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SECRETARIAT OF THE FRAMEWORK CONVENTION FOR THE PROTECTION OF NATIONAL MINORITIES

COMPILATION OF OPINIONS OF THE ADVISORY COMMITTEE RELATING TO ARTICLE 3 OF THE FRAMEWORK CONVENTION

SECOND CYCLE

“Article 3

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

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 40 opinions, among which 39 opinions on Article 3.

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

Census and birth certificates

Findings of the first cycle

In its first Opinion, the Advisory Committee noted that the last census held in Albania, in 2001, did not contain any questions on ethnic belonging, and considered that a national census might be a good opportunity for persons belonging to national minorities to assert their identity, while respecting their subjective choices regarding their ethnic belonging.

Present situation

a) Positive developments

Albania's next general census is scheduled for 2011. The possibility of including a question on ethnic belonging has now been accepted by the authorities and the National Statistics Institute (INSTAT) in particular, as one of the issues which need to be addressed, although no conclusion has been reached as yet. Preparations for the census are to begin in 2009.

The Advisory Committee is pleased to note that Albania passed a law on personal data protection in March 2008, which Council of Europe experts assessed as generally complying with international standards in this area, including the 1981 Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data and its Protocols and Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the same subject.

b) Outstanding issues

In its discussions with the authorities, the Advisory Committee noted their reluctance to include a question on ethnic belonging in the census questionnaire. This is because of a presumed risk that some people might fraudulently claim a given ethnicity – in this case Greek – in view of the advantages supposedly deriving from affiliation with that national minority, particularly in terms of cross-border contacts.

The Advisory Committee notes that, on the whole, persons belonging to minorities called for the next census to enable them to assert their ethnic identity. In the Advisory Committee's view, this should not be overlooked by the authorities. The Advisory Committee points out that people's answers to questions on ethnic belonging must remain voluntary and that no disadvantage may result from their choices, in accordance with the principles of Article 3 of the Framework Convention. In the light of these concerns, it is important to raise awareness among the public and public officials about the need for the census to be as accurate as possible. In addition, the Advisory Committee considers that the census should not be regarded as the sole means of obtaining data on the country's ethnic composition. While the census results undoubtedly are necessary and play an important role, they could be supplemented by sociological surveys and other studies on minorities, including at local level. Such studies must have due regard both to international standards concerning the protection of personal data and to Article 3 of the Framework Convention.

While collecting data on ethnic affiliation through a census seems to raise issues for the Albanian authorities due to concerns related to personal data protection and possible manipulation on the one hand, the Advisory Committee notes, on the other hand, that such data is already gathered *ex-officio* when birth certificates are issued. Therefore, there appears to be a contradiction with regard to the position of the Albanian authorities on ethnic data collection. Indeed, the Advisory Committee was informed that the mandatory section on ethnic origin is filled in only for Greeks and Macedonians and that following the practice which existed from before and during the former communist regime, recording a person's ethnic origin on his or her birth certificate is done on the basis of the parents' birth certificates rather than a free

declaration by the person concerned. “Ethno-linguistic” minorities (see paragraph 39) such as the Vlachs/Aromanians and Roma, which were not identified as such at the time, and the Serbo-Montenegrins, who for historical reasons have no longer been listed as such since the 1950s, are apparently not subject to that requirement. This may constitute an unjustified differential treatment among persons belonging to national minorities and this has implications in terms of access to certain rights, for instance in the education field (see below). The Advisory Committee has also been informed that the mandatory registration of Greeks and Macedonians would only produce its effects within “minority zones” (see specific comments below on the issue of territorial restrictions). The Advisory Committee is of the view that recording people’s ethnic origin on their identity papers without their specific consent, in this case birth certificates, raises issues of compatibility with the principles of Article 3 of the Framework Convention. The authorities have however highlighted in their dialogue with the Advisory Committee that such a practice is nowadays based on the principle of self-identification. The Advisory Committee is of the opinion that, in order to comply with that article, the authorities should make sure that the reported practice of *ex-officio* ethnic recording is stopped.

Recommendations

The Advisory Committee encourages the authorities to include a question on ethnic belonging in the next general census in 2011 and to ensure that the choices are explained to the public and public officials by means of information campaigns. It also invites the authorities to forge ahead in this area by supplementing the census results with sociological surveys and other studies on minorities, including at local level.

The Advisory Committee urges the authorities to take the necessary action to ensure that the practice of mandatory recording of people’s ethnicity on their birth certificates is abolished.

Classification of national or “ethno-linguistic” minorities

Findings of the first cycle

In its first Opinion, the Advisory Committee invited the Albanian authorities to re-examine, in consultation with those concerned, the question of the designation of the Roma and Vlachs/Aromanians as purely linguistic minorities.

Present situation

a) Positive developments

As indicated in the State Report, the authorities have given thought to the action to be taken on the Advisory Committee’s aforementioned recommendation, organising a consultation meeting with experts in 2003. This is a positive first step.

b) Outstanding issues

The Albanian government continues to place Roma and Vlachs/Aromanians in categories other than that of national minorities. Following the aforementioned meeting of experts, the two groups are now defined as “ethno-linguistic” minorities (the term used in the State Report), notwithstanding the demands of those concerned, who have explicitly informed the authorities of their objection to this label – which, in their view, reduces their identity to a primarily linguistic component – and expressed their desire to be recognised as national minorities on the same basis as Greeks, Macedonians and Serbo-Montenegrins. The government, for its part, is keeping to its approach of recognising only minorities with a “kin-state” as national minorities. The Advisory Committee notes that in practice this classification as “ethno-linguistic” leads *de facto* to a differentiated treatment of the persons of the group concerned since these persons are not able to access certain rights such as minority language education, in the same conditions as those persons recognised as national minorities (see below, under Article 14). Such a situation raises problems. Moreover, this classification creates an impression among those concerned that they are not included among the main minority groups.

Recommendation

The Advisory Committee is of the view that the authorities should reconsider their distinction between national and “ethno-linguistic” minorities with a view to ensure that there is no differentiated treatment in the enjoyment of certain rights for the Roma and the Vlachs/Aromanians as compared to “national minorities”.

Egyptians and the Framework Convention

Findings of the first cycle

In its first Opinion, the Advisory Committee considered that the *a priori* exclusion of Egyptians from the personal scope of application of the Framework Convention was not compatible with the latter, and that the government should re-examine the matter in consultation with those concerned.

Present situation

Outstanding issues

The Albanian government’s position remains largely unchanged. According to the authorities, discussions have been held on the subject of the Egyptian community, but they do not consider it necessary to recognise the latter as a national minority with a view to resolving its socio-economic problems.

In their discussions with the Advisory Committee, the Egyptians reiterated their desire to be recognised as an ethnic group distinct from Roma, with whom they have often been confused by the public and by the authorities themselves. They also wish to receive State assistance with a view to preserving their culture, which they believe should also be reflected in school textbooks. Furthermore, they consider that the authorities should address the issue of their representation within the public administration and elected bodies.

The Albanian government is not ruling out the possibility of specific measures aimed at ensuring better socio-economic integration of persons belonging to the Egyptian community. In the Advisory Committee’s view, however, it is important that the specific identity asserted by the Egyptians be respected in accordance with the principles of Article 3 of the Framework Convention. They must not, therefore, be treated as members of the Roma community.

The representatives of this community have expressed the wish to benefit from similar measures to those included in the National Strategy on the Roma. The Advisory Committee considers that this Strategy may indeed offer a valid framework, *mutadis mutandis* in order to address the needs of the Egyptians. The Albanian authorities may wish to draw inspiration from it while making the necessary adaptations and respecting the specific identity of the Egyptians, in order to meet adequately the demands of this community.

Recommendation

The authorities start an intensive dialogue with the Egyptians to discuss the necessary measures with a view to preserving their specific identity. In addition, their policy towards the Egyptians should be based on the principles of the Framework Convention.

Bosniacs and the Framework Convention

Present situation

Bosniac community representatives reported to the Advisory Committee that they were well integrated within Albanian society. They also emphasised the importance of the assistance provided by their “kin-state” for the teaching of the Bosnian language (see also under Article 14). The representatives of this community asked that the Albanian authorities consider them as a national minority, since it is important to them to have their existence as a distinct group acknowledged.

The Advisory Committee notes that affording Bosniacs protection as a national minority covered under the Framework Convention would allow their specific needs to be met.

Recommendation

The Advisory Committee considers that the authorities should step up their dialogue with representatives of the Bosniac community and, with a view to meeting their needs for protection, apply the provisions of the Framework Convention to them.

Territorial restrictions

Findings of the first cycle

In its first Opinion, the Advisory Committee, noting that the application of “minority zones” still enjoyed a certain currency, invited the authorities to ensure that no undue limitations were placed on the rights of persons belonging to national minorities who lived outside these zones and to clarify the situation with those concerned.

Present situation

Outstanding issues

The issue of “minority zones”, outside which persons belonging to national minorities are not eligible for certain rights, persists. The government continues to contend that all those belonging to national minorities are recognised as such, irrespective of the geographical areas in which they live. However, the situation is somewhat different in practice. As already noted, the reported automatic recording of a person’s ethnic origin – albeit incompatible with Article 3 – only produces its effects in particular zones inhabited by substantial numbers of persons belonging to national minorities. It follows that the ethnic belonging recorded in such zones is used by the authorities to address the demands of persons belonging to minorities, for instance with a view to opening classes in minority language (see also under Article 14), and that persons belonging to national minorities who leave these zones may not claim the same rights. This results in a situation in which the protection of national minorities is subject to overly rigid geographical restrictions. The Advisory Committee is of the view that this *de facto* situation raises issues of compatibility with Article 3 of the Framework Convention.

Passing a law on national minorities does not appear to be a matter of immediate concern to Albania, even though it is mentioned in the National Plan for the implementation of the Stabilisation and Association Agreement between Albania and the European Union as a medium-term legislative initiative. Although the Advisory Committee acknowledges that other issues require the authorities’ urgent attention, it considers that drafting a framework law on the protection of national minorities might help to clarify Albania’s policy towards its minorities, particularly in terms of territorial scope.

Recommendations

The Advisory Committee considers that the authorities should ensure that persons belonging to national minorities can assert their rights, in line with Article 3, with no undue territorial restrictions.

The Advisory Committee invites the authorities to give adequate consideration to drafting a framework law on national minorities, clarifying *inter alia* the territorial application of the protection afforded to national minorities in Albania.

2. Armenia

Opinion adopted on 12 May 2006

Personal scope of application of the Framework Convention

Findings of the first cycle

In its first Opinion, the Advisory Committee noted that there was some degree of uncertainty with regard to the concept of national minority, especially for groups not having representative organisations.

The Advisory Committee also took note of the dispute over the national identity of Kurds and Yezidi.

Finally, it recommended that the Armenian authorities consider a possible inclusion of persons belonging to other groups, including non-citizens, in the application of the Framework Convention on an article-by-article basis.

Present situation

a) Positive developments

The Advisory Committee welcomes the inclusive approach taken by the Armenian authorities, as expressed in their Comments to the first Opinion of the Advisory Committee, with regard to the scope of application of the Framework Convention, especially the possibility of including non-citizens in the personal scope of application. The Advisory Committee also considers as a positive step the amendment of former Article 37 of the Constitution of Armenia (now Article 41 following the reform of the Constitution in 2005), according to which the enjoyment of the constitutional right to preserve and develop their traditions, religion, language and culture is granted to “persons belonging to national minorities”, and no longer to citizens only.

