majority.

43. The Advisory Committee notes that several countries have adopted substantial quotas for broadcasting in the official language(s). While acknowledging the legitimacy of the aim of promoting the official language(s), the Advisory Committee has consistently underlined in its findings that special provisions should be put in place to ensure that the linguistic rights of

<sup>41</sup> Third Opinion on Croatia.

<sup>42</sup> Second Opinion on Romania.

<sup>43</sup> Third Opinion on Hungary.

<sup>44</sup> Third Opinion on the Russian Federation and Third Opinion on Austria.

persons belonging to national minorities are guaranteed, for instance, through the flexible implementation of such quotas and or through exemptions of regions where minority communities live in substantial numbers.<sup>45</sup> The imposition of language quotas must never imply regulation of content and must fully respect the freedom of the media. Costs for translation or subtitling in order to adhere to such quotas should be taken into account when allocating public funds to minority language media.

44. Moreover, it is important to note that Article 6 of the Framework Convention explicitly calls for action in the media field to promote tolerance and intercultural dialogue in society, and to promote social cohesion. The Advisory Committee has repeatedly underlined the important role of the media in promoting tolerance and respect for diversity, and has criticised media for fuelling inter-ethnic hostilities through biased reporting.<sup>46</sup> It is important in this context to ensure that regulatory bodies are established to promote ethical journalism, including through targeted training and awareness-raising activities, and that such bodies also include minority representatives and regularly consult with minority communities.

## 2. PRIVATE SECTOR MEDIA

45. The Advisory Committee values the significant role played by private and community media for the realisation of linguistic rights of persons belonging to national minorities, and has welcomed the contribution made by the private sector media in the areas of integration and the general appreciation of cultural diversity in society.<sup>47</sup> Given the competitiveness of the private media sector, the authorities should consider the creation of incentives for private and community media providers, for instance through funding and the allocation of frequencies, to increase access to and presence in the media especially of numerically smaller minorities and their languages. Special attention should be paid in this regard to the particular needs of rural and remote areas where persons belonging to national minorities live traditionally or in substantial numbers.

46. As regards the application of official language quotas in the private media sector, the Advisory Committee finds that particular attention must be paid to ensuring that private initiative is not unduly limited and that language quotas do not hinder the creation or continuation of minority language media.<sup>48</sup> The Advisory Committee has held that the application of an official language quota of 75% to the private media sector is incompatible with Article 9.3 of the Framework Convention.<sup>49</sup> Negative consequences facing minority language outlets may include the limitation of broadcasting time, increased costs due to requirements for translation or the production of subtitling in the official language, and even, in some instances, fines for infringements of legal provisions in this domain.

## 3. PRINT MEDIA

47. While Article 9.3 contains mainly a negative obligation *not to hinder* the creation and use of print media, the Advisory Committee has underlined in a number of country-specific Opinions its particular significance for persons belonging to national minorities.<sup>50</sup> Serving as an important and traditional means of receiving information and news in particular for the elderly members of the minority community concerned, minority language print editions also have a considerable symbolic and 'emblematic' value for the community as a whole, as they confirm the existence of the language in the public sphere. In addition, the Advisory

<sup>45</sup> Second Opinion on Ukraine.

<sup>46</sup> See, for instance, Third Opinion on Ukraine (restricted); Third Opinion on the Russian Federation.

<sup>47</sup> See for instance, Third Opinion on Austria.

<sup>48</sup> Third Opinion on Moldova.

<sup>49</sup> Second Opinion on Ukraine.

<sup>50</sup> See, for instance, Third Opinion on Finland.



Committee has repeatedly observed that minority communities consider their minority language print media as an important means to preserve and develop their specific culture and language within mainstream society. The Advisory Committee has therefore emphasised the need to uphold support for such editions which, due to their small size, are often not commercially viable, as their particular significance for the minority community cannot be substituted with modern and electronic media. It has encouraged states to ensure that their general rules relating to press subsidies, which often contain conditions such as a minimum number of prints or state-wide distribution, should not be applied to minority language print media that are unlikely ever to meet these conditions.<sup>51</sup> When subsidies and support for minority language print media is provided, this should be allocated in line with clear and transparent procedures and with full respect for freedom of expression.

#### **4. TECHNOLOGICAL ADVANCES IN THE MEDIA AND IMPACT ON MINORITIES**

48. Like the offer of programmes in minority language in the private media sector, the offer of minority language publications on the Internet is steadily increasing. Electronic media often play an important role in the circulation of information in minority languages. While not replacing the traditional print media, they must still be taken into account when support is granted to the production of media in minority languages. Importantly, there is a need for professional and financial support for the maintenance of websites and increased training of journalists working for minority language electronic media.<sup>52</sup>

49. Technical and technological developments in the media field, including social media, offer opportunities but can also become obstacles in accessing media in minority languages, depending on how these changes are introduced and how their reception by the interested groups is supported. Special needs and interests of minority communities must be taken into account, for instance, when frequencies are changed.<sup>53</sup> As there is limited availability of terrestrial frequencies, the number of broadcasting channels can be multiplied through digitalisation. It is, however, essential that advances in the digitalisation of the media do not restrict the ability of persons belonging to national minorities to receive media in their languages. The introduction of new technologies can also facilitate the reception of programmes in the languages of minorities produced in other, often neighbouring, countries, as encouraged by Article 17 of the Framework Convention. This should, however, not be seen as a substitute for locally-produced programmes, which normally better meet the needs and interests of minority communities.<sup>54</sup>

#### **5. FILM/MUSIC INDUSTRY AND MINORITY LANGUAGES**

50. Domestically-produced films or music in minority languages can also play an important role in promoting the prestige and presence of the minority language in public life and are equally protected by the provisions of Article 9 of the Framework Convention. The Advisory Committee held, for instance, that authorities must not create excessive requirements in terms of dubbing, post-synchronisation or sub-titling into the official language, as these could disproportionately hinder the production and projection of films in minority languages.<sup>55</sup>

<sup>51</sup> See, for instance, Third Opinion on Austria; Third Opinion on Finland.

