COUNCIL OF EUROPE CONSEIL DE L'EUROPE

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SECRETARIAT OF THE FRAMEWORK CONVENTION FOR THE PROTECTION OF NATIONAL MINORITIES

COMPILATION OF OPINIONS OF THE ADVISORY COMMITTEE RELATING TO ARTICLE 16 OF THE FRAMEWORK CONVENTION

SECOND CYCLE

Article 16

The Parties shall refrain from measures which alter the proportions of the population in areas inhabited by persons belonging to national minorities and are aimed at restricting the rights and freedoms flowing from the principles enshrined in the present framework Convention."

This document was produced for the work of the Advisory Committee. For publication purposes, please refer to the original versions of the opinions of the Advisory Committee on the Framework Convention.

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

As of 2 February 2016, the Advisory Committee on the Framework Convention for the Protection of National Minorities had adopted 39 opinions, among which 11 opinions on Article 16.

NOTE

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

This statement is not to be understood as signalling that adequate measures have now been taken and that efforts in this respect may be diminished or even halted. On the contrary, the nature of the obligations of the Framework Convention requires a sustained and continued effort by the authorities to respect the principles and achieve the goals of the Framework Convention. Furthermore, a certain state of affairs may be considered acceptable at one stage but that need not necessarily be so in further cycles of monitoring. It may also be the case that issues that appear at one stage of the monitoring to be of relatively minor concern prove over time to have been underestimated.

1. Albania

Opinion adopted on 29 May 2008

Article 16 of the Framework Convention

Administrative units

Present situation

The Advisory Committee was informed that Albanian local authorities were too small to allow effective management of public affairs, and that a reform aimed at dividing Albania into more viable administrative units was to be undertaken in the future. The Advisory Committee considers that this is undoubtedly a legitimate issue, but one that may have a number of repercussions in terms of the ethnic composition of the administrative units in question. It is essential to guard against dividing the country up in such a way as to modify the population's ethnic composition without first consulting national minorities.

Recommendations

While being sensitive to the arguments in favour of a more efficient system of administrative boundaries, the Advisory Committee invites the Albanian authorities to address the issue of Albania's division into administrative units in consultation with all those affected, including representatives of minorities, having due regard to the principles of Article 16 of the Framework Convention.

2. Azerbaijan

Opinion adopted on 9 November 2007

Article 16 of the Framework Convention

Displaced persons

Findings of the first cycle

In its first Opinion, the Advisory Committee noted that the Nagorno-Karabakh conflict had substantially altered the proportion of the population in a number of areas inhabited by persons belonging to national minorities.

Present situation

Outstanding issues

The Advisory Committee notes with concern that no lasting and peaceful solution to the conflict has been found yet and that a process of sustainable voluntary return can, under these circumstances, not be envisaged.

Recommendation

The Advisory Committee supports efforts to find a peaceful solution to the Nagorno-Karabakh conflict, which will result in lasting peace. A process of voluntary return could then hopefully be initiated, including for persons belonging to national minorities.

3. Croatia

Opinion adopted on 1 October 2004

Article 16 of the Framework Convention

Sustainable return

Findings of the first cycle

In its first Opinion, the Advisory Committee referred to substantial changes in the proportion of the population in areas inhabited by persons belonging to national minorities and stressed the importance of fostering sustainable voluntary return.

Present situation

a) Positive developments

Many steps have been taken to foster sustainable return including in terms of improved provision of reconstruction assistance and other measures (see related comments under Article 4 above).

b) Outstanding issues

Problems still remain in connection with the return, affecting in particular persons belonging to the Serbian national minority (see also under Article 4 above). While there are differences of view as to the number of potential future returns, it is important that the possibility to return is seen as a permanent entitlement without deadlines.

Recommendations

The authorities should ensure that the return is understood as a permanent option, including at the local level.