The Advisory Committee welcomes the position taken by the Armenian authorities, according to which the principle of self-identification should prevail in the context of the ongoing controversy over the ethnic identity of Kurds and Yezidi. The Advisory Committee indeed notes that some of the Yezidi leaders it met during the visit to Armenia consider that the Yezidi religious, ethnic and linguistic identity is distinct from the Kurdish one, whereas the Kurdish leaders it met claim that the Yezidi and Kurds share the same ethnic identity and language and that the term Yezidi defines only the religion.

b) Outstanding issues

The Advisory Committee notes that the 11 national minorities included in the application of the Framework Convention have representative organisations and a seat in the Co-ordinating Council for National Minorities, as was the case during the first monitoring cycle. According to information available to the Advisory Committee, there are persons from other ethnic backgrounds in Armenia, in particular a small number of persons of Roma and Azeri origin, who are currently not included in the scope of application of the Framework Convention. While these persons have for the time being not indicated interest in benefiting from the protection of the Framework Convention, the Advisory Committee considers that this protection should remain available to them, should they request it in the future.

Recommendations

The Advisory Committee encourages the Armenian authorities to maintain their inclusive approach with regard to the scope of application of the Framework Convention and to envisage, where appropriate, the possibility of including persons belonging to other groups, including non-citizens, in the application of the Framework Convention, in consultation with those concerned.

The draft law “on the Republic of Armenia citizens of non-Armenian ethnicity and ethnic minorities”

Findings of the first cycle

The Advisory Committee found in its first Opinion that it would be important to establish a legal framework capable of securing appropriate protection for persons belonging to national minorities, in consultation with those concerned.

Present situation

a) Positive developments

The Advisory Committee notes that a new draft law “on the Republic of Armenia citizens of non-Armenian ethnicity and ethnic minorities” (hereinafter referred to as the draft law on minorities) is being prepared by the Department for Ethnic Minorities and Religious Affairs and that the authorities have indicated their intention to submit it to the Council of Europe for an expert opinion on its conformity with international standards on minority protection. The Advisory Committee welcomes the fact that minority representatives were consulted on the draft text at an early stage.

b) Outstanding issues

The Advisory Committee notes that the vast majority of the representatives of national minorities in the Co-ordinating Council for National Minorities expressed dissatisfaction with regard to the draft law and were no longer in favour of adopting legislation on national minorities. The current draft does not, in their view, provide any added value in relation to the existing situation.

The Advisory Committee notes that the draft law includes a citizenship criterion for protecting and promoting the ethnic identity of persons belonging to minorities. The Advisory Committee considers that such an approach does not adequately reflect the spirit of openness and flexibility required in relation to Article 3 and other provisions of the Framework Convention. It believes that the citizenship criterion is a legitimate requirement in some areas, such as representation in Parliament, but that its application can generate problems in relation to provisions contained in other key areas covered by the Framework Convention, such as non-discrimination and equality.

The Advisory Committee also notes that the draft law, as it stands, contains a definition of the concepts of “ethnic minorities” and of “citizens of non-Armenian ethnicity”. The distinction between “citizens of non-Armenian ethnicity” and “ethnic minorities” introduces two different levels of protection. The conditions for being recognised as an “ethnic minority” are as follows: to belong to a group; to constitute at least 3,000 persons for groups dispersed on the territory, or at least 15% of the population in municipalities of at least 2,000 inhabitants, or to form the majority of the population of municipalities of at least 300 persons; and to have a presence in Armenia of at least 50 years. Those not meeting these criteria and who do not belong to the majority population will be considered “citizens of non-Armenian ethnicity” and will benefit from different guarantees than the persons belonging to “ethnic minorities”. The Advisory Committee is of the opinion that this distinction might result in unjustified differences of treatment of persons or groups. Therefore, while noting that the intention expressed by the authorities is not to exclude persons or groups from the protection of the draft law, the Advisory Committee is of the opinion that this distinction needs to be reconsidered, taking due account of the principles of the Framework Convention.

Furthermore, the Advisory Committee notes that the draft law uses the term “mother tongue” when it refers to the protection of linguistic identity. The term “mother tongue” is not used in the Framework Convention. The use of this term in the law might be problematic for persons who prefer Russian as their minority language and who, while not belonging in ethnic terms to the Russian minority, wish their children to receive education in this language. In this respect, the Advisory Committee would like to stress that the principle of self-identification should also apply to the choice of one’s minority language (see also the remarks in respect of Article 14).

Recommendations

It is important that the authorities pursue the consultations on the draft law on minorities with the representatives of national minorities with a view to obtaining a higher degree of agreement on the main principles to be enshrined in the law.

The authorities should ensure compliance of the draft law with international standards in the field of minority protection. The Advisory Committee welcomes the intention expressed by the Armenian authorities to request an international expert opinion on the compliance of the draft law with the principles of the Framework Convention.

The Advisory Committee urges the Armenian authorities to ensure that the provisions contained in the draft law on minorities do not go against the inclusive approach adopted by the Armenian authorities in the context of the first cycle of monitoring. In particular, they should keep open the possibility of including other groups in the future, including non-citizens where appropriate, in the application of the Framework Convention. They should also ensure that the provisions of the draft law do not lead to undue differences in the treatment of different persons or groups which could benefit from the protection of the Framework Convention.

3. Austria

Opinion adopted on 8 June 2007

Scope of application of the Framework Convention

Findings of the first cycle

In its first Opinion, the Advisory Committee encouraged the Austrian authorities to continue the approach they have taken in practice on the criteria of citizenship and autochthonous territory, as this approach was more inclusive than that suggested by the Declaration deposited by Austria upon ratification of the Framework Convention.

The Advisory Committee also encouraged the authorities to continue examining the claims relating to the protection offered by the Law on Ethnic Groups of 1976 made by groups that are not considered to be covered by the Framework Convention. Moreover, it invited the authorities to consider the possibility of extending the application of the Framework Convention on an article-by-article basis to persons belonging to these groups including, as appropriate, when they are not citizens.

Present situation

a) Positive developments

The Advisory Committee notes that the Austrian authorities reiterated, in the State Report, the view that persons belonging to autochthonous minorities and living outside their traditional settlement area retain their status as persons belonging to national minorities, which is demonstrated by the support provided by the authorities to projects implemented by minorities outside their settlement areas. It also notes that the authorities continue to show some flexibility in the application of the criteria of citizenship as they distribute funds for activities covering also persons who are not Austrian citizens, e.g. in the case of the Roma.

During the visit, the authorities expressed the view that the protection of the Framework Convention could be extended to groups other than the six officially recognised groups, provided they meet the criteria to be recognised as “ethnic groups”. This approach has been maintained over the last decades; while the State Treaty of 1955 only recognised the Slovenes of Carinthia and Styria and the Croats of Burgenland as “ethnic groups”, four additional groups were granted the status of “autochthonous ethnic groups” and subsequently, rights under the Law on Ethnic Groups of 1976.

b) Outstanding issues

As in its first Opinion, the Advisory Committee notes that, despite the fact that there is some flexibility in the approach of the authorities, persons belonging to national minorities living outside their autochthonous settlement area do not enjoy the same rights as those who live in this area. Although the Advisory Committee understands that the enjoyment of some rights can be connected to a specific territory and to the concentration of the minority population, it recalls that persons belonging to minorities living outside their autochthonous settlement area have needs that should be catered for. This applies, in particular, to Croats of Burgenland but also to other persons belonging to minorities living in Vienna and in other areas outside of the traditional settlement areas.

The Advisory Committee is aware that the authorities do not strictly apply the criteria of citizenship and territoriality when it comes to the distribution of funds and that they support projects outside the areas of traditional settlement areas. Nevertheless, the Advisory Committee finds it important to recall that a strict application of the criteria of territoriality, notably as regards rights in the field of education, could undermine efforts to ensure the preservation of the language and identity of the minorities. It is of the opinion that further efforts should be made to ensure consistency and a more inclusive application of the rights granted to persons belonging to the national minorities throughout the country. The situation that prevailed at the time of the conclusion of the State Treaty of 1955 has changed and will further evolve as persons belonging to national minorities will continue to move out of their traditional settlement areas. The legislation covering the rights of national minorities should be able to adapt to this changing reality. The reform of the Austrian Constitution, which is in preparation, could be a valuable opportunity for further reflections on this issue.

The Advisory Committee was informed that representatives of the Polish community continue to express strong interest for protection under the Law on Ethnic Groups of 1976. They disagree with the response given by the authorities in 2001 to their request for recognition as a national minority, which highlights as the main criterion for the rejection of the request the fact that they do not have a long-standing and firmly rooted presence in Austria. The Advisory Committee takes the view that the Austrian authorities should pursue a flexible approach with regard to criteria such as the length of established presence of a group of persons belonging to a national minority in the country to be recognised as an ethnic group and ensure that the resulting approach takes into account existing calls for inclusion of additional groups in the protection of the Framework Convention.

Furthermore, the Advisory Committee is of the opinion that the protection of the Framework Convention could potentially be extended to groups that are not recognised under the Law on Ethnic Groups, including as appropriate on an article-by-article basis.

On the criterion of citizenship, the Advisory Committee acknowledges that there is some flexibility in the approach of the authorities, as mentioned in paragraph 32 above and it recommends that this approach be pursued in the future, in line also with the conclusions of the Venice Commission in its Report on non-citizens and minority rights of 2006.

Recommendations

The Advisory Committee invites the authorities to explore ways of ensuring an inclusive and consistent application of the rights of persons belonging to national minorities and to ensure that the needs of those living outside the traditional settlement areas are also adequately catered for.

The Advisory Committee encourages the Austrian authorities to continue examining the claims for recognition under the Law on Ethnic Groups of persons belonging to groups that are not considered by the authorities to be covered by the Framework Convention, in close cooperation with representatives of these groups.

The Advisory Committee invites the authorities to consider the possibility of including in the protection of the Framework Convention persons belonging to groups that are not recognised under the Law on Ethnic Groups, including where appropriate on an article-by-article basis.

4. Azerbaijan

Opinion adopted on 9 November 2007

Scope of application of the Framework Convention

Findings of the first cycle

The Advisory Committee welcomed in its first Opinion the inclusive approach taken by the authorities regarding the scope of application of the Framework Convention and invited the authorities to reflect this positive stance in all pertinent practice as well as in the new law on national minorities being drafted.

Present situation

a) Positive developments

The Advisory Committee notes that the authorities have maintained an inclusive approach with regard to the scope of application of the Framework Convention and continue to consider a large number of groups to fall within this scope.

b) Outstanding issues

The Advisory Committee was informed of the existence of groups of Roma in Azerbaijan who, according to the authorities, have not formally claimed to be recognised as a national minority. The authorities could raise further awareness on the Framework Convention among Roma and persons belonging to other groups and check whether these persons wish to be included in its scope of application. It is important that they remain open to possible future expressions of interest of such groups with regard to the application of the Framework Convention.

Recommendations

The Advisory Committee encourages the authorities to continue to take an inclusive approach with regard to the application of the Framework Convention. They should also start a dialogue with persons belonging to groups that could be covered by the Framework Convention. In this regard, the Advisory Committee notes that State Parties should promote mutual respect, understanding and cooperation among all persons living on their territory.

The Advisory Committee encourages the authorities to reflect their inclusive approach with regard to the scope of application of the Framework Convention in any new legislation on national minorities, particularly the draft law on national minorities which has been under consideration since the accession of Azerbaijan to the Council of Europe.

Census questionnaires and the principle of self-identification

Findings of the first cycle

In its first Opinion, the Advisory Committee recalled that replying to a question on individual's ethnic/national origin in census should be optional. It also expressed the view that those who choose not to answer a question on one's ethnicity should not be categorised as ethnic Azerbaijani in the resulting statistics.

Present situation

a) Positive developments

The Advisory Committee notes that the next population census is to take place in 2009 and that the census will include an optional question on the ethnic origin (nationality) as well as on the language that is best known by the interviewees. It also notes that the optional question on the ethnic origin/nationality will be open as there will be no list from which to select one ethnic origin/nationality.