<sup>52</sup> Third Opinion on Cyprus.

<sup>53</sup> Third Opinion on the Slovak Republic.

<sup>54</sup> Third Opinion on Germany; Third Opinion on Moldova.

<sup>55</sup> Second Opinion on Ukraine.

## PART V: PUBLIC AND PRIVATE USE OF MINORITY LANGUAGES

### 1. USE OF MINORITY LANGUAGES IN PUBLIC, IN THE ADMINISTRATION AND IN THE JUDICIAL SYSTEM

51. Language rights are effective only if they can be enjoyed in the public sphere. Article 10 of the Framework Convention contains the main principles relating to the right to use minority languages orally and in writing, in private and in public, including – under certain conditions - in relations with administrative authorities. Given the importance of this right, it is essential that any decision related to language policies and the enjoyment of language rights is made in close consultation with minority representatives to ensure that the concerns of persons belonging to national minorities are effectively duly taken into account.

#### 1.1. Official language laws or ‘state language’ laws

52. The right to use one’s language in private and in public, orally and in writing, freely and without interference, is considered one of the principal means to assert and preserve linguistic identity. While the right to use a minority language must never be interfered with, Article 10.1 also limits state interference in the public use of a minority language, such as in public places and in the presence of others. Language legislation may restrict the sole use of minority languages only in cases where the activities of private undertakings, organisations or institutions affect a legitimate public interest, such as public security, health, protection of consumer and employment rights, or safety in the workplace. The necessity and proportionality of any such measure must be established and the rights and interests of the individuals concerned taken into account in each case. The concept of legitimate public interest must thus be interpreted narrowly. As regards consumer rights, for instance, health and safety implications (such as those related to medication) shall prevail over questions of mere preference of the majority of consumers for the official language.

53. States may adopt laws aimed at strengthening and protecting the official language(s).<sup>56</sup> This legitimate aim, however, must be pursued in a manner that is in line with the rights contained in Articles 10 and 11 and other relevant provisions of the Framework Convention and its general spirit of encouraging tolerance and mutual understanding within society. Given the explicit right, contained in Article 10.1, of persons belonging to national minorities to use their language freely and without interference, state language laws must in particular not infringe on the private sphere of a person. Measures aimed at promoting official languages must be implemented in a way that respects the identity and the linguistic needs of persons belonging to national minorities. Authorities must thus seek to strike an appropriate balance between the protection of the official language(s) and the linguistic rights of persons belonging to national minorities. In this regard, promotional and incentive-based measures are a much more effective approach towards strengthening knowledge and use of the official language(s) by all members of the population than any form of coercion.

54. Some states have established and implement punitive measures such as the imposition of fines or the withdrawal of professional licenses in order to impose the use of the official language.<sup>57</sup> The Advisory Committee considers that sanctions of whatever nature for not complying with the provisions of state language laws must strictly respect the limit of proportionality and the existence of a clearly demonstrated, legitimate and overriding public interest. In this regard, the Advisory Committee has held that the mere legal possibility of imposing fines, whether on legal persons or self-employed natural persons, for using their

<sup>56</sup> In a number of countries, the official language (as referred to in Article 14.3 of the Framework Convention and the Explanatory Report) is termed as ‘state language’ and implies an important state identification function of language.

<sup>57</sup> Third Opinion on the Slovak Republic; First and Second Opinion on Estonia.

minority languages in the private sphere is not compatible with the provisions of the Framework Convention. Equally incompatible with the Framework Convention is the imposition of language inspection systems in the private sector, as they may disproportionately intrude in the private sphere of the individual.<sup>58</sup>

## **1.2. Use of minority languages in relations with administrative authorities in areas inhabited by national minorities traditionally or in substantial numbers**

55. Article 10.2 provides the conditions under which minority languages may also be used in relations with administrative authorities. This use is without detriment to the official language(s). While states enjoy a margin of discretion with regard to the identification of areas where minorities live “in substantial numbers”, they have a duty to provide clear criteria as to what constitutes “sufficient numbers” or a “sufficiently large number.”<sup>59</sup> The possibility of using minority languages in dealings with the administration in all areas where the criteria established by Article 10.2 of the Framework Convention are met may not be left solely to the discretion of the local authorities concerned. It is therefore important to set up clear and transparent procedures on how and when to institute the use of minority languages, including in written form, to ensure that the right is enjoyed in an equal manner.

56. As the rights of Article 10.2 are triggered by one of the two main criteria (substantial number *or* area traditionally inhabited), they apply also to areas where only a relatively small percentage of persons belonging to national minorities reside, provided that persons belonging to national minorities *traditionally* inhabit the areas concerned, that there is a request by these persons, and that such a request corresponds to a real need. States should carefully study the demand and assess existing needs in the geographical areas where there is substantial or traditional settlement of persons belonging to minorities, taking also into account the specific local situation.<sup>60</sup> ‘Need’ in this context does not imply the inability of persons belonging to national minorities to speak the official language and their consequent dependence on services in their minority language. A threat to the functionality of the minority language as a communication tool in a given region is sufficient to constitute a ‘need’ in terms of Article 10.2 of the Framework Convention.<sup>61</sup> Protective arrangements must be in place to maintain services in the minority language, even if it is not widely used, as it may otherwise disappear from the public sphere. In addition, states should not take decisions on the existence of sufficient demand based on discussions held in bodies where persons belonging to national minorities are not effectively represented.<sup>62</sup>

57. Numerical thresholds must not constitute an undue obstacle to the official use of certain minority languages in areas inhabited by persons belonging to national minorities either traditionally or in substantial numbers. In particular, a requirement that the minority group represents at least half of the population of a district in order to admit use of the minority language contacts with local administrative authorities is not compatible with the Framework Convention.<sup>63</sup> Where thresholds exist, they must not be applied rigidly and flexibility and caution should be exercised.<sup>64</sup> The Advisory Committee has welcomed the flexibility shown by some local administration officials in applying rigid legal provisions concerning the use of minority languages where, in practice, communication and correspondence in minority languages are still accepted, even if written replies are produced in the official language.<sup>65</sup> Overall, the Advisory Committee encourages states to give careful

<sup>58</sup> First Opinion on Latvia.