4. Finland

Opinion adopted on 2 March 2006

Article 16 of the Framework Convention

Changes in administrative borders

Present situation

The Advisory Committee notes that the authorities in Finland are considering mergers of various municipalities and other administrative changes that might have an impact on the proportion of persons belonging to national minorities in the administrative units concerned and thereby affect the fulfilment of State obligations concerning participation under Article 15 of the Framework Convention and other provisions of the Framework Convention.

Recommendations

The authorities should ensure that the linguistic composition of the administrative units and the possibilities of persons belonging to minorities to take part in the decision-making and access relevant services are taken into account in the planning and implementation of reforms affecting administrative borders.

5. Germany

Opinion adopted on 1 March 2006

Article 16 of the Framework Convention

Possible dissolution of municipalities in Saxony

Findings of the first cycle

In its first Opinion, the Advisory Committee expressed concern with regard to the dissolution of the municipality of Horno, inhabited in part by Sorbians for reasons of lignite quarrying, and as concerns the relocation of the inhabitants to another municipality.

Present situation

Outstanding issues

The Advisory Committee has been informed of the possibility of extending the lignite quarrying with effect from 2010, involving also new relocations of villages inhabited in part by persons belonging to the Sorbian minority.

Recommendations

This question is addressed in the comments on Article 5.

6. Kosovo*[1]

Opinion adopted on 5 November 2009

Article 16 of the Framework Convention

Protection against population changes

Findings of the first cycle

In its first Opinion, the Advisory Committee called on the authorities to ensure that the process for a sustainable return was organised in a manner that respects the choice of the place of return in Kosovo*.

It also called on the authorities to take due account of the principles enshrined in Article 16 of the Framework Convention and of views of all minority communities in the context of the process of decentralisation.

Present situation

The Advisory Committee notes that the implementation of Article 16 of the Framework Convention continues to be considerably complicated by the internal displacements of minority communities during the 1999 conflict and the violent events of 2004. Sustainable return of persons belonging to the communities concerned is made difficult in the absence of conditions necessary for increasing employment and educational opportunities and security.

According to information received from the Bosniac and Gorani communities, some Southern municipalities have experienced population changes as a result of property transactions which occurred during the privatisation of former socially-owned companies. In addition, improper and insufficient regulations on sales of immovable property have reportedly led to a considerable number of illegal constructions in certain municipalities inhabited by persons belonging to minority communities. This may potentially have a negative effect on the proportions of the population in certain municipalities.

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

While recognising that decentralisation is an ambitious project affecting persons belonging to minority communities, the Advisory Committee notes that discussions about decentralisation arrangements continued during the period under monitoring.

Recommendations

It is essential to ensure that measures taken, in the current processes, including those related to return and decentralisation, are not used to change substantially the proportion of the population in certain areas inhabited by persons belonging to minority communities before the conflict, including in Northern Kosovo*.

All efforts should be made to facilitate safe and sustainable returns that respect the returnees' choice of residence including where circumstances prevent persons belonging to minority communities from returning to their places of residence before the conflict. This includes those returning to Southern and to Northern Kosovo*.

7. Lithuania

Opinion adopted on 28 February 2008

Article 16 of the Framework Convention

Ethnic distribution of the population

Findings of the first cycle

In its first Opinion, the Advisory Committee noted that the changes in electoral constituencies which had occurred in Lithuania had, according to the representatives of minorities, brought a reduction in the number of representatives of minorities in elected bodies, both at local/regional and at central level. The authorities were encouraged to consult national minorities about all future decisions in this field.

Current situation

Outstanding issues

The representatives of the Polish minority informed the Advisory Committee on some shortcomings that they considered likely, in the long-term, to give rise to changes in the ethnic composition of the population, and to have a negative effect on the preservation of minorities' identities. They referred to what they considered to be discriminatory application of the legislation on land restitution. They highlighted notably situations in which, according to them, in the region of Vilnius, land had been granted to persons originating from other regions of the country and who had never been the owners of the land concerned.