The Advisory Committee was informed by the authorities that those who will not declare a specific ethnic origin/nationality will not be categorised as ethnic Azerbaijani but as persons with non-identified ethnicity.

b) Outstanding issues

It is important that, for the next population census in 2009, the authorities ensure that persons belonging to national minorities be sufficiently aware of the existing possibilities to freely declare ones' ethnic identity/nationality without this resulting in any disadvantage. Enumerators should be adequately trained to allow free and informed declaration by persons belonging to national minorities of their ethnic identity/nationality. The involvement of minority representatives in the preparation of the census, especially in connection with the questions on ethnic origin and language, could contribute to increased awareness among persons belonging to national minorities and more transparency.

Recommendations

The Advisory Committee encourages the authorities to conduct awareness-raising campaigns ahead of the 2009 population census to ensure free and informed choice by persons belonging to national minorities with regard to the declaration of their ethnic identity.

Minority representatives should be consulted on the questions regarding ethnic/national origin and languages during the phase of preparation of the census. The Advisory Committee also encourages the authorities to consider translating the census questionnaire in minority languages and to recruit enumerators with appropriate command of the respective minority languages.

5. Bosnia and Herzegovina

Opinion adopted on 9 October 2008

Scope of application

Findings of the first cycle

In its first Opinion, the Advisory Committee noted that the personal scope of application of the Framework Convention was limited to citizens only, according to the State Law on National Minorities and invited the authorities to consider the inclusion of persons belonging to other groups, including non-citizens, following consultation with those potentially concerned.

Present situation

Outstanding issues

The Advisory Committee notes that the scope of the term “national minorities” continues to apply only to citizens of Bosnia and Herzegovina. This position is reinforced by the inclusion of the same criterion in legislation on national minorities at the level of the Entities, i.e. the Law on National Minorities of the Republika Srpska of 2004 and the Law on National Minorities of the Federation, which was adopted in July 2008.

In the process of dialogue with the Advisory Committee, the authorities expressed no readiness with regard to an extension of the scope of application of the Framework Convention to non-citizens. The Advisory Committee would like to recall that State Parties should, as part of the implementation of the Framework Convention, promote mutual respect, understanding and co-operation among all persons living on their territory, including, where appropriate, non-citizens.

In addition, the Advisory Committee stresses the fact that citizenship requirements can have a negative impact on those persons whose legal status is still unclear as a result of the upheavals that have occurred in the region. This is particularly relevant in the case of the Roma, who often face difficulties in obtaining confirmation of their citizenship, notably because of a lack of personal documents (see also remarks in respect of Article 4 hereinafter). The Advisory Committee is of the opinion that the difficulties met by Roma without a clear legal status in such circumstances should be duly taken into account by the authorities when considering the

scope of application of minority rights, including the provisions of the Framework Convention as well as domestic provisions.

Recommendations

The Advisory Committee invites the authorities to pursue a flexible approach with regard to the scope of application of the Framework Convention, in line with the report of the Venice Commission on Non-Citizens and Minority Rights, and to consider, as appropriate, its application to groups other than those recognised in the State Law on National Minorities.

The Advisory Committee calls on the authorities to address as a priority the problems faced by those Roma and other persons belonging to national minorities whose legal status remains uncertain.

Persons belonging to the constituent peoples in a minority situation

Findings of the first cycle

The Advisory Committee considered, in its first Opinion, that persons belonging to a constituent people who live in areas where they do not belong to the majority could be given the possibility to rely on the protection of the Framework Convention, as an additional tool to respond to some specific needs.

Present situation

The Advisory Committee welcomes the fact that extensive information on discrimination and related problems (such as higher unemployment rate, difficult access to pension rights, etc) experienced by persons belonging to constituent peoples in a minority situation was brought to its attention in the State Report and during the Advisory Committee's visit to Bosnia and Herzegovina. From discussions it had with some representatives of the constituent peoples, the Advisory Committee also understands that persons belonging to these groups would not object to being able to benefit from the protection of the Framework Convention, as an additional tool to address problems of discrimination they are facing, without this implying a weakening of their status as constituent peoples.

Recommendation

The Advisory Committee invites Bosnia and Herzegovina to consider further applying the Framework Convention to persons belonging to constituent peoples in a minority situation, on a case-by-case basis and in close consultation with those concerned. Furthermore, it urges the authorities to ensure that the Partial Decision of the Constitutional Court of Bosnia and Herzegovina of 30 June and 1 July 2000 is fully implemented (see also remarks under Article 4 below).

National minorities in the Constitution

Findings of the first cycle

In its first Opinion, the Advisory Committee highlighted the problems connected with the use of the term "Others" at the constitutional level to refer to national minorities and hoped that the terminology used in the State Law on National Minorities would be introduced at the constitutional level as well.

Present situation

a) Positive developments

The Advisory Committee welcomes the fact that both the Republika Srpska Law and the Federation law on minorities consistently use the term "national minorities" instead of "Others".

b) Outstanding issues

At the constitutional level, no changes were introduced with regard to the use of the terms “Others”. Representatives of the national minorities that the Advisory Committee met during its visit reiterated the view expressed in earlier stages of monitoring under the Framework Convention that this terminology is offensive. Furthermore, they consider that it entails their exclusion from public affairs and society as a whole. Moreover, there continue to be divergent interpretations of the scope of the term “Others”, which can also be understood as covering all those not wishing to be associated with one of the constituent peoples, including persons who do not belong to national minorities (see also remarks in respect of Article 15 below).

Recommendation

The authorities should consider introducing, at the constitutional level, more adequate terminology to refer to national minorities, drawing on the terminology used in the State and Entities laws on national minorities, in order to put an end to their exclusion from public affairs.

Right to self-identification*Findings of the first cycle*

In its first Opinion, the Advisory Committee was concerned that the ethnicity of individuals was very often openly referred to in daily life in Bosnia and Herzegovina, in particular in the context of access to political posts and public service jobs, without providing adequate safeguards of the right to be treated or not to be treated as a person belonging to a given ethnic group and without ensuring that no disadvantage will result from this choice.

Furthermore, the Advisory Committee stressed that a future general population census should make questions relating to ethnic or national affiliation optional and that possibilities offering neutral entries, such as “Bosnian” should be considered.

Present situation

Outstanding issues

While recognising the importance of the availability of data on ethnic origin (see comments in respect of Articles 4 and 15 below), the Advisory Committee recalls that the right to be treated or not to be treated as a person belonging to a given ethnic group, as contained in Article 3 of the Framework Convention, should be fully respected and that personal data should be protected, in line with relevant international standards. Against this background, it notes that mentioning the ethnicity of individuals continues to be very frequent in Bosnia and Herzegovina, notably to access political posts and public employment. The Election Law in particular still requires from candidates for certain posts that they declare their ethnic affiliation (see also remarks in the first Opinion of the Advisory Committee in this respect), which is problematic from the point of view of Article 3 of the Framework Convention. Even though the Advisory Committee understands that this largely results from the system established under the Dayton Agreement, which helped to end the armed conflict, it is deeply concerned by this situation.

Moreover, the provisions of the Election law adopted in 2008 allowing for the representation of national minorities in local councils and assemblies (see also remarks under Article 15 hereinafter) provide for special lists of candidates representing persons belonging to national minorities. The appointment of candidates can be made by national minority organisations or political parties, according to specific requirements contained in the Law. However, some interlocutors of the Advisory Committee fear that this provision may be abused by political parties representing the majority population, which might propose candidates for positions reserved for national minorities that are not recognised by persons belonging to minorities as such, as has happened in the past.

The Advisory Committee regrets that the introduction of new, more neutral entries, such as “Bosnian”, in future population census is considered by the authorities as counterproductive and impossible to implement. Yet, it is still of the opinion that adequate options should be offered to persons who do not wish to associate with one of the constituent peoples or a national minority. It is important that this issue be widely discussed in society. Furthermore, options for recording the ethnic identity of persons during the next census or any other data collection campaign should be considered in close co-operation with representatives of national minorities. Identification with one ethnic group must, in any case, be optional (see also comments in respect of Article 4 below).

Recommendations

The Advisory Committee calls on the authorities to ensure that adequate guarantees for the protection of personal data be provided in the legislation and that the existing legislation be amended, as appropriate. The authorities should also take resolute measures to ensure that, in practice, the right to self-identification, as set out in Article 3 of the Framework Convention, be fully respected.

The authorities should consider ways and means to avoid limiting possibilities for self-identification with affiliation with one of the constituent peoples or with a national minority. They should also encourage a debate in the society at large on this subject.

6. Bulgaria

Opinion adopted on 18 March 2010

Personal scope of application of the Framework Convention

Findings of the first cycle

In its first Opinion, the Advisory Committee found a divergence of views between the authorities and the representatives of the Macedonian and Pomak communities as regards the applicability of the Framework Convention. The Advisory Committee considered that the Government should review the matter in consultation with those concerned.

Present situation

a) Positive developments

The Advisory Committee notes that the Bulgarian legal order does not define the concept of national minority. However, according to the authorities, the Framework Convention applies to all Bulgarian citizens who identify themselves as belonging to one of the country's ethnic, religious or linguistic minorities and have freely expressed the wish to be treated as such.

b) Outstanding issues

The Advisory Committee notes that the Bulgarian authorities do not recognise the existence of the Pomak and Macedonian minorities as such, considering that there are no objective criteria for distinguishing persons belonging to the Macedonian and Pomak communities from the majority population. The Advisory Committee recalls that recognition by the State as a minority is not a prerequisite to qualify for the protection of the Framework Convention.

The Advisory Committee notes that, according to the authorities, the existence of a national minority should be based on both objective criteria (such as identifiable distinctive features) and subjective criteria (self-identification as a minority). They underline that groups other than those represented in the National Council for Ethnic and Demographic Issues are potentially eligible to benefit from the protection of the Framework Convention if they satisfy certain objective and subjective criteria. Yet, the Advisory Committee further notes that the authorities consider that the 2001 census is not sufficient to determine the scope of application of the Framework Convention because it is only based on the subjective criterion of individuals' freely expressed choice to be identified with a particular ethnic, religious or linguistic minority.

The Advisory Committee held discussions with representatives of the Macedonian community who expressed their wish to benefit from the protection of the Framework Convention.

The Advisory Committee was also informed during an exchange of views with representatives of the Pomak community that they consider the failure to recognise their distinct identity as Bulgarian Muslims as discriminatory. Persons belonging to the Pomak minority identify themselves as persons with distinct differences in their life styles, culture, religion, work traditions, dress and use of language. They consider that all these aspects present a identity distinct from that of other citizens.

The Advisory Committee acknowledges that the Contracting Parties have a margin of appreciation in determining the personal scope of application of the Framework Convention. It considers, however, that it is part of its duty to examine the personal scope of application given to the implementation of the Framework Convention in order to verify that no arbitrary or unjustified distinctions have been made.

The Advisory Committee considers self-identification with a minority as an essential component in determining whether a person can benefit from the protection of the Framework Convention. It reminds the authorities that it may be legitimate to link the recognition of a group as a national minority to objective criteria (which means precisely determined and measurable criteria, for example life styles, culture, religion, work traditions, dress and use of language). However, these criteria should be relevant to the person's identity and tradition, and not be construed in the legislative framework of the country in question in such a way so as to limit arbitrarily the possibility of such recognition. The Advisory Committee regrets that apparently no consultations with the two groups concerned have been organised.

Recommendation

The Advisory Committee urges the authorities to engage in a dialogue with persons belonging to groups interested in the protection offered by the Framework Convention. In particular, the authorities are encouraged to act on the Committee of Ministers Resolution (ResCMN(2006)3) adopted in the first cycle of monitoring and to pursue an inclusive approach to the personal scope of application of the Framework Convention, in consultation with those concerned and in accordance with the provisions of the Framework Convention.