<sup>59</sup> First Opinion on Armenia.

<sup>60</sup> First Opinion on Bulgaria.

<sup>61</sup> First Opinion on the Netherlands.

<sup>62</sup> First Opinion on Italy.

<sup>63</sup> Second Opinion on Bosnia and Herzegovina.

<sup>64</sup> See Third Opinion on the Slovak Republic with regard to a 20% threshold.

<sup>65</sup> Third Opinion on Estonia.

consideration to the setting up of thresholds for determining the areas inhabited by persons belonging to national minorities in substantial numbers and welcomes measures taken by the authorities to lower any such thresholds as appropriate.

58. The Advisory Committee encourages maximum implementation of the possibilities provided by law to allow the use of minority languages in contacts with administrative authorities at local level and in education. Authorities should support and actively encourage such measures by creating an environment that is conducive to the use of minority languages, including through the allocation of necessary financial and human resources.<sup>66</sup> In this context, authorities are also invited to consider carefully the situation of those national minorities and linguistic communities whose members live in substantial numbers outside of their traditional territories (often in capital cities). The Advisory Committee has reiterated in this regard that the conditions of Article 10.2 are met as long as there is demand and persons belonging to national minorities live in substantial numbers.<sup>67</sup>

### **1.3. Right to be informed in criminal proceedings**

59. According to Article 10.3 of the Framework Convention, every person belonging to a national minority has the right during criminal proceedings to be informed of the reasons of the arrest and of the nature and cause of any accusation brought against him or her in a language he or she understands. These rights are also guaranteed by Articles 5 and 6 of the European Convention on Human Rights. However, the Advisory Committee has repeatedly noted that, while adequate legal provisions may exist, this right is often not systematically implemented because of inadequate financial resources and/or a lack of qualified interpreters. This is particularly the case for the languages of numerically smaller minorities. The Advisory Committee has consistently encouraged the authorities to take all necessary measures to ensure that minority language rights in the judicial system are fully safeguarded, including as regards investigative and pre-trial stages.<sup>68</sup> In addition, the Advisory Committee has welcomed the guarantee of the right to interpretation into a minority language not only in the context of criminal proceedings, but also in that of civil and administrative proceedings.<sup>69</sup>

### **1.4. Alphabet of minority languages**

60. Article 10 does not address the issue of choice of an alphabet separately from the right to use a minority language. The Advisory Committee considers the alphabet as an integral part of language and thus urges states not to draw a distinction between the two concepts nor to create separate rules. Furthermore, the Advisory Committee finds that in cases where the use of a language does not concern relations with public authorities, the choice of the alphabet should as a rule be left to the discretion of the individuals concerned, and not be subject to any normative limitations.<sup>70</sup>

## **2. MANIFESTATIONS OF MINORITY LANGUAGES: PERSONAL NAMES, PLACE NAMES AND TOPOGRAPHICAL INDICATIONS**

### **2.1. Personal names and patronyms**

61. The right to use one's personal name in a minority language and have it officially recognised is a core linguistic right, linked closely to personal identity and dignity, and has been emphasised by the Advisory Committee in a number of country-specific Opinions.<sup>71</sup>

<sup>66</sup> Third Opinion on Slovenia; Second Opinion on Switzerland.

<sup>67</sup> Third Opinion on Finland; First Opinion on Norway.

<sup>68</sup> First Opinion on the Czech Republic.

<sup>69</sup> First Opinion on Georgia; Second Opinion on Romania.

<sup>70</sup> Second and Third Opinion on the Russian Federation.

<sup>71</sup> See, for instance, Second Opinion on Lithuania; Third Opinion on Finland.

States Parties must make sure that individuals are free from obstacles or pressure on the use and recognition of their names in their own language. This means that relevant civil servants, such as those issuing birth certificates, must be aware of their obligations. While the provision is worded in a way that allows States Parties to apply it in light of their own particular circumstances and legal system, a clear legislative framework in line with international standards should exist and be implemented in an equal manner.

62. In cases where persons have been obliged to change or give up their names, Article 11 of the Framework Convention requires that it should be possible for the original form of the name to be added to passports, identity documents or birth certificates. Registration should occur at the request of the person concerned or his/her parents.<sup>72</sup> The requirement to produce documentary evidence thereof should not, in practice, unduly restrict the right to have the original form of the names added to identity documents, nor must costs be prohibitive.<sup>73</sup> Authorities may, in line with Article 11, require that personal identity documents contain a phonetic transcription of the personal name into the official alphabet, if it contains foreign characters. However, the transcription should be as accurate as possible and should not be disconnected from the essential elements of the minority language, such as its alphabet and grammar. In addition, the Advisory Committee expects that the right to official recognition of names in minority languages is always fully respected.<sup>74</sup> New technologies facilitate the use of diacritic signs and alphabets of national minorities. States are therefore encouraged to make use of all available technical opportunities in order to offer full and effective guarantees to the rights provided by Article 11 of the Framework Convention.<sup>75</sup>

63. Problems may arise from a conflict of language traditions, for instance, in determining the suffix of female names after marriage, which may extend to the names of children. The Advisory Committee welcomes legislation which provides for the possibility of surnames to be entered in registers without the feminine suffix required by some Slavic language grammar rules, and, conversely, legislation that allows for a Slavic suffix in countries that do not usually have such practice, following the rule about gender declension of names.<sup>76</sup>

## **2.2. Information of a private nature visible to the public**

64. Provisions unduly limiting the use of a minority language (alone or as an addition to the official language) in advertisements and announcements, signs and other information of a private nature visible to the public are not compatible with Article 11.2 of the Framework Convention. In this connection, the Advisory Committee recalls that the expression “of a private nature” in Article 11 of the Framework Convention refers to all manifestations of a minority language which are not official, including for example signs, posters or advertisements. The Advisory Committee also welcomes measures to raise the profile of minority languages and history in maps.<sup>77</sup>

## **2.3. Public signs**

65. Article 11.3 of the Framework Convention states that provision must be made for topographical indications to be displayed also in minority languages in areas traditionally inhabited by “substantial numbers of persons belonging to a national minority”. The conditions are stricter, thus, than those contained in Article 10.2, as settlement must be both traditional and in substantial numbers. Like in Article 10.2, a minimum percentage for the latter is not fixed. Transparent procedures, entailing clear criteria of what constitutes

<sup>72</sup> First Opinion on Lithuania; First Opinion on Ukraine.