Some representatives of minorities expressed concern about the decline in the number of residents of Polish origin in certain parts of the Vilnius region in recent years. They considered that measures such as those mentioned above contributed to this. In their view, this could have a significant long-term impact on the composition of the population of the region, on the participation of minorities in decision-making and, more generally, on the preservation of their identity (see also the comments above relating to Articles 4 and 15).

Recommendations

The Advisory Committee calls on the authorities to examine the shortcomings reported in the process of land restitution. They should ensure that the persons belonging to minorities are not, directly or indirectly, subject of discriminatory measures.

Furthermore, it is essential to ensure that no measure is taken in this process with the intention of altering the relative proportions of the population in the geographical areas concerned, and

thereby reducing the rights enjoyed by the persons belonging to national minorities in pursuance of the Framework Convention.

8. Montenegro

Opinion adopted on 19 June 2013

Article 16 of the Framework Convention

New territorial divisions and ethnic composition of the territorial units

Findings of the first cycle

In its first Opinion, the Advisory Committee considered that the authorities should strengthen the process of decentralisation of the country, while taking into account that any changes to municipal boundaries should not breach the principles contained in Article 16 of the Framework Convention and that national minorities be duly consulted in the process.

Present situation

a) Positive developments

The Advisory Committee is informed about the on-going discussions and local referenda in Gusine, Petnjica and Tuzi on the plans for the reform of local administration ~~of Montenegro~~ with a view to establishing these localities as separate municipalities. The Advisory Committee notes that persons belonging respectively to Bosniak and Albanian national minorities constitute a very significant part of the population in each of these three localities and as a consequence their ability to influence public affairs is likely to increase.

b) Outstanding issues

The Advisory Committee notes that changes to the territorial structure of the country, while beneficial to some, may affect negatively others, in particular those persons belonging to national minorities who will find themselves residing outside of the borders of the newly established territorial units. Consequently, the Advisory Committee urges the authorities to proceed with caution and to consult representatives of national minorities on the borders of the newly established municipalities. The enjoyment of minority rights should not be unduly linked to a particular part of the territory. In addition, arrangements should be made to allow children belonging to national minorities to attend schools dispensing tuition in the languages of these minorities, regardless of their place of residence.

Recommendations

The Advisory Committee urges the authorities to ensure that the rights of persons belonging to national minorities are duly taken into account when planning and implementing the changes to the territorial division of the country. In particular, the authorities should ensure that there is no negative impact on the right of persons belonging to national minorities to participate effectively in public affairs at the local level in any of the units, both old and newly-established.

The authorities should ensure that school children belonging to national minorities continue to have access to education in minority languages irrespective of the changes introduced to the territorial structure of the country.

9. Netherlands

Opinion adopted on 20 June 2013

Article 16 of the Framework Convention

Territorial arrangements

Findings of the first cycle

In its previous Opinion, the Advisory Committee noted that in parallel with the plan to increase the competences of the province of Fryslân in a number of fields, a redrawing of municipal boundaries was being discussed. It expected that adequate consultations would be carried out with the persons concerned.

Present situation

Outstanding issues

The Advisory Committee notes that representatives of the Frisian minority fear that a possible merger of municipalities might result in the closure of a number of small schools where the Frisian language is used, which might have negative effects on the use of Frisian language in all aspects of social and daily life. They also consider that these measures might alter the proportions of the persons belonging to the Frisian minority in certain areas and, as a result, might restrict their rights and freedoms in the Northern municipalities.

Recommendation

The Advisory Committee calls on the authorities to take measures, in close consultation with persons concerned, to ensure that the possible future reform of the Northern municipalities and provinces will not have negative repercussions on the situation of persons belonging to the Frisian minority.

10. Russian Federation

Opinion adopted on 11 May 2006

Article 16 of the Framework Convention

Forced displacements including deportations

Findings of the first cycle

In its first Opinion, the Advisory Committee called for decisive and urgent measures from the federal authorities to ensure that the authorities of Krasnodar krai revise their norms and policies apparently aimed at putting pressure on persons belonging to certain national minorities, in particular the Meskhetians, to leave the region.