Collection of ethnicity data

Findings of the first cycle

In its first Opinion on Bulgaria, the Advisory Committee found that a number of national minority representatives had expressed concerns over the implementation of the principle under which every person belonging to a national minority has the right freely to choose to be treated or not to be treated as such, in particular in the context of the population census of 2001.

Present situation

a) Positive developments

The Advisory Committee notes that a new population census is scheduled for March 2011 in Bulgaria and that the authorities have already begun preparations for this. The Law on the Population and Housing Census of 2011 has been adopted. This Law was drafted in accordance with Regulation (EC) N° 763/2008 of the European Parliament and of the European Council of 9 July 2008 on population and housing censuses and contains optional questions on ethnic origin (nationality), religion and language.

Representatives of the National Statistical Institute responsible for the preparation of the census assured the Advisory Committee that the census will follow the established practice of voluntary self-identification and that the census enumerators will be obliged to record strictly the respondents' choice. The respondents will be allowed to indicate "none" or "not declared" when asked the three questions concerning ethnicity, language and religion.

The Advisory Committee welcomes the information that there are plans to consult representatives of national minorities affiliated with the National Council for Coordination on Ethnic and Demographic Issues in the course of the preparation of the programme and methodology of the census.

The Advisory Committee also welcomes plans to include persons belonging to the different national minorities among the census enumerators which, in principle, should promote the atmosphere of trust necessary to obtain reliable figures in respect of the ethnic composition of the population.

b) Outstanding issues

The conduct of the 2001 census and the nature of the questions contained therein gave rise to criticism as to the freedom to exercise the right to declare affiliation with a national minority, and subsequent doubts as to the reliability of the data as regards the ethnic composition of the country.

The Advisory Committee considers it important that representatives of national minorities be consulted on the wording of the questions, in as much as it concerns national minorities and the methods to be used for collecting data of an ethnic nature.

The Advisory Committee notes that, according to the information provided by the National Statistical Institute, the authorities do not collect information on the situation of persons belonging to the various national minority groups, in particular the Roma, in various relevant sectors, such as employment, health etc. The Advisory Committee finds that the lack of comprehensive ethnic data, disaggregated by ethnicity, gender and geographical location, significantly complicates the task of the Government to design, implement, monitor and evaluate its policies targeting national minorities. In this context, it is essential that the Government steps up its efforts to obtain reliable data on the socio-economic situation of national minorities in all relevant fields and to this end, develop adequate methods of ethnic data collection while fully respecting the principle of self-identification and in accordance with international standards of personal data protection.

Recommendations

During the preparatory phase of the next census, the authorities should continue to consult the representatives of minorities about questions relating to a person's affiliation with a national minority and to his or her mother tongue.

The Advisory Committee calls upon the authorities to take specific measures to include persons belonging to minorities, and persons speaking a minority language among the census officials.

The authorities should undertake awareness-raising activities among persons belonging to national minorities well in advance of the next census, in co-operation with minority representatives. These activities should relate to the importance and usefulness of the collection of information about the ethnic composition of the population, as well as about national safeguards and international standards for the protection of personal data.

The Advisory Committee calls upon the authorities to identify further ways and means of obtaining, in accordance with international standards of personal data protection, reliable data that is disaggregated by ethnicity, gender and geographical location and encourages them to ensure public availability of such data.

7. Croatia

Opinion adopted on 1 October 2004

Constitutional definition of the term national minority

Findings of the first cycle

In its first Opinion on Croatia, the Advisory Committee regretted that only some of the national minorities covered by the Constitutional Law on National Minorities were explicitly mentioned in the preamble of the Constitution of Croatia while the rest were referred to as “others”, and it noted that this limited listing was reflected in the electoral system of the country.

Present situation

a).Positive developments

The list contained in the preamble of the Constitution remains unchanged. However, the new Constitutional Law on the Rights of National Minorities does not contain any list of national minorities but defines, in its Article 5, in general terms the Law’s personal scope of application. Furthermore, 12 national minorities not mentioned in the preamble of the Constitution were included in 2003 in the scope of Article 16 of the Law on Election of Representatives to the Croatian Parliament concerning representation of persons belonging to national minorities in the legislature. This is a welcome development (see also related comments under Article 15 below).

b).Outstanding issues

While the legal impact of the inclusion or non-inclusion of a national minority in the said listing has thereby been diminished, it continues to carry symbolic significance amongst the national minorities concerned.

Recommendations

The authorities should take seriously the concerns expressed by those persons belonging to national minorities who are not explicitly mentioned in the preamble to the Constitution. The authorities should also make sure that the implementation of the norms pertaining to the rights of persons belonging to national minorities covers all national minorities protected in accordance with the Constitutional Law on the Rights of National Minorities.

Citizenship criterion in the definition of the term national minority

Findings of the first cycle

In its first Opinion on Croatia, the Advisory Committee encouraged the authorities to include persons belonging to additional groups, including non-citizens as appropriate, in the application of the Framework Convention on an article-by-article basis.

Present situation

a).Positive developments

The Advisory Committee welcomes the fact that the Croatian authorities have, in the course of the monitoring exercise under the Framework Convention, engaged in dialogue with the Advisory Committee also on the protection of individuals who do not have confirmed citizenship of Croatia.

b).Outstanding issues

The Constitutional Law on the Rights of National Minorities could be interpreted as providing an *a priori* exclusion of non-citizens from its scope of application: It defines in general terms under Article 5 the term national minority for the purposes of the said law as a “group of *citizens* whose members traditionally inhabit the territory of the Republic of Croatia, its members having ethnic, linguistic, cultural and/or religious characteristics different from other citizens and are led by the wish to preserve these characteristics” (emphasis added). Furthermore, Article 4 of the Constitutional Law states that every “*citizen of the Republic of Croatia* has the right to declare freely to be a member of a national minority” (emphasis added).

The Advisory Committee agrees that a citizenship criterion can be a legitimate requirement in relation to certain measures taken in accordance with the principles of the Framework Convention. This is the case for example as regards provisions guaranteeing minority representation in the legislature, in accordance with the Constitutional Law and the Law on the Election of Representatives to the Croatian Parliament. A generally applicable citizenship criterion is, however, problematic in relation to guarantees in some other key fields covered by the Framework Convention, such as non-discrimination and education, especially taking into account that a number of Roma and other persons affiliated with national minorities reside in Croatia without a confirmed citizenship and have had difficulties in acquiring citizenship (see related comments under Article 4 below).

Recommendations

Croatia should consider amending the Constitutional Law on National Minorities in so far as it provides an *a priori* exclusion of non-citizens from its scope and the authorities should ensure that in the relevant sectoral legislation and practice such a requirement is invoked judiciously and only in cases where it pursues a legitimate aim.

Data collection

Findings of the first cycle

In its first Opinion on Croatia, the Advisory Committee encouraged the authorities to ensure that collection of data on individuals' affiliation with national minorities be coupled with adequate legal safeguards and that the right not to be treated as a person belonging to a national minority is also protected.

As regards the population census of 2001, the Advisory Committee expressed the hope that it would result in accurate statistics and that persons belonging to national minorities of Croatia who reside outside of Croatia would have the possibility of taking part in the census.

Present situation

a). Positive developments

Croatia has improved guarantees pertaining to data collection, notably by adopting the Law on the Protection of Personal Data in 2003. The authorities are also committed to following the principles of Article 3 of the Framework Convention in the on-going process of setting up a central registry of civil servants, which will contain confidential information on the civil servants' affiliation with a national minority only if the individuals concerned so wish.

b). Outstanding issues

The 2001 census results have a direct impact on the implementation of some of the provisions of the Constitutional Law on the Rights of National Minorities and of several other key laws, including the Law on the Official Use of Minority Languages and Scripts and the Law on Local Elections. The results showed a drastic decrease in the number of persons declaring that they belong to a national minority in relation to the 1991 census, including as regards the Serbs (whose share of the population dropped from 12.2% to 4.54%), Hungarians (from 0.5% to 0.37%) and Slovenes (from 0.5% to 0.3%) and Ukrainians (from 0.1% to 0.04%). While no detailed research on the issue is yet available, it is clear that the reductions appear to reflect in part the demographic changes that have occurred, including as a result of the war. It should however also be noted that conduct of the census itself has been the subject of criticism, including as regards the limited extent to which those Croatian Serbs who currently reside outside the country were included in the census and the extent to which Roma and other national minorities were involved in the process, for example, as census takers. It also appears likely that some participants decided to use their right not to reveal their affiliation with a national minority due to their past experience of discriminatory practices or hostility towards certain national minorities.

The Council for National Minorities has concluded that various factors around the census results merit being examined further and it has launched an independent research project to analyse the census process and its results. This may provide important results that could help to address the concerns expressed and to identify ways to obtain additional disaggregated data on national minorities in accordance with Article 3 of the Framework Convention.

Recommendations

The Croatian authorities should support independent research, including the research launched by the Council for National Minorities, to analyse the census process and its results. Results of such research could be used to address concerns expressed in relation to the census and to identify ways to obtain increasingly reliable and up-to-date disaggregated data on national minorities in accordance with Article 3 of the Framework Convention. At the same time, the authorities should ensure that the census results are not given undue weight in the design and implementation of minority policies.

Status of Muslims

Present situation

a). Positive developments:

Persons identifying themselves as Bosniacs were for the first time categorised as such in the 2001 census results, after having been previously placed in the census results under the category “Muslims”. This is a development to be welcomed in the light of Article 3 of the Framework Convention.

b). Outstanding issues

It appears that the status of Muslims has not been clearly addressed. The number of those who declared their “nationality” as Muslims (19,677) was included, not in the list of national minorities, but as a “note” to the official census results. It remains unclear to what extent they are entitled, in the view of the authorities, to the protection of the Framework Convention and have the right to invoke provisions contained in the Constitutional Law on the Rights of National Minorities, including those pertaining to councils of national minorities.

Recommendations

The authorities should clarify, in co-operation with the persons concerned and taking into account the results of research on the census, their approach to the category “Muslims” in a manner which accords with the right to self-identification under Article 3 of the Framework Convention.

8. Cyprus

Opinion adopted on 7 June 2007

Personal scope of the Framework Convention

Findings of the first cycle

In its first Opinion on Cyprus, the Advisory Committee found that the provisions made in Article 2 of the Constitution, laying down the obligation for the three minority groups and their members to choose adherence to the Greek Cypriot Community or the Turkish Cypriot Community, were not compatible with Article 3 of the Framework Convention. Furthermore, the Advisory Committee considered it incompatible with Article 3 of the Framework Convention that there was a legal obligation for members of the three minority groups to elect their representatives, as part of the general obligation of citizens to vote.

The Advisory Committee encouraged the authorities to re-examine the question of the designation of the Maronites as simply a “religious group”, in view of their own self-

identification as a separate ethnic group, and the wish of the Latins to be designated by a term more properly reflecting the essential element of their identity, the Roman Catholic religion.

The Advisory Committee considered it possible to envisage including persons belonging to other groups in the application of the Framework Convention, on an article-by-article basis.

Present situation

a). Positive developments

The formal approach regarding the designation as “religious groups” of the three minority groups (the Armenians, the Latins and the Maronites) coming under the protection of the Framework Convention is founded on constitutional provisions. The Advisory Committee has nevertheless noted the existence of a general consensus that Maronites and Armenians in particular, above and beyond their distinctive religious characteristics, possess a linguistic, cultural and historical identity by which they may be regarded more broadly as ethnic minorities. The Advisory Committee notes that a study is in progress and that a dialogue has been opened on these issues with the groups concerned.