<sup>73</sup> First Opinion on Latvia.

<sup>74</sup> First Opinion on Azerbaijan; See in this context also the UN HRC decision *Raihan vs. Latvia*, where the Committee considered the transformation of a personal name in accordance with the Latvian grammar rules as a breach of the ICCPR.

<sup>75</sup> Third Opinion on Finland; Second Opinion on Poland.

<sup>76</sup> First Opinion on the Czech Republic; Third Opinion on Germany.

<sup>77</sup> Third Opinion on Germany.

‘substantial’ must be established by States Parties, such as for instance in the form of thresholds. While states have a margin of appreciation in determining the threshold, this must not be exercised in such a manner as to constitute a disproportionate obstacle with respect to certain minority languages. For instance, the Advisory Committee found that the requirement of an absolute or relative majority in urban, municipal or local communities raised concern in terms of its compatibility with Article 11 of the Framework Convention.<sup>78</sup> The relatively flexible wording of this provision stems from a desire to be able to take due account of the specific circumstances prevailing in the various States Parties. In addition, Article 11.3 also takes into account, where applicable, existing agreements with other states, without, however, establishing an obligation for states to enter into such agreements.<sup>79</sup>

66. The Advisory Committee always welcomes the lowering of thresholds. Since Article 11.3 of the Framework Convention refers to areas which have been “traditionally inhabited” by substantial numbers of persons belonging to a national minority, the demographic structure of the area in question should be considered over a certain period in order to ensure that more recent assimilation tendencies do not work against the preservation of the minority language.<sup>80</sup> Therefore, authorities should interpret and apply legislation in a flexible manner without relying too strictly on the threshold requirement.

67. Article 11.3 of the Framework Convention requires that the display of signs in minority languages be given a clear and unambiguous legislative basis. It is not sufficient if this practice is granted as a matter of fact but unsupported by law.<sup>81</sup> Road traffic safety or the use of different alphabets may not be used as arguments against bilingual signposts.<sup>82</sup> On the contrary, bilingualism in signposts should be promoted as it conveys the message that a given territory is shared in harmony by various population groups.<sup>83</sup>

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<sup>78</sup> First Opinion on Bosnia and Herzegovina; Second Opinion on Poland.

<sup>79</sup> See Framework Convention for the Protection of National Minorities and Explanatory Report, H(1995)010, February 1995, paragraph 70.

<sup>80</sup> Third Opinion on Austria.

<sup>81</sup> First Opinion on Georgia.

<sup>82</sup> First Opinion on Denmark.

<sup>83</sup> Third Opinion on Italy.

## PART VI: LANGUAGE RIGHTS AND EDUCATION

### 1. ACCESS TO EDUCATION

68. Article 12 of the Framework Convention requires the commitment of States Parties to promote equal access to education at all levels for persons belonging to national minorities.<sup>84</sup> Language may, however, constitute a significant ‘gate -keeping factor’ and is thus considered a crucial element in access to all levels of education. Disadvantages and discrimination can result from the exclusion of minority languages from education, from a lack of adequate possibilities to learn (in) minority language(s), and from segregation that is language-based, or justified as language -based, into ‘special schools’ or ‘special classes’.<sup>85</sup> The curriculum in such classes may often be significantly reduced in scope, volume and quality, as compared to the officially prescribed teaching programme. Disadvantages are visible in high illiteracy rates, low enrolment, high drop -out rates, school exclusion, as well as considerable under -representation in secondary and higher education of persons belonging to national minorities. While the Advisory Committee is particularly concerned, in this regard, by the situation of the Roma, the development of inclusive education policies requires general attention.

69. Authorities must also take demographic developments into account, as persons belonging to national minorities may migrate outside their areas of traditional settlement (see comments related to Article 10.2 above). The preservation of local minority language school networks should be guaranteed, and persons living outside the areas of traditional settlement should, where feasible and where living in substantial numbers, be given opportunities to be taught their language or in their language.<sup>86</sup> As the fulfilment of the conditions set out in Article 14 with regard to demand for minority language education and substantial numbers of persons belonging to national minorities in certain areas may vary, the measures taken by states to offer minority language education should be flexibly designed in order to adapt well to a given situation.<sup>87</sup> For minority languages that are only spoken by small numbers of people, there may be a particular need to revitalise the language, for instance through the creation of separate classes or through language immersion. The functions and needs of the different languages and language speakers must thus be assessed to establish ‘demand’ in line with Article 14.2. In addition, requests for minority language teaching must be accommodated in an equitable manner and refusals made subject to the possibility of legal challenge.<sup>88</sup> Linguistic skills within the community of minority language speakers may vary. It is unacceptable, however, to bar pupils from having access to minority language education solely on the basis of their insufficient language skills.

### 2. ADEQUATE OPPORTUNITIES FOR TEACHING AND LEARNING OF AND IN MINORITY LANGUAGES

#### 2.1. Open and inclusive approach to minority languages in education

70. Authorities are encouraged to adopt detailed legislative guarantees for the protection and promotion of minority languages in formal and informal education and to monitor regularly the implementation of legal provisions in practice. The Advisory Committee welcomes measures that extend the guarantees contained in Article 14 to other groups, as well

<sup>84</sup> The Advisory Committee devoted its first Thematic Commentary to Education under the Framework Convention, see Footnote 3.

<sup>85</sup> Third Opinion on Croatia. See also *D.H. and Others v. the Czech Republic*, Application no. 57325/00, Judgment 13 November 2007, <http://www.echr.coe.int/echr>.