The Advisory Committee encouraged the authorities to take additional measures to facilitate the voluntary return of Ingush displaced from the Prigorodny district in North Ossetia-Alania and to ensure the voluntary nature of the return process of persons displaced due to the conflict in Chechnya.

Present situation

a) Positive developments

In 2005, after long delays, the authorities of Krasnodar krai began to comply with the Constitutional Court decisions striking down aspects of this region's registration regime. Thus, on 14 December 2005 a new law "On the Implementation of State Policy with Respect to the Legal Status of Foreign Citizens and Stateless people on the Territory of Krasnodar krai", removed the unlawful restrictions on registration for Russian citizens which had existed for more than a decade (see also comments under Article 4).

The Advisory Committee welcomes the progress made so far to assist the voluntary return of Ingush displaced from their homes in Prigorodny district during the 1992 conflict between Ingushetia and North Ossetia-Alania (see also comments under Article 5). In this connection, the Advisory Committee notes with satisfaction the fact that, in its decision of 1 December 2005, the Constitutional Court of the Russian Federation requires the mutual consent of subjects of the federation for changes of their common borders. The Constitutional Court decision thus establishes that Article 6 of the Law on the Rehabilitation of Repressed Peoples which guarantees "territorial rehabilitation" to repressed peoples must be read in the context of the constitutional provisions of the Russian Federation.

b) Outstanding issues

Although improvements have been made to Krasnodar krai's provisions for issuing residency registration to Russian citizens, most persons belonging to national minorities who encountered problems obtaining registration stamps (especially Meskhetian Turks, Khemshils, Yezids, Batumi Kurds) were former Soviet citizens who were either denied automatic citizenship in 1991-1992 or had failed to obtain naturalisation under subsequent facilitated procedures owing to discriminatory treatment. Following the entry into force of the 2002 Law on the Legal Status of Foreigners, many of these people fell into situations of irregularity (see comments under Article 4 above). The Advisory Committee is concerned about reports it has received that, beginning in 2003, a number of district courts in Krasnodar krai have begun to issue deportation orders to Meskhetian Turks and persons belonging to other national minorities, including Armenians.

By 2005, a special resettlement programme funded by the United States Government and administered by the International Organisation for Migration allowed 7,000 Meskhetian Turks living in Krasnodar krai without registration to resettle in the United States. The Advisory Committee welcomes this programme to the extent that it has helped to resolve the irregular situation of thousands of Meskhetian Turks in Krasnodar krai. However, the Advisory Committee is disturbed by reports it has received about instances where government officials in Krasnodar krai attempted to obstruct the resettlement process, while simultaneously failing to provide conditions for Meskhetian Turks to regularise their stay in the region. The Advisory Committee is also concerned about reports suggesting a deterioration in the situation of persons belonging to other national minorities, including Yezids, Batumi Kurds and Khemshils, in the wake of the U.S. resettlement programme.

The Advisory Committee notes that the remaining problems affecting the return of displaced Ingush, which include a lack of a consensus on the number of Ingush who have the right to state assistance in resettlement, are aggravated by the failure to find a political solution to the territorial dispute. The uncertainty which consequently hangs over the fate of Prigorodny district fuels speculation thus adding tension to the process of return.

The Advisory Committee notes with concern that in Chechnya the return of displaced persons is being accelerated by the decision to attach compensation payments to the physical return of applicants, in spite of the absence of security guarantees in some of the affected areas.

Recommendations

The authorities should actively support the efforts of Meskhetian Turks wishing to remain in the territory of Krasnodar krai, as well as persons belonging to other national minorities, to regularise their legal status, and provide guarantees regarding their access to rights.

The Advisory Committee considers that the position expressed by the Constitutional Court of the Russian Federation as regards the meaning of Article 6 of the Law on the Rehabilitation of Repressed Peoples should be used for resolving the remaining problems related to the return of Ingush to Prigorodny district. Consultations should be pursued with all involved parties and a political solution that takes into account the needs of all sides should be devised without delay.