Regarding the term used to designate the Latins, legislative measures have been envisaged by the Government to meet the request of the members of this group that terms more accurately reflecting their religious identity (“Catholic Latins” or “Roman Catholic Latins”) be used to designate them. In this matter the authorities consider that a favourable response to their request would not raise any constitutional problems as it would not require any amendment to the Constitution.

b). Outstanding issues

As to the obligation that members of the three minority groups adhere to either of the two Communities - Greek Cypriot or Turkish Cypriot - the authorities consider that this obligation, arising from constitutional provisions, cannot be altered at the present stage. The Advisory Committee is deeply concerned, as it was in the first Opinion, by the continuing existence of this obligation, which it considers not to be consistent with the Framework Convention. The Advisory Committee notes that, according to the Cypriot Constitution, members of the “religious groups”, or the groups as such, can decide to cease to belong to the Community in question (Greek Cypriot or Turkish Cypriot). It notes however that, as a result, they would automatically be deemed to belong to the other Community and that no other option exists. In addition, the procedure to follow in order to express this decision and to make it effective is complicated and difficult to apply, as it requires the approval of the two communities’ Chambers, which have ceased to exist. The Advisory Committee also considers that the constitutional provision according to which a married woman shall belong to the community to which her husband belongs is contrary to the principles of free self-identification and gender equality.

The Advisory Committee observes that, besides the population census, registration on the electoral rolls is an additional means of certifying the identification of individuals as members of a “religious group”. According to the information supplied by the authorities, all citizens are asked, on the forms to be completed for their registration in the general electoral rolls, to state *inter alia* their attachment to a “religious group”, and to indicate the group in question (Armenians, Latins, Maronites). In addition, each person that has indicated his or her belonging to a “religious group” must submit a declaration expressly requesting his or her inclusion in the electoral list for the group in question and is under the obligation to participate in the election of the group’s representative in parliament.

The Advisory Committee notes that, according to the information which it received, the fact of belonging to one of the three minority groups, stated upon registration in the electoral lists compiled for these groups, must be confirmed by the Church in question. The Advisory Committee considers that this practice creates serious concerns from the perspective of the principle of free identification enshrined in Article 3 of the Framework Convention.

The Advisory Committee notes that members of the three minority groups in Cyprus are still obliged to vote for their representative in parliament. The authorities have indicated that, as this obligation is part of a general legal obligation to vote in elections, which applies, under Cypriot law, to all citizens, they are not ready, at this stage, to consider the possibility of removing it. While understanding that this position is linked with the special situation in Cyprus, the Advisory Committee finds, as it did in the first Opinion, that the obligation imposed on members of the three minority groups to vote for their representative in parliament is not consistent with the Framework Convention. It notes however that, according to the authorities, nobody has been prosecuted since 2001 for non-compliance with the legal obligation to vote. Likewise, it understands that no such prosecutions will be initiated for non-compliance in the future.

The Advisory Committee notes that on becoming a citizen of Cyprus everyone is under the obligation to opt for adherence to either of the two main Cypriot communities (Greek or Turkish) and to vote in the elections, which also affords the opportunity to declare one's attachment to a "religious group". It is unclear, however, whether a naturalized citizen who indicates his or her attachment to one of the three "religious groups" is officially recognised and protected as a member of the group in question by virtue of this declaration and if so, whether this is the case for all three minority groups. The Advisory Committee is concerned that the lack of clarity of this approach may lead to arbitrary distinctions and may give rise to discriminatory treatment within and between the groups concerned.

The Advisory Committee regrets that the measures initiated to meet the expectations of the Latins concerning the proper term with which to designate them have not been carried through. According to the authorities, this is due to constitutional difficulties linked with related requests made by the Latins. While aware of the complexity of the constitutional situation in Cyprus, the Advisory Committee recalls that persons belonging to minorities are entitled to freely identify themselves, and that the authorities should respect their choice as regards their designation.

The Advisory Committee notes that no development has been noted regarding the formal status of the Roma living in Cyprus, who since 1960 have continued to be regarded as belonging to the Turkish Cypriot Community. According to the information made available to the Advisory Committee, no dialogue has been opened with the representatives of the Roma on this issue.

The Advisory Committee regrets, in this connection, the restrictive nature of the question on ethnic or religious affiliation posed in the 2001 census, which did not provide any other option than adherence to one of the groups exhaustively itemised in the list provided: Greek Cypriot, Armenian, Maronite, Latin and Turkish Cypriot. The Advisory Committee considers that a closed list does not allow persons belonging to a minority freely to express their affiliation, and therefore raises deep concerns from the perspective of Article 3 of the Framework Convention.

The Advisory Committee is aware of the constitutional or other constraints that may make it difficult for Roma to be recognised as a separate national or ethnic group or minority. Likewise, it takes note of the practical difficulties invoked by the Government when it comes to communicating with their representatives. The Advisory Committee notes, however, that despite the frequent alleged movements of Roma between the south of the island and the territory not under Government control, the authorities have information on these people, their places of residence (particularly in the districts of Limassol and Paphos), and the situation and difficulties which they encounter in various sectors.

The Advisory Committee recalls that inclusion in the Framework Convention's personal scope of application is not contingent on formal recognition of a group as a "national minority". The Advisory Committee also notes that, in their definition of the Framework Convention's personal scope of application, States Parties must avoid any unjustified or arbitrary distinction or exclusion. At the same time, it notes that, in practice, supporting measures have been taken by the authorities on behalf of Roma, in the areas of housing and education especially, and welcomes these commendable initiatives.

The Advisory Committee notes that, due to their constitutional position, the Turkish Cypriots are not regarded by the authorities as a minority. The Advisory Committee also understands that the Turkish Cypriots themselves do not want to be treated as a minority. It notes at the same time that the Government reports that it is trying to devise specific measures to meet the needs of these persons, whose number has considerably diminished in the Government-controlled territory and who, due to the specific Cypriot context, find themselves in a vulnerable position. The Advisory Committee appreciates the fact that the State Report contains quite detailed information on the measures adopted in various sectors in respect of persons belonging to this Community. The inclusion of such information is particularly welcome as it covers also the measures taken to improve the situation of the Roma, who are deemed to belong to the Turkish Cypriot Community.

Recommendations

The authorities should re-examine, in the light of Article 3 of the Framework Convention, the obligation to affiliate oneself to one of the two Communities - Greek Cypriot or Turkish Cypriot - imposed on persons belonging to the three minority groups and to look for possibilities to revise this obligation. The legal obligation for members of the three minority groups to vote for their representative in parliament should likewise be reviewed. The authorities should also take appropriate measures to ensure that, after marriage, both spouses have the possibility to maintain their respective community, ethnic and religious affiliation.

The authorities should continue their dialogue with the Latins in order to identify, in consultation with them, a solution permitting a designation for them that is acceptable to the members of this group.

The authorities should take appropriate measures to ensure that, in future, the census questions and forms are established in such a way as to allow the free expression of individuals' ethnic or religious identification.

The Advisory Committee encourages the authorities to consider allowing Roma access to the protection of the Framework Convention, should they, after being duly informed of the content of the Convention, express the wish for it. It is also important to ensure that the inclusion of Roma in the Turkish Cypriot Community is not against the wishes of the persons concerned. Accordingly, it is essential to open a dialogue with Roma representatives on these issues.

The authorities are encouraged to display a flexible approach to the Framework Convention and to consider the possible inclusion in its application of other persons who have shown an interest in the Convention.

Collection of data

Findings of the first cycle

In its first Opinion, the Advisory Committee stressed the importance of having reliable data on the ethnic make-up of the population, and encouraged the authorities to consider various possibilities for obtaining data in order to better determine the numerical size of the communities and their relative situation.

Present situation

a). Positive developments

The authorities currently have at their disposal updated statistics on the numbers and the situation of the persons belonging to the groups protected under the Framework Convention, derived from the population census organised in 2001. The Advisory Committee notes that such information is also obtained by other means. These include the process of voters' registration in the special lists established for election of the representatives of the three minority groups in parliament, and in the context of the education system.

b). Outstanding issues

The Advisory Committee notes that there are disparities between the official figures and the three minority groups' own estimates of their actual numbers. It further notes the concern of the representatives of these groups over the dwindling numbers, due *inter alia* to the growing frequency of mixed marriages and to the fact that young people, from the Armenian group in particular, choose to remain abroad on completing their studies (see also observations under Article 5 below).

The Advisory Committee appreciates the efforts made by the Government to supplement by other means the data provided by the census on the religious or ethnic identity of individuals. The Advisory Committee is, however, concerned by the information it has received from school representatives, according to which, until recently, the religious and ethnic identity of pupils was stated on their graduation certificates. Concerns may also be raised with regard to the application of the principle of free self-identification in the context of the collection of data in respect of the Roma. The Advisory Committee reminds the authorities of the importance of respecting the principle of free self-identification, and the need to provide safeguards concerning data protection when such private information is collected, processed and disseminated, in accordance with the relevant international principles and standards.

Recommendation

In the collection and utilisation of data on the religious or ethnic composition of the population, the authorities should ensure respect for the right of every person belonging to a national minority “freely to choose to be treated or not to be treated as such” embodied in Article 3 of the Framework Convention. Likewise, the principles contained in Recommendation No. 97 (18) of the Committee of Ministers concerning the protection of personal data collected and processed for statistical purposes should be duly taken into account.

9. Czech Republic

Opinion adopted on 24 February 2005

**Personal scope of the Framework Convention.
Citizenship criterion in defining the term “national minority”**

Findings of the first cycle

In its first Opinion on the Czech Republic, the Advisory Committee noted that a law on the protection of national minorities was then being drafted, and hoped that its adoption would not lead to a limitation of the personal scope of application of the Framework Convention.

It noted that only citizens could be recognised as persons belonging to national minorities, and that there were other groups not regarded by the Government as protected by the Framework Convention.

Present situation

Positive developments

The “Act on the rights of members of national minorities and the amendment of certain laws” (Act No. 273/2001, of 10 July 2001, hereinafter “the National Minorities Act”), does not list officially recognised national minorities, but Article 2 defines the terms “national minority” and “member of a national minority”.

The Advisory Committee understands that the persons protected in the Czech Republic by the Framework Convention are, in practice, those who belong to groups represented on the Council for National Minorities, a government advisory body. These are Bulgarians, Croats, Hungarians, Germans, Poles, Roma, Ruthenians, Russians, Greeks, Slovaks and Ukrainians, as well as Serbs, who have recently been included. This recent inclusion of Serbs shows that the Czech authorities favour an open approach to the personal scope of application of the Framework

Convention, which is to be welcomed. This approach is also illustrated in respect of the Jews, who are covered by the State support programmes for national minorities, despite the fact that most of them regard themselves as a cultural or religious community, rather than a national minority.

Obviously, non-citizens have access to the measures included in the Government's special programme for the integration of foreigners. Because of shared ethnic origins, however, many of them (for example, Russians and Ukrainians) participate in the cultural or other activities of groups traditionally resident in the Czech Republic. They can therefore freely avail of state support provided for those groups, and use it to preserve their identity more effectively, without actually being recognised as national minorities. As stated by the Government in its observations on the Advisory Committee's first Opinion (concerning Article 5 of the Framework Convention), other groups, such as the Vietnamese, also have access to the subsidies provided by the state for the cultural activities of various communities.

The official approach, as embodied in the National Minorities Act, is that the personal scope of application of the Framework Convention only applies to citizens. However, the situation outlined above shows that, in practice, the Czech authorities' position is more open and flexible. The Advisory Committee welcomes the fact that the authorities continue to consider, where appropriate, the inclusion of persons without citizenship of the Czech Republic in the application of the Framework Convention on an article-by-article basis.

Recommendations

While taking note of the citizenship criterion included in the definition of "national minority" given in Czech legislation, the Advisory Committee encourages the authorities to pursue an open and flexible approach referred to above, and not to use this criterion to exclude certain persons from the personal scope of application of the Framework Convention.