<sup>86</sup> See, for instance, Third Opinion on Germany; Third Opinion on Austria,

<sup>87</sup> See also ACFC First Thematic Commentary on Education.

<sup>88</sup> Second Opinion on Ukraine.

as legislation that includes additional minority languages. Special attention must be paid to the languages of numerically smaller minorities, such as those of indigenous groups, as their languages are often particularly threatened.<sup>89</sup> States should also consider extending guarantees to geographically dispersed minorities and their languages, such as Romani.<sup>90</sup>

71. The Advisory Committee appreciates the fact that minority language teaching is often offered in response to local demand and therefore encourages the regular monitoring of such demands. A purely passive approach on the part of the authorities is therefore not an adequate response; demands for education in a minority language should actually be stimulated through awareness-raising among parents and young people, and the promotion of existing possibilities for minority language teaching. Parents belonging to national minorities must be enabled to make informed choices about the language education of their children.

72. The right to learn and to develop one's minority language, as contained in Article 14.1 of the Framework Convention, is not only linked to the preservation of individual identity, but also forms an important basis for the development of the individual linguistic repertoire and the acquisition of additional languages.<sup>91</sup> The possibility of being taught in a minority language can also be an important factor in ensuring equal access to education and contributing towards full and effective participation in society. Nevertheless, it is equally important, as stressed in Article 14.3, that proper knowledge of the official language(s) is acquired, as the lack thereof seriously restricts opportunities for persons belonging to national minorities to effectively participate in public life, and may inhibit their access to university education.<sup>92</sup> There should be no mutually exclusive choice between the learning of a minority language or the official language(s) and authorities should encourage multilingual and dual medium education models, which attract children from majority and minority backgrounds and cater for children who grow up bilingually, or in 'mixed' families.<sup>93</sup> Bi- or multilingual education open to students from all linguistic groups, including minorities and the majority, can, apart from having significant cognitive benefits for the individual, contribute to intercultural comprehension and co-operation.

73. The possibilities for teaching and learning of and in minority languages vary according to the specific parameters of local situations: bi- or multilingual schools may offer minority language education in parallel to that in the official language; minority language classes may be included in the public education system; or there may be private minority language schools or 'Sunday classes' organised by communities, with or without support from neighbouring states or the State Party.<sup>94</sup> The Advisory Committee encourages the inclusion of minority languages in the public school system and in the mandatory curriculum, including languages of numerically smaller minorities. Schools should also offer education in and of Romani where appropriate.<sup>95</sup> Special attention is drawn in this context to the Curriculum Framework for Romani developed by the Council of Europe.<sup>96</sup> In addition, the Advisory Committee also welcomes private or community initiatives which are supported by the authorities.

74. A number of particular problems may be encountered as regards opportunities for minority language learning, including the insufficient number of teaching hours of or in a minority language or the organisation of classes outside normal school hours, high numerical thresholds for establishing minority language classes, lack of teachers and teaching or learning materials, or insufficient availability of classes due to the closure or merger of village

<sup>89</sup> Third Opinion on the Russian Federation.

<sup>90</sup> Second Opinion on Spain.

<sup>91</sup> OSCE HCNM, The Hague Recommendations, 1996.

<sup>92</sup> See, for instance, First Opinion on Georgia.

<sup>93</sup> First Opinion on Serbia and Montenegro; First Opinion on Norway.

<sup>94</sup> See also ACFC First Thematic Commentary on Education.

<sup>95</sup> Third Opinion on Hungary; Third Opinion on Cyprus; Third Opinion on Croatia; Second Opinion on Poland.

<sup>96</sup> *A Curriculum Framework for Romani*. Language Policy Division, Council of Europe, Strasbourg, 2008, prepared in co-operation with the European Roma and Travellers Forum.



schools. This raises questions of compatibility with Article 14.2, even in cases where transport to alternative schools is organised and financed by the authorities.<sup>97</sup> In particular, minority representatives must be effectively consulted on all changes related to education reforms or decentralisation, as they often affect directly and negatively the opportunities for minority language teaching. In cases of school mergers, efforts can be made, for instance, to maintain different language classes in one school or develop bi- or multilingual teaching methodologies to reduce negative impacts on minority communities.

75. In order to develop minority language skills as an added value for their speakers, whether belonging to a minority or not, there must be continuity in access to teaching and learning of and in minority languages at all levels of the education system, from pre-school to higher and adult education. Particular weaknesses in the offer of minority language education are often observed at pre-school as well as at secondary school level. Lack of incentives or insufficient possibilities at pre-school, secondary or higher level can seriously reduce the attractiveness of minority language learning at primary level. A specific obstacle is also represented by high school graduation or university entry exams provided in the official language only, since they may reduce the chances of persons belonging to national minorities to gain access to higher education and thereby negatively impact on their subsequent professional opportunities. As university entrance exams are usually not developed for multilingual purposes and are not adapted to the needs and skills of minority language speakers, they may discourage the academic learning of minority languages at the highest level of proficiency. This further reduces the acceptance and functionality of a minority language in public life. Conversely, the Advisory Committee has repeatedly welcomed the provision of access to university education in minority languages as an important contribution to the development and prestige of minority languages in the country.<sup>98</sup>

## **2.2. Means to enable the full enjoyment of educational rights**

76. In order to ensure the quality of education in and of minority languages, adequate school curricula and standards must be developed and teaching methodology, as well as material, adapted. A particularly important aspect in ensuring the quality of education in and of minority languages, however, is teacher training. It is essential that teachers working in minority languages are trained in sufficient numbers and that such training is of adequate quality, preparing teachers for all levels of education, including at pre-primary or nursery levels. In many situations, these teachers are required to work in bilingual or trilingual contexts. Bearing in mind the difficulties in recruiting and training minority language teachers able to work in such environments, the Advisory Committee welcomes and encourages the development of modern and interactive methodologies that are suited to multilingual teaching environments.