The Advisory Committee urges the authorities to ensure that the return of persons displaced by the conflict in Chechnya takes place voluntarily and under conditions of safety.

Creation of new territorial formations

Present situation

The Advisory Committee notes that the process of integrating Perm oblast and Komi-Permyak autonomous okrug is now well under way. According to information received from government sources, after the merger, the cultural and educational activities of persons belonging to the Komi-Permyak minority will be funded through a separate budget and a special electoral district will be established for them in order to facilitate their representation in the new region's elected bodies. The Advisory Committee welcomes these intentions but notes that the precise impact of the merger on the level of cultural, linguistic and educational support received by the Komi-Permyak national minority remains at this stage unclear.

A similar merger will shortly begin between Irkutsk oblast and Ust-Ordinsk Buryats autonomous okrug, following their 16 April 2006 referenda on this issue. Another merger planned is between Krasnoyarsk krai, Taimir (Dolgano-Nenets) autonomous okrug and Evenky autonomous okrug.

The Advisory Committee is concerned about reports of inter-ethnic tensions in the Republic of Adygea following calls for a referendum by certain representatives of the majority population that could lead to a merger between the Republic of Adygea and Krasnodar krai. The Advisory Committee notes that persons belonging to the Adyg "titular nation" make up only 24% of the republic's population. Such a referendum would require a previous amendment to the Republic's Law on Referenda, which currently prohibits changes to Adygea's borders, an eventuality which is currently being debated by the republican legislature.

The Advisory Committee is seriously concerned about the mounting tension in the Republic of Kabardino-Balkaria following administrative mergers of settlements and affecting several predominantly Balkar villages, without a referendum as required by federal law. The situation has been aggravated by the categorisation of lands, also mainly of Balkar settlements, as "in between settlement lands" through the Law No. 12 of Kabardino-Balkaria "On Administrative-Territorial Structure of the Kabardino-Balkaria Republic", resulting in their expropriation.

Recommendations

When planning and implementing mergers between subjects of the Russian Federation, the authorities must carefully examine their impact on, and ensure the sustainability of, the rights of persons belonging to national minorities in the areas concerned. It is essential that the level of cultural, linguistic and participatory rights of persons belonging to minorities living in compact settlement in formerly autonomous okrugs or other territorial formations should either be strengthened or remain unchanged as a result of the merger. Guarantees to this effect should be enshrined in law.

The federal authorities, including the Presidential Representatives of the respective Federal Districts, should ensure that mergers and other such territorial changes can be introduced only if they stem from local needs and demands. In the event of a referendum taking place, the authorities must provide the necessary conditions for holding a free and fair vote.

The Advisory Committee draws the attention of the regional and federal authorities to the obligation to consult with those affected by administrative-territorial changes in order to ensure that these measures do not infringe upon the rights enshrined in the Framework Convention, including the right to effective participation. In addition, any expropriation of land would need to be considered in light of applicable human rights principles, including Article 1 of the first protocol of the European Convention on Human Rights as interpreted by the European Court of Human Rights.

11. "The former Yugoslav Republic of Macedonia"

Opinion adopted on 23 February 2007

Article 16 of the Framework Convention

New territorial divisions and ethnic composition of the territorial units

Findings of the first cycle

In its first Opinion, the Advisory Committee took note of the concerns expressed by persons belonging to national minorities as to the possible negative impact of the draft Law on Municipal Boundaries on the ethnic balance of the territorial units. The authorities were encouraged to consult further with persons belonging to minorities during the legislative process and to pay due attention to their concerns.

Present situation

Positive developments

The Advisory Committee takes note of the adoption and entry into force, in 2004, of the Law on the territorial organisation of municipalities, which have resulted in changes in the proportion of the ethnic communities within some municipalities. Whilst these changes have produced tensions in some cases, the tensions have declined without major incidents. Despite reports of irregularities and attempts at intimidation, the local elections organised in 2005 were held under relatively peaceful conditions and were considered by international observers to be in line with international norms.