Collection of data

Findings of the first cycle

In its first Opinion on the Czech Republic, the Advisory Committee noted that there were doubts concerning the reliability of the census-based figures on the number of persons belonging to national minorities. The authorities were invited to find ways of obtaining more accurate statistics on the ethnic composition of the population, essential to any effective policy for the protection of national minorities.

Present situation

a) Positive developments

A general census of the population was carried out in March 2001, and the findings have since been made public. The Advisory Committee welcomes the fact that national minority representatives were consulted in advance on the formulation of the questions relating to ethnic affiliation and mother tongue included in the census forms, and that both the forms and the accompanying explanatory material were published in several minority languages (German, Polish, Romany, Russian, Ukrainian), as well as English, French, Vietnamese, Arabic and Chinese. It also welcomes the fact that persons belonging to minorities, including the Roma, were directly involved in carrying out the census.

b). Outstanding issues

The census figures show a marked decrease, since the previous census (1991), in the number of persons declaring an ethnic origin other than that of the majority. The authorities see this as reflecting an increasing tendency on the part of respondents not to identify with national minorities. To explain this tendency, they suggest various reasons, for example, greater homogeneity within Czech society, the optional character of the ethnic question, increased integration of certain groups, refusal or reluctance to declare an ethnic origin other than that of

the majority, or terminological confusion (failure to distinguish the terms indicating Czech citizenship and ethnic affiliation).

Minority representatives, on the other hand, consider that this is also due to certain organisational shortcomings of the census, such as failure to publicise the availability of forms in minority languages, and a lack of transparency in selecting persons belonging to national minorities to serve as census-takers. In the run-up to the census, certain media insisted on the danger that personal data might be misused, and this also seems to have been a significant factor.

The Advisory Committee notes that the authorities favour using independent surveys and research to supplement and refine the census data. It also notes, however, that they mention difficulties which impede data collection, one being the distrust of the process shown by certain persons belonging to minorities, and particularly the Roma.

As in the previous census, “Moravians” or “Silesians” (altogether 391,352 persons, or approximately 3.8% of the population) figure again among large groups amongst the population on the basis of self-identification. According to the authorities, this self-identification in no way denotes ethnic affiliation, but simply reflects these persons’ wish, for historical or other reasons, to associate themselves with a regional identity, instead of indicating an ethnic origin.

Recommendations

The Advisory Committee encourages the authorities to engage in dialogue with the persons concerned on trends highlighted by the latest population census and their consequences, so that they can better assess the practical impact of those trends on their policies for the protection of national minorities.

The authorities are encouraged to devise new ways of obtaining information on the actual number of persons belonging to national minorities, while ensuring that the international rules on the protection of personal data are respected. Additional information and awareness-raising measures are also needed to encourage the persons concerned to use the possibility of indicating their ethnic affiliation in the next census.

10. Denmark

Opinion adopted on 9 December 2004

German minority

Findings of the first cycle

The Advisory Committee in its first Opinion on Denmark considered that persons belonging to the German minority but living outside the area of Southern Jutland cannot *a priori* be excluded from the personal scope of application of the Framework Convention. The Committee of Ministers in its Resolution considered that the issue merits further consideration by the Government with those concerned.

Present situation

Outstanding issues

According to information received by the Advisory Committee, persons belonging to the German minority do not, in principle, seek the protection of the Framework Convention outside their area of traditional inhabitancy, namely South Jutland. This is in part a reflection of the strong desire of persons belonging to this group to safeguard their identity, which they consider to be closely linked to the history and culture of the borderland region of South Jutland. Persons belonging to the German minority have, however, indicated that if the proposed administrative reforms (see under Article 15 below) have the effect of impacting on their identity within the new administrative region, they would need to re-examine their demands.

The Advisory Committee understands the position of persons belonging to the German minority who want to ensure first and foremost their traditional identity in the borderland region. The Advisory Committee is, however, conscious that increased mobility, including for education and work, as well as the possible impact of the proposed administrative reforms, could create new difficulties for persons belonging to the German minority keeping their language and culture alive in the region of South Jutland.

Recommendations

The Advisory Committee, while noting the lack of demand for application of the Framework Convention to persons belonging to the German minority outside of South Jutland, considers that the Framework Convention could have an application outside of South Jutland and recommends that the Government should keep this possibility in mind.

Greenlanders and Faeroese and Danes living in Greenland and the Faeroe Islands

Findings of the first cycle

In its first Opinion on Denmark, the Advisory Committee considered that the *a priori* exclusion of Greenlanders and Faeroese from the implementation of the Framework Convention was not compatible with the Framework Convention. The Committee of Ministers in its Resolution considered that the issue merits further consideration by the Government with those concerned.

Present situation

a). Positive developments

The Danish Government approached both the Faeroese and the Greenland Home Rule Governments in order to obtain their respective views on the status of the Faeroe Islands and Greenland under the Framework Convention. In written replies, both Home Rule Governments have stated clearly that they do not consider that the Framework Convention applies to the people of the Faeroe Islands and Greenland living within their respective territories. In the absence of representations to the contrary from persons belonging to these groups, the Advisory Committee understands that there is no reason at this stage to apply the Framework Convention to them in these areas. Should, however, there be a will manifested in the future by persons belonging to these groups, the Advisory Committee considers that the matter should be examined by the authorities along with the persons concerned.

b). Outstanding issues

The application of the Framework Convention to Danes living in the Faeroe Islands and in Greenland remains an issue. There also remains an issue concerning the application of the Framework Convention to Greenlanders and Faeroese living in mainland Denmark.

It can be noted from the State Report, that the Faeroese authorities have requested the Danish authorities to contact “Faeroese associations in Denmark with a view to clarifying the extent to which the Council of Europe’s Framework Convention on Minorities applies to the national Faeroese minority in Denmark”. The Danish Government has not done this. Neither has it contacted persons belonging to the Greenland community. Similarly no discussions have been held with Danes in Greenland or in the Faeroe Islands.

The Advisory Committee notes that notwithstanding the lack of progress on discussions concerning the personal scope of application referred to above, a number of steps have been taken in relation to Greenlanders in mainland Denmark which are within the spirit of the Framework Convention. These include research into the situation of Greenlanders in mainland Denmark and an increase in funding for activities and actions in favour of persons belonging to this group.

Recommendations

The Advisory Committee considers that the relevant authorities should inform Greenlanders and Faeroese living in mainland Denmark about the Framework Convention. The same applies to Danes living in Greenland and the Faeroe Islands. The relevant authorities are invited to find out from them if they have an interest in the protection offered by the Framework Convention. In the light of these discussions the Danish authorities are invited to re-examine, if necessary, their position concerning the personal scope of application of the Framework Convention to persons belonging to these groups.

Roma*Findings of the first cycle*

The Advisory Committee in its first Opinion on Denmark considered that given the historic presence of Roma in Denmark, persons belonging to the Roma community cannot *a priori* be excluded from the personal scope of application of the Framework Convention. The Committee of Ministers in its Resolution considered that the issue merits further consideration by the Government with those concerned.

Present situation

a). Positive developments

The Danish authorities have had a discussion on the issue of recognition of Roma in Denmark with representatives of the Roma community.

b). Outstanding issues

Notwithstanding this discussion, and the representations made by representatives of Roma as to their historical presence going back to the 16th Century and their desire for protection under the Framework Convention, the Advisory Committee understands that the Danish authorities are unwilling to grant protection to the Roma under the Framework Convention.

According to the Danish authorities the Roma in Denmark can be divided into two main groups, namely those arriving at the end of the 1960s and those fleeing the wars in former Yugoslavia in the 1990s. The authorities maintain that those Roma who took up residence prior to the 1960s have been completely integrated and do not emerge as an identifiable group. The authorities indicate that they are prepared to consider and evaluate any other material information on Roma in Denmark that may be made available.

The Advisory Committee considers that there is evidence of a historical presence of Roma in Denmark. There is also a clear indication from persons belonging to the Roma community that they would like protection under the Framework Convention, and, as noted also by the Council of Europe Commissioner for Human Rights, there is a renewed eagerness of Roma in Denmark to maintain and rejuvenate the Roma culture, language and traditions. The Advisory Committee considers that the Roma are in a unique position in both western and eastern Europe. Most European countries recognise the Roma as a national minority. While they are not a homogeneous group, they share and maintain certain common elements of their identity making them the largest minority in Europe. The Roma do not have the benefit of support from a kin-State and the results of the first monitoring cycle under the Framework Convention demonstrate clearly that throughout Europe they experience social exclusion and are in special need of protection under the Framework Convention.

Recommendations

The Advisory Committee echoes its conclusions of the first monitoring cycle that persons belonging to the Roma community should not *a priori* be excluded from the personal scope of application of the Framework Convention.

The authorities are encouraged to further their dialogue with the Roma on the possible extension of the personal scope of application of the Framework Convention. Pending further progress on this issue, the authorities are encouraged to take the basic principles of the Framework Convention into account in their legislation, policies and practice in relation to the Roma.

Collection of statistics

Present situation

Outstanding issues

Statistical information in Denmark is almost exclusively based on information that is recorded in the Government's Central Population Register. This register contains no information on ethnic groups, religion or language, with certain exceptions such as in relation to citizens of foreign countries, persons born outside of Denmark and information on whether a person is a member of the Danish National Church.

The Advisory Committee notes that the Government considers that there is in general no need for a census in Denmark as the Central Population Register generally contains all the information that the Danish authorities need.

The Advisory Committee notes that there is no official data on the size of the German minority although estimates range from 12,000 to 20,000 people. The Advisory Committee notes that there is no official data on the size of the Roma population either.

The Advisory Committee understands that there is some confusion within society over the procedure and legality of collecting and using ethnicity data.

The Advisory Committee welcomes that the Danish Institute for Human Rights is tackling one aspect of this problem by raising awareness about how ethnicity data can be used in the workplace to tackle discrimination and has published a leaflet on this subject together with the Ministry of Employment.

The Advisory Committee considers that reliable statistical data on ethnicity, broken down by age, gender and location are essential for targeting, implementing and monitoring measures to ensure full and effective equality. Without such data it is difficult for the State and civil society to operate effectively and for international bodies to ascertain whether Denmark meets its obligations flowing from the Framework Convention.

The Advisory Committee considers that there is a need for greater clarity as to the rules concerning the collection and use of ethnicity data in Denmark. The Advisory Committee highlights in this respect that the principles identified in the Committee of Ministers' Recommendation (97) 18 concerning the protection of personal data collected and processed for statistical purposes need to be respected, along with the principle of voluntary self identification under Article 3 of the Framework Convention.

Recommendations

The Advisory Committee recommends that the authorities should seek means of obtaining more reliable ethnicity data broken down by age, gender and location and that further clarification should be provided for those wishing to collect or use such data on the rules, regulations and exceptions to the collection of such data.

11. Estonia

Opinion adopted on 24 February 2005

Definition of the term national minority

Findings of the first cycle

In its first Opinion, the Advisory Committee noted that Estonia had *de facto* pursued a more inclusive approach to the protection of national minorities than that suggested in its declaration contained in the instrument of ratification. The Committee was of the opinion that Estonia should re-examine its approach contained in the declaration and consider the inclusions of additional persons belonging to national minorities, including non-citizens, in the application of the Framework Convention.

Present situation

a). Positive developments

The Estonian authorities recognise that the above-mentioned declaration, rather than guiding policies and practices, has mostly a “political-historical” meaning in today’s Estonia. In an important statement contained in the second State Report, the authorities explicitly endorse the inclusive approach by noting that, while the declaration specifies the direct beneficiaries of the provisions of the Convention, “*it is also apparent that all provisions of the Framework Convention are applicable in practice without any substantive limitations, and the norms of the Convention are equally available for all persons who consider themselves belonging to national minorities*”.

b). Outstanding issues

While the declaration at present has only limited impact in practice, it nevertheless continues to carry symbolic significance for persons belonging to minorities. Furthermore, there are areas where the declaration contributes to the prevailing legal uncertainty, including in terms of the right to use a minority language in contacts with administrative authorities (see also related comments under Article 10 below). It is also worth mentioning that the implementation of the National Minority Cultural Autonomy Act, referred to by the authorities as the source of inspiration for the restrictive declaration, has been problematic partly due to its limited scope of application (see also below under Article 5).