77. The Advisory Committee considers the availability of textbooks in minority languages a prerequisite for raising interest among students and parents in minority language learning and an indispensable element for providing quality education. While aware of the high cost of producing materials with low level distribution, the Advisory Committee considers that such materials should be free of charge or at least not more expensive than materials in majority languages. Especially on the level of secondary education, there is often a more general lack of teaching material. As it is important that the content and language use are tailored to the specific needs of the minority groups concerned, including as regards specific minority language terminology of technical subjects, priority should be placed on materials produced in the country. Materials developed in neighbouring states may also be approved and made available where appropriate.<sup>99</sup> Co-operation of this form is explicitly encouraged in Article 17

<sup>97</sup> Third Opinion on Germany.

<sup>98</sup> See, for instance, Third Opinion on Romania (restricted).

<sup>99</sup> Third Opinion on Cyprus; Third Opinion on Croatia.

of the Framework Convention. However, attention must be paid to the risk this may entail with regard to the emergence of parallel education systems, which can threaten social cohesion.<sup>100</sup>

78. In addition, measures to attract students to study minority languages or study in minority languages, such as for example the reservation of university places or the abolition of restrictive quotas are encouraged.<sup>101</sup> Research on minority languages and linguistic practices has a specific role to play with a view to developing quality teaching as well as learning methods and materials. It is equally important for terminology development, interpretation and translation. In this field, authorities are encouraged to pay special attention to the languages of numerically small or dispersed minorities, which are in the process of codification.<sup>102</sup> In this context, attention must be paid to the fact that the process of codification does not ‘freeze’ the language and that the speakers’ opinions remain central to the understanding of the language.

### **2.3. Striking a balance between majority and minority languages in education**

79. Article 12 of the Framework Convention calls for concrete measures to promote knowledge about minority and majority languages. Language plays an important role in promoting integration, mutual respect among groups, and social solidarity. This implies not only providing language education for members of national minority communities, but also education about and of minority languages for the benefit of the majority language speakers and society as a whole. The possibility for majority language speakers to learn minority languages and especially possibilities of attending bi- and multilingual education for all can enhance intercultural understanding and co-operation.<sup>103</sup> Within the meaning of life-long learning, this also includes adult education. Where states have introduced measures to promote the official language(s), it is particularly important that these go hand in hand with measures to protect and develop the languages of minorities, as otherwise such practices may lead to assimilation rather than integration.

80. On the other hand, lack of knowledge of the official language(s) can limit possibilities of equal participation in society, of access to higher education and access to employment. Parents may as a result opt for enrolling their children in mainstream schools as these seem to offer better opportunities to integrate into society and obtain gainful employment. Therefore, minority language schools must provide an adequate development of the speakers’ proficiency in the official language(s). However, care must be taken in this regard to prevent a lowering of general education standards as a result of policies that suddenly introduce more official language learning. This can be a risk when minority language teachers are called upon to teach in the official language, without proper support and preparation.<sup>104</sup> Education reforms that aim at promoting increased official language teaching in minority language schools must be implemented gradually and flexibly to allow for adaptation to the needs of the teachers and the students concerned. In this context, it is important to monitor regularly the quality of education provided throughout the reform process. This should be carried out in close consultation with representatives of the school board, teacher and parents’ organisations.

81. The Advisory Committee encourages the development of bi- or multilingual teaching models as part of the mandatory school curriculum.<sup>105</sup> Ideally, if the situation so allows, dual-medium approaches may be adopted in which minority and majority languages are present in equal proportions. In specific situations, however, it can also be useful to promote one or

<sup>100</sup> Second Opinion on Bosnia and Herzegovina.

<sup>101</sup> Third Opinion on Germany.

<sup>102</sup> Third Opinion on Norway.

<sup>103</sup> See also ACFC First Thematic Commentary on Education.

<sup>104</sup> Third Opinion on Estonia.

<sup>105</sup> Third Opinion on Hungary; First Opinion on Sweden; Second Opinion on Switzerland.

another language in order to counterbalance differences in language prestige, to guarantee the rights of speakers of numerically small minority languages, and to meet the legitimate needs of parents and children as protected under the Framework Convention. Dual-medium approaches can achieve their aim by alternating the languages, based on weekdays or subject, or by applying the one-teacher-one-language model. When languages are determined by subject, minority languages should not be limited to cultural or historical subjects. The Advisory Committee recommends that the authorities, in close consultation with persons belonging to national minorities, develop a comprehensive long-term strategy in order to promote multiple language development in education policies.<sup>106</sup>

#### **2.4. The promotion of linguistic diversity and intercultural education**

82. School education should offer a fair reflection of the linguistic and cultural diversity of society and thereby promote the values of tolerance, intercultural dialogue and mutual respect. In addition to teaching in and of minority languages, the mandatory curriculum should therefore also include information on the history and contribution of minorities to the cultural heritage and the society of the State Party. Such teaching should not be limited to areas traditionally inhabited by national minorities, so that awareness of and respect for the linguistic diversity of society is promoted throughout the country from an early age onwards. In this context, the Advisory Committee welcomes the use of maps for history and geography teaching that indicate the areas of historical importance to national minorities and mark the local names in minority languages. In addition, it has underlined the importance of introducing multiple perspectives into history teaching.<sup>107</sup>

83. In terms of social cohesion, initiatives to attract children from other communities to enrol in schools with minority languages as a medium of teaching and learning are welcomed by the Advisory Committee, as are measures that encourage intercultural and trans-border contacts and promote language learning through partial or total immersion programmes. When developing such inter-cultural approaches, it is important that not only the structure of the education system (such as through diversified classes, schools, and school administration boards) but also the content of the education itself promote the values of mutual respect and inter-ethnic understanding, whilst taking into account other elements of identity such as religion, geographical location, or gender.<sup>108</sup>

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<sup>106</sup> See also ACFC First Thematic Commentary on Education.

<sup>107</sup> Third Opinion on Estonia.

<sup>108</sup> See also ACFC First Thematic Commentary on Education.

## **PART VII LANGUAGE RIGHTS AND PARTICIPATION**

84. The right of persons belonging to national minorities to effective participation in public affairs, as contained in Article 15, is considered a central provision of the Framework Convention, to which the Advisory Committee devoted its second thematic commentary.<sup>109</sup> Effective participation is key to the full enjoyment of other rights protected by the Framework Convention, facilitates intercultural dialogue and promotes social cohesion. All of these aspects of participation, however, may be problematic for persons belonging to national minorities due to language barriers. This Chapter on language rights and participation therefore touches upon considerations that are also of relevance in other chapters of this thematic commentary, such as the issues of equality and non-discrimination, the use of minority languages in public, as well as the learning in and of minority and official languages.

85. The issues of language and language legislation are often central to minority communities and may provoke tension within society. Therefore, two equally important goals must be negotiated: guarantees and respect for the use of minority languages, on the one hand, and social cohesion, on the other. This latter concept often contains references to one main official language. The Advisory Committee has reiterated in a number of relevant country-specific Opinions the legitimacy of the goal of promoting the official language, as it plays a very important role in achieving cohesive societies and encouraging the effective participation of persons belonging to national minorities in public life. Knowledge of the official language facilitates identification as resident and active citizen of a state and is therefore indispensable for persons belonging to national minorities to take part effectively in public life. On the other hand and as mentioned above, proficiency in the official language and enjoyment of the specific linguistic rights of persons belonging to national minorities are not mutually exclusive. All plans or measures to strengthen the official language must be discussed in timely and public consultation processes. These must include the active participation of national minority representatives in order to ensure that minority language rights are effectively protected.

### **1. LANGUAGE RIGHTS AND EFFECTIVE PARTICIPATION IN CULTURAL, SOCIAL AND ECONOMIC LIFE**

86. Persons belonging to national minorities frequently face more significant difficulties than others in accessing the labour market, education and training, housing, health care and other social services. These difficulties are, among others, often due also to language barriers, related to insufficient command of the official language.<sup>110</sup> The situation can be even worse for persons belonging to national minorities who, due to low-quality minority language learning possibilities, graduate with only limited minority language skills and without proficiency in the official language. In most cases, high quality teaching and proficiency in the official language is a precondition for effective participation in cultural, social and economic life. Official language learning for persons belonging to national minorities should thus be facilitated for all age groups, including for those already engaged in public or private sector employment. Particularly in states where new official languages have been introduced, the authorities should make it attractive for persons belonging to national minorities to learn the new official language, for instance, by offering career opportunities for persons who speak official and minority languages.

<sup>109</sup> ACFC Second Thematic Commentary to the Effective Participation of Persons belonging to National Minorities in Cultural, Social and Economic Life and Public Affairs, see footnote 4.

<sup>110</sup> See, for instance, First Opinion on Georgia.

87. Excessive requirements of proficiency in the official language (s) in order to access certain positions or obtain specific goods and services may, however, unduly restrict access to employment and social protection of persons belonging to national minorities.<sup>111</sup> States Parties should therefore take effective measures to remove any disproportionate restrictions in access to the labour market. Regarding positions where proficiency in the official language is a legitimate condition, language proficiency requirements must in each case be proportionate to the public interest pursued and not go beyond what is necessary to achieve that aim. Moreover, language training courses and, where necessary, targeted supports should be made available before language requirements are enforced, in order to facilitate the learning of the official language and prevent discrimination or insufficient participation of staff or applicants belonging to national minorities.<sup>112</sup>

88. Access to social benefits and to certain public services and utilities must not be hampered by undue language or residency requirements.<sup>113</sup> Information and advice on public services and welfare institutions should be made easily accessible and available, where appropriate, in the languages of national minorities.<sup>114</sup> Medical and administrative staff employed in health services and care of the elderly in areas inhabited in substantial numbers by persons belonging to national minorities should be able to provide services in minority languages, and should also receive training on the cultural and linguistic background of national minorities, so that they can adequately respond to their specific needs. The Advisory Committee has observed in this context that local authorities should actively seek to recruit appropriately qualified staff with the necessary linguistic competencies.<sup>115</sup> In addition, the employment of health mediators or assistants belonging to national minorities (or at least interpreters speaking the minority language) can contribute to improved communication.<sup>116</sup>

89. Moreover, States Parties should promote the recruitment, promotion and retention in the administration and public services of persons belonging to national minorities and/or speaking the language(s) of national minorities, both at national and local levels. It is essential that the effective participation of persons belonging to national minorities and/or speaking minority language(s) is ensured within the administration, including the police, and the judicial system, in order to make effective the right to use minority languages in dealings with authorities. Furthermore, the adequate presence of minority languages in public and official life helps to ensure that the minority language develops or maintains sufficient prestige to present an attractive learning goal for young people belonging to national minorities as well as the majority. To this end, proficiency in the minority language should always be considered an asset and, in areas of traditional settlement, even a requirement in recruitment proceedings for the civil service.

## **2. LANGUAGE RIGHTS AND EFFECTIVE PARTICIPATION IN PUBLIC AFFAIRS**

90. The Advisory Committee recognises that a federal structure, decentralisation and various systems of autonomy can be beneficial to persons belonging to minorities.<sup>117</sup> Cultural autonomy arrangements, for instance, may aim to delegate to national minority organisations important competences in the area of minority culture, language or education. Where such arrangements exist, constitutional and legislative provisions must clearly specify the nature and scope of the autonomy system. The relations between relevant state institutions, as well as their system of funding, should be clarified by law.<sup>118</sup> Division of responsibilities among

<sup>111</sup> See, for instance, First Opinion on Azerbaijan.

<sup>112</sup> See ACFC Second Thematic Commentary on Effective Participation.

<sup>113</sup> Ibid.

<sup>114</sup> Ibid. Third Opinion on Denmark.

<sup>115</sup> Third Opinion on Estonia; Third Opinion on Sweden (restricted).

<sup>116</sup> See ACFC Second Thematic Commentary on Effective Participation.

<sup>117</sup> See also the OSCE HCNM Lund Recommendations, 1999.