Recommendations

The authorities should continue to pursue an increasingly inclusive approach in legislation, policies and practices concerning persons belonging to national minorities. The proposed changes to the National Minority Cultural Autonomy Act and/or the proposed new law on national minorities would provide a suitable context for consolidating such an inclusive practice in legislation. This would send a strong message of inclusion to the persons without citizenship and other persons belonging to minorities who are currently formally outside the scope of the declaration issued by Estonia under the Framework Convention.

Data collection

Findings of the first cycle

In its first Opinion on Estonia, the Advisory Committee encouraged the authorities to pay careful attention to data protection and to the right to be treated or not to be treated as a person belonging to a national minority in the collection of ethnicity data.

Present situation

a). Positive developments

Estonia has reformed its legal framework pertaining to data protection, notably by adopting a new Law on Personal Data Protection, which entered into force in October 2003, as well as through a new Code on Criminal Procedure, which entered into force in July 2004 and which

abolished the obligation to indicate the ethnicity of the accused in the records of interrogation and to request such information at criminal trials.

b). Outstanding issues

The legitimate goal of ensuring personal data protection is at times pursued in a manner that excludes altogether the collection of ethnicity-based data. In many key fields, such as law-enforcement and participation in elected bodies and economic life, more comprehensive data on persons belonging to national minorities, broken down by gender and geography and other relevant factors, is needed to analyse the implementation of various articles of the Framework Convention.

Recommendations

The authorities should identify further ways to obtain increasingly reliable and up-to-date disaggregated data on national minorities, while continuing to pay careful attention to the principles contained in Article 3 of the Framework Convention.

12. Finland

Opinion adopted on 2 March 2006

Personal scope of application of the Framework Convention

Findings of the first cycle

In its first Opinion, the Advisory Committee concluded that the authorities should examine, in consultation with those concerned, the advisability of maintaining the distinction between “Old Russians” (considered by the authorities to be covered by the Framework Convention) and other Russians in the consideration of the applicability of the Framework Convention.

The Advisory Committee noted that there are different views amongst the Swedish-speaking Finns as to whether they should be considered to be covered by the Framework Convention, while the authorities have viewed them as *de facto* covered.

The Advisory Committee also concluded that the Finnish-speaking population in the Province of Åland could be given the possibility to rely on the protection provided by the Framework Convention as far as the issues concerned are within the competence of the Province. It also noted that the inclusion of other groups mentioned in the first State Report in the application of the Framework Convention, on an article-by-article-basis, could also be considered.

Present situation

a). Positive developments

Following the publication of the first monitoring results under the Framework Convention, certain new initiatives were launched to examine the situation and status of the Russian-speaking population in Finland. These included an important report on the questions concerning the Russian-speaking population, issued in 2002, by an *ad hoc* working group set up by the Advisory Board for Ethnic Relations. According to the authors of the report, the Russian-speaking population constitutes a specific national minority group on the basis of its language, religion and culture, and the working group stressed the importance of an official recognition of the existence of Finland’s Russian-speaking population.

Whereas the main representative body of the Swedish-speaking Finns (the Swedish Assembly of Finland) has not informed the Advisory Committee of any changes in its position, according to which the Framework Convention should not be applied to Swedish Finns, there are new civil society initiatives that are actively seeking to use the potential of the Framework Convention for the benefit of the Swedish-speaking Finns.

As regards the Finnish-speaking population living in the province of Åland, the Advisory Committee notes that the question is not addressed in detail in the second State Report, but the

Committee welcomes the opportunity it had to discuss also the situation of these persons in its dialogue with representatives of Åland during the country visit.

b). Outstanding issues

The state report and other information obtained by the authorities suggest that the authorities' position on the scope of the Framework Convention still reflects the distinction between "Old Russians" and other Russian-speakers, although the State Report openly mentions the criticism expressed by certain minority representatives towards this approach. Together with other proposals made by the above-mentioned *ad hoc* working group, it appears that the findings on the recognition of the Russian-speaking population have received only scant follow-up within the official structures (see also related comments under Article 15). The Advisory Committee acknowledges that the Russian-speakers are not a homogenous group, but it recalls that diversity is also a feature of other groups that the government considers to be covered by the Framework Convention, including the Roma, and that the principle of self-identification of the persons concerned should be a guiding principle when considering the matter.

At the same time, there are additional groups whose representatives have expressed interest in receiving the protection of the Framework Convention. These include the Karelians, some of whom consider that the specific linguistic and other elements of their cultural identity should be addressed in this context, and even some Kvens have argued that they should be recognised as a specific group in Finland. Another issue that merits further reflection is the specific identity of Ingrians. While originally a Finnish-speaking group, most Ingrians, having spent their lives in the Russian Federation before moving to Finland, have now Russian as their mother tongue, which affects also their self-identification in Finland. There are also other issues that are likely to emerge as the linguistic and ethnic diversity of Finland increases further. One of these issues is the situation of the Estonians, who are already now one of the largest immigrant groups in Finland, with, generally speaking, relatively positive experiences of integration.

Recommendations

The Finnish authorities are encouraged to endorse more explicitly the inclusive practice pursued in their dialogue under the Framework Convention as far as the personal scope of application is concerned, taking into account the criticism expressed towards the distinction between Old Russians and other Russian-speakers and the related findings of the working group report on the questions concerning the Russian-speaking population.

The Finnish authorities are also encouraged to conduct a dialogue on the potential of the Framework Convention in the protection of other groups whose representatives have expressed an interest in being covered by this convention, such as Karelians. Increasing dialogue should also be pursued by the central authorities and the authorities of Åland on the applicability of the Framework Convention to the Finnish-speaking population living in the province of Åland to the extent that those concerned show interest in such dialogue.

13. Georgia

Opinion adopted on 17 June 2015

Personal scope of application of the Framework Convention and the right to free self-identification

Findings of the first cycle

In its first Opinion, the Advisory Committee encouraged the authorities to pursue a flexible and open approach towards the scope of application of the Framework Convention in both legislative and administrative measures and called on them to ensure that the right to free self-identification was observed in the course of the next population census.

Present situation

a) Positive developments

The Georgian authorities maintain a flexible approach towards the personal scope of application of the Framework Convention and the Advisory Committee is not aware of groups that would wish to be considered as national minority or to be protected under the Framework Convention but are disregarded. A population and housing census was conducted in November 2014, gathering valuable data on population profiles, including as regards educational and employment situation. The Advisory Committee welcomes the fact that the preparation and organisation of the exercise is overall positively evaluated, including by persons belonging to national minorities. Enumerators were locally recruited and thus familiar with the cultural and linguistic background of respondents. In addition, guidelines were provided as to the right of respondents to freely self-identify when indicating ethnic or religious affiliations and steps were taken to ensure adherence to international personal data protection standards.

b) Outstanding issues

The Advisory Committee nevertheless gained the impression that neither enumerators nor respondents fully appreciated the relevance of free self-identification in any data collection exercise. While questions on ethnic and religious background were open and provided the possibility to indicate “other”, the Advisory Committee learned for instance that representatives of the numerically smaller groups such as the Dukhobor or the Meskhetians were not encouraged to indicate their specific background but chose instead to affiliate with the larger groups, Russians or Georgians respectively, of which they consider themselves as sub-groups. In addition, it is regrettable that no possibility existed to indicate multiple ethnic affiliations or to indicate “none”. According to the interlocutors of the Advisory Committee, descendants of mixed marriages usually indicated the ethnicity of the father. It further learned with concern that religious affiliations were sometimes automatically filled in by enumerators in accordance with the ethnic background of respondents, i.e., a person self-identifying as Georgian would automatically be characterised as Orthodox, etc. The Advisory Committee reiterates its view that the right to self-identification must be firmly anchored in all relevant data collection exercises to ensure that the results adequately reflect the profile of the population, including for future measures to promote the effective equality of particularly disadvantaged groups (see further comments on Article 4).

Recommendation

The Advisory Committee encourages the authorities to maintain their flexible approach towards the personal scope of application of the Framework Convention. It further calls on them to firmly establish this flexibility also in all relevant data collection exercises, and to ensure that persons belonging to national minorities are fully made aware of their right to freely self-identify, or to refrain from doing so, including with respect to multiple affiliations.

14. Germany

Opinion adopted on 1 March 2006

Scope of the Framework Convention

Findings of the first cycle

In its first opinion on Germany, the Advisory Committee urged the German authorities to consider the possibility of including other groups than the four official recognised minorities (including German nationals and non-nationals) in the scope of the Framework Convention, on the basis of an article-by-article approach.

Present situation

Outstanding issues

The Advisory Committee notes that the German authorities, in accordance with the declaration made on ratification of the Framework Convention, continue to consider the criterion of German citizenship as essential to the enjoyment of rights granted to national minorities and that no substantial dialogue has been started on the applicability of the Framework Convention with representatives of other groups potentially concerned. In the course of its first visit, the Advisory Committee noted that there were other groups, of both nationals and non-nationals, some of whom had been residing in Germany for several decades but whom the authorities did not consider as being covered by the Framework Convention. The Advisory Committee also notes that, between 2000 and 2004, 787 217 foreigners acquired German citizenship, following the entry into force in 2000 of the Citizenship Act.

Recommendations

While the Advisory Committee agrees that citizenship may be considered a legitimate requirement in respect of certain measures taken in compliance with the Framework Convention, it stands by the view expressed in its first Opinion that the authorities should consider including other groups which do not fulfil the citizenship and traditional residence criteria in applying the Convention on an article-by-article basis, in close consultation with the persons concerned. The Advisory Committee adds that the Citizenship Act of 2000 and the Immigration Act of 2004 will, in all probability, speed up the integration into German society of many Turkish and other people with foreign background who, in the Advisory Committee's view, could benefit from certain rights covered by the Framework Convention.

In this regard, the Advisory Committee notes the objection raised by the German authorities who fear that granting the protection afforded by the Framework Convention to persons belonging to groups, other than the four recognised national minorities on an article-by-article basis, could give rise to unequal treatment between various groups. The Advisory Committee recalls that the application of the Framework Convention, as well as other international human rights instruments, to persons belonging to different national minorities often requires differentiated treatment according to their specific situation and needs. Moreover, the German authorities are *de facto* applying differentiated measures to respond to the needs of persons belonging to different minorities and this approach cannot in itself be considered as incompatible with the right to equality as set out in the Framework Convention.

15. Hungary

Opinion adopted on 9 December 2004

Criterion of citizenship in the definition of the expression "national and ethnic minorities"*Findings of the first cycle*

In its first Opinion on Hungary, the Advisory Committee encouraged the authorities to include persons belonging to other groups in the scope of application of the Framework Convention on an article-by-article basis.

Present situation

Positive developments

On 3 March 2004, the Government approved draft Law T/9126 amending various legislative provisions governing the status of national and ethnic minorities living in Hungary (hereinafter: draft Law T/9126). This Government draft uses a different definition of national and ethnic minorities to that contained in Law LXXVII of 1993 on the Rights of National and Ethnic Minorities. It does away with the condition of Hungarian citizenship for the individuals concerned, but requires the minority group to which they belong to have been present in Hungary for at least a century.

The Advisory Committee welcomes the Government's intention to broaden the scope of application of Law LXXVII of 1993 on the Rights of National and Ethnic Minorities. Since the Government considers that the Framework Convention applies to minorities as defined in Law LXXVII of 1993, such a broadening would mean that the Framework Convention would also apply to non-citizens. The Advisory Committee stresses that a general application of the citizenship criterion may cause problems linked to certain guarantees relating to important areas covered by the Framework Convention, such as non-discrimination and education. The proposed broadening of the scope of the Law would, however, enable non-citizens to participate in elections of the minority self-governments, which would be a highly commendable step in terms of their political and participation rights (see comments on Article 15, below).