<sup>118</sup> See ACFC Second Thematic Commentary on Effective Participation.

different levels of government cannot be invoked as a justification for the non-implementation of policies aimed at promoting the conditions for persons belonging to national minorities to develop their culture and language, as the central government remains fully responsible for the respect of its international obligations in this field, including those contained in the Framework Convention.<sup>119</sup>

91. When considering reforms which aim to modify administrative boundaries, the authorities should consult persons belonging to national minorities so that they can consider the possible impact of such reforms on the enjoyment of their linguistic rights. In any case, no measures should be adopted that aim to reduce the proportion of the population in areas inhabited by persons belonging to national minorities or to limit the rights protected by the Framework Convention. In a small number of countries, the Advisory Committee has considered the situation of persons belonging to the majority population who reside in areas of the country where they constitute a minority. The linguistic rights of these so-called 'majority in a minority' situations require, in the opinion of the Advisory Committee, similar safeguards to those of persons belonging to national minorities.<sup>120</sup> It found for instance, that reduced thresholds as to the minimum number of pupils per class should apply in these situations, as they do in minority language schools, so that teaching in and of the 'factual' minority language can be effectively provided.<sup>121</sup>

92. States Parties should ensure that political parties representing or including persons belonging to national minorities have equal opportunities in election campaigning. This may imply the display of electoral advertisements in minority languages. The authorities should also consider providing opportunities for the use of minority languages in public service television and radio programmes devoted to election campaigns and on ballot slips and other electoral material in areas inhabited by persons belonging to national minorities traditionally or in substantial numbers. Language proficiency requirements imposed on candidates for parliamentary and local elections may raise issues of compatibility with Article 15 of the Framework Convention as they negatively affect the participation of persons belonging to national minorities in public affairs.<sup>122</sup> In particular, within locally-elected bodies, the possibility to use minority languages can allow persons belonging to national minorities to participate more effectively in decision-making. The Advisory Committee has welcomed efforts to allow for minority languages to be used internally in public administration in areas that are inhabited substantially by persons belonging to national minorities.<sup>123</sup>

93. The right to use minority languages freely, orally and in writing, in private and in public, as well as in relations with administrative authorities, is also a significant factor which promotes the participation in public affairs of persons belonging to national minorities, particularly in areas where persons belonging to national minorities reside traditionally or in substantial numbers. The possibility of using minority languages in relations with administrative authorities can often contribute to more effective communication on issues directly affecting national minorities, while the exclusive use of the official language(s) may seriously hamper their effective consultation and participation. It is therefore important to ensure that minority communities are provided with the necessary interpretation or translation services when, for instance, relevant legislative drafts are being discussed in order to ensure that they have an effective opportunity to reflect their concerns. In addition, guarantees must be in place to ensure that consultative mechanisms for persons belonging to national minorities, such as Advisory Councils, adequately process contributions made by minority representatives and effectively take them into account in the decision-making process.

<sup>119</sup> Third Opinion on Italy.

<sup>120</sup> A similar approach should be used also with regard to the so-called 'minority in a minority' situations.

<sup>121</sup> Third Opinion on Finland; Third Opinion on Estonia; Third Opinion on Romania (restricted).

<sup>122</sup> First Opinion on Georgia.

<sup>123</sup> Third Opinion on Estonia; Second Opinion on Ukraine.

## PART VIII CONCLUSIONS

94. By ratifying the Framework Convention, States Parties have agreed to “promote the conditions necessary for persons belonging to national minorities to maintain and develop their culture and to preserve the essential elements of their identity”, including language. This Commentary takes stock of the Advisory Committee’s interpretation of language-related provisions of the Framework Convention with a view to providing long-term guidance for improving the implementation of the principles of the Framework Convention. It is addressed to authorities, decision-makers, minority representatives, public officials, non-governmental organisations, academics and other relevant stakeholders. It offers advice and practical recommendations in order to assist the development of a cohesive society when drafting legislation and policies affecting the language rights of persons belonging to minorities.

95. Minority rights, as conceived by the Framework Convention, and developed further through the monitoring process, require inclusive language policies. This implies that everyone has the right to express differences and that such differences must be recognised. However, such recognition must not result in creating fixed identities. As language is closely linked to ideology and hierarchical relations, the categorisation of persons belonging to national minorities can lead to denying an equal status in social interaction. Recognition of differences shall be based on full and effective equality of all members of society, irrespective of their identity and language affiliation. Promotion of such equality requires the adoption of measures that enable an equal access to resources and rights despite differences, and allow for social interaction across differences.

96. The Framework Convention, as an individual rights instrument, is focused on the individual speaker and his or her rights and freedoms when interacting in social contexts. Policies implementing the Framework Convention must thus take into account that language affiliation is based on free self-identification, and is neither static nor exclusive. In addition, while specific provisions target groups of individuals, such as in order to promote their effective equality, comprehensive promotional policies for the full development of language rights must also address society as a whole.

97. Apart from the general principles related to full and effective equality and the promotion of tolerance and mutually respectful inter-ethnic relations, the Framework Convention offers a catalogue of special provisions on sectors that are key for the balanced development of language rights of persons belonging to national minorities on one hand, and the advancement of diverse societies, on the other. These include the media (both public and private, traditional and web-based), the private and public use of languages, education and effective participation. This Commentary therefore deals in particular with these fields.

98. In order to contribute to the overall goal of promoting social cohesion by guaranteeing the rights and freedoms of persons belonging to national minorities, solutions must be tailor-made to the situation of each national minority within the specific context in the State Party. As there is constant evolution, measures identified by States Parties in response to certain circumstances will not necessarily ensure compliance with the standards of the Framework Convention in the future. Therefore, policies, legislative framework and implementation mechanisms directly or indirectly affecting the language rights of persons belonging to minorities must be continuously monitored, evaluated and amended, in close consultation with the groups concerned. Accordingly, the Advisory Committee will also, in subsequent monitoring cycles, reassess state measures affecting language rights, and will further develop its findings. As already mentioned in the Introduction, the Commentary is to be seen as a living instrument, whose interpretation should be developed as monitoring under the Framework Convention evolves. \*\*\*