Recommendations

Hungary should continue its efforts to be more inclusive in dealing with the personal scope of application of the Framework Convention, including by giving force of law to the approach proposed by the Government in this matter.

List of voters for the election of national and ethnic minority self-governments

Findings of the first cycle

In its first Opinion on Hungary, the Advisory Committee noted that Hungarian law, which guarantees the right of any person belonging to a national or ethnic minority to choose freely to be treated or not to be treated as such, allows persons to belong to more than one national or ethnic community. The Advisory Committee's first Opinion and the corresponding Committee of Ministers' Resolution also highlighted the need to find solutions to the problem of persons managing, through the openness of the electoral system, to create self-governments representing a minority with which they have no links at all.

Present situation

a). Positive developments

The Hungarian authorities openly admit that the abuses committed by certain individuals who have no links whatsoever with the national or ethnic minorities in whose name they are elected are such that they are undermining the credibility and functioning of the whole system of minority self-government. In this context, the Advisory Committee can only welcome the recent amendment of Article 70 of the Constitution, which was adopted in 2002 and entered into force in May 2004. Under the new provision, only persons belonging to minorities will in future be able to elect their self-governments and to stand as candidates in those elections.

In order to keep the aforementioned abuses to an absolute minimum and take into account this amendment to the Constitution, draft Law T/9126 provides for the introduction of lists of voters for the election of the minority self-governments. In principle, only persons who had applied and been included in the lists of voters, rather than all citizens, would be entitled to participate in those elections. No individual could be included in more than one register.

Although it is not supported by all the minorities, the system was proposed by the Government following broad consultation with representatives of the national minority self-governments, the Parliamentary Commissioner for the Rights of National and Ethnic Minorities and members of the Parliamentary Committee on Human Rights, Minorities and Religious Affairs. The Advisory Committee is pleased to note that extensive safeguards are planned with regard to the use of these lists, which would be controlled by the minorities themselves and destroyed after the election.

b). Outstanding issues

The Advisory Committee notes that, at the most recent minority self-government elections, held at the same time as the municipal elections in October 2002, the abuses that had affected the previous elections were repeated and, in the opinion of the Government and minority

representatives, were even more serious this time. It turned out that many candidates had stood in elections for a local self-government of a minority with which they had no link whatsoever. Such abuses led to the election of several of these candidates.

These abuses affected all national or ethnic minorities, in particular the German, Roma, Romanian, Slovenian and Serbian minorities. Most of them appear to have been committed for financial reasons, since local minority self-governments are organisations recognised by public law and managing public funds. It also seems that some people elected in this way have tried, by infiltrating a Roma local self-government, to introduce segregation of persons belonging to that minority, particularly in the education field (see comments on Article 12, below).

Recommendations

Hungary should continue its efforts to eliminate abuses of the electoral system for minority self-governments. This should be done through the adoption of the necessary changes such as the envisaged legislative amendments aimed at the introduction of lists of voters, together with the necessary safeguards for the protection of ethnic data.

Data collection

Findings of the first cycle

In its first Opinion on Hungary, the Advisory Committee stressed the sometimes wide discrepancies that existed between the official statistics and the estimates of national minorities about the number of persons belonging to minorities and warned against the negative consequences of this situation. The Advisory Committee therefore invited the authorities to find ways of obtaining more reliable statistical data and to encourage persons belonging to minorities to make use of the possibility to identify themselves in the context of the next census.

Present situation

a). Positive developments

A general census of the population was carried out in 2001 and its results have now been published. The Advisory Committee considers it very positive that two questions dealt with national and ethnic belonging and two with linguistic affiliation. It was clearly stated that these four questions were optional. It is also positive that the forms used for this census were discussed in advance with representatives of the national minority self-governments, that they contained a pre-printed, non-exhaustive list of the 13 national and ethnic minorities and that they were translated into the minority languages. Finally, the Advisory Committee welcomes that, through the media, the Government Office for National and Ethnic Minorities tried to raise the awareness of persons belonging to national minorities of the importance of the census before it was carried out.

The results of the 2001 census seem to paint a more accurate picture of the situation of minorities in Hungary and have been independently studied and analysed by organisations such as the Institute for Ethnic and National Studies of the Hungarian Academy of Science. Generally speaking, the number of persons who declared that their mother tongue was a minority language seems to have fallen by around 1.4% compared to the previous census although the number of people who said they belonged to a national or ethnic minority rose significantly. However, closer analysis of the figures shows that the different minorities grew at very different rates. Some figures rose quite considerably and seem to reflect more accurately the real size of the minorities concerned. These include the number of persons declaring an ethnic or national affiliation with the Roma minority (190,046, 33% more than in the previous census in 1990), the German minority (62,233, a rise of 101% compared to the 1990 census) and the Slovakian minority (17,693, a 69% increase compared to the 1990 census).

b).Outstanding issues

Although the situation of minorities appears to be monitored fairly accurately through the collection of data in some areas, such as education, monitoring still seems to be largely insufficient in many other fields, such as access to employment and health care, housing conditions and discrimination in different fields (see comments under Articles 4 and 6, below). The authorities need more precise data, broken down not only by minority, but also by gender and geographical area, in order to ensure that policies and measures designed to help persons belonging to minorities are effective. In this respect, the Advisory Committee notes that the Government's efforts to introduce a list of voters entitled to elect national and ethnic minority self-governments shows that it is possible to reconcile the collection of certain sensitive data with the Hungarian legal system's requirements in the data protection field in particular.

Recommendations

Hungary should seek to improve its evaluation of the practical effectiveness of measures taken to implement the Framework Convention through the collection of statistical data in different areas, such as access to medical care and employment, housing conditions or, in the absence of such data, by other means such as estimates based on *ad hoc* studies and special surveys. At the same time, it is important to ensure that data and privacy are protected and that the individuals who provide information do so voluntarily and in full knowledge of what it will be used for.

16. Ireland

Opinion adopted on 6 October 2006

Scope of application of the Framework Convention

Findings of the first cycle

In its first Opinion on Ireland, the Advisory Committee considered that that it would be possible to examine the inclusion of additional groups in the application of the Framework Convention on an article-by-article basis.

Present situation

a).Positive developments

The Advisory Committee welcomes the fact that the Irish authorities, while justifiably continuing to focus on the situation of the Irish Travellers in the context of the Framework Convention, accept that other groups may benefit from the protection of the Framework Convention on an article-by-article basis, and they have sought to expand their consultation process accordingly.

Various civil society representatives have actively invoked articles of the Framework Convention in different stages of the monitoring process in relation to the rights of persons belonging to new immigrant groups. Similarly, the Advisory Committee welcomes the fact that, during the country-visit, the authorities engaged in a substantive dialogue on issues pertaining to such groups, even though the state report contains only limited information in respect of them.

b).Outstanding issues

The Advisory Committee considers that, while the authorities' approach in terms of the scope of application of the Framework Convention is in practice inclusive and positive, it is important to ensure that written statements concerning the issue consistently reflect this position. In this connection, the Advisory Committee would like to stress that, while it agrees that many of the provisions of the Framework Convention have particular significance for "groups which have come about as a result of political upheaval and which have historical ties to a country", the relevance of the Convention is not restricted to persons belonging to groups meeting these criteria.

Recommendations

The Irish authorities should ensure that the inclusive approach in terms of the scope of application of the Framework Convention is consistently and unequivocally reflected in the authorities' statements on the matter.

Recognition of Travellers as an ethnic group*Present situation*

The question of recognising Travellers as an ethnic (minority) group has received considerable attention in recent years in Ireland and also in international treaty monitoring in relation to Ireland. Travellers' organisations and other key actors dealing with related issues, including the Irish Human Rights Commission, have called for the recognition of the Travellers as an ethnic group but the Government disagrees. The Advisory Committee acknowledges that the recognition of a specific ethnic identity of a particular group involves complicated issues and that the applicability of many of the relevant standards does not necessarily require a formal recognition of this nature by the Government concerned. In particular, the applicability of the Framework Convention does not necessitate a formal domestic recognition of a group as a national minority *per se* and it is, *a fortiori*, clear that the recognition of a group as an ethnic group is not a precondition for access to the protection of the Framework Convention.

While not in a position to state whether the authorities should make such a formal recognition – advocated in various well-reasoned submissions – the Advisory Committee finds it is regrettable that the authorities have, instead of reserving their position on the matter, at least pending further examination of the issue and consultations with Travellers and others concerned, expressed a view according to which the Travellers “do not constitute a distinct group from the population as a whole in terms of race, colour, descent or national or ethnic origin”. Such a conclusion appears to be, at best, premature, bearing in mind, *inter alia*, that there are no procedures or criteria in place for the authorities to determine the issue and that several Traveller groups and a number of other stakeholders have presented a range of arguments in favour of an opposite conclusion.

As regards the present practical importance of the question, the Advisory Committee recognises that equality legislation, notably the Irish Equality Act, explicitly prohibits discrimination not only on the grounds of race, colour, nationality or ethnic or national origin but also on the “Traveller community ground”. This reduces domestic legal implications of the Government's position as regards Travellers' ethnic origin. There are, however, concerns, expressed *inter alia* by the Irish Human Rights Commission, that, aside from the symbolic significance of the issue, the Government's position may affect the Travellers' possibilities to employ normative tools to combat discrimination, for example, in terms of invoking the EU Directive 2000/43/EC (“Racial Equality Directive”) in relation to issues that are allegedly not adequately covered by the enabling domestic legislation referring specifically to the Travellers.

Recommendations

The Irish authorities should refrain from conclusive statements affirming that the Travellers do not constitute an ethnic minority in so far as such a position is not based on clear criteria and does not result from a dialogue with the minority concerned, taking into account the principle of self-identification stemming from Article 3 of the Framework Convention. At the same time, the authorities should ensure, both *de jure* and *de facto*, the applicability of international and domestic non-discrimination and minority rights guarantees in relation to the Travellers.

Data collection and census*Findings of the first cycle*

In its first Opinion on Ireland, the Advisory Committee called for further steps to improve the scope and accuracy of data concerning persons belonging to national minorities.

Present situation

a). Positive developments

Ireland has stepped up its data collection on minority-related issues, and a range of sectoral initiatives have been launched, or considered, to improve collection of ethnicity data in areas ranging from education to health service, which will hopefully address, *inter alia*, the need for gender disaggregated data. Furthermore, in the census of 2006, Ireland included for the first time a census question on “ethnic or cultural” background, whereas in the previous census only persons’ possible affiliation with Travellers was queried. In this connection, the Advisory Committee welcomes the information it has received indicating that the census forms were translated into several minority languages, which undoubtedly increased the accessibility of the process amongst the groups concerned. The census has resulted in comprehensive new data on the ethnic make-up of the population.

b). Outstanding issues

The Advisory Committee welcomes the fact that the authorities included a question on ethnicity in the population census of 2006, as this can result in useful information for meeting the needs of minorities. The Advisory Committee notes, however, that legislation pertaining to the census made it compulsory for persons participating in the census to provide information on their “ethnic or cultural” background (either in the pre-determined specific categories or under the general category “other”). The Advisory Committee repeats its view, expressed in relation to population censuses and other data collection exercises, that an optional question on persons’ ethnicity would better reflect the principles of the Framework Convention than a mandatory question, as the latter may lead to problems in relation to the right not to be treated as a person belonging to a national minority contained in Article 3 of the Framework Convention. It is also important to ensure that, if pre-determined categories are used, such categories are chosen in a manner that takes into account the principle of self-identification and reflects the diversity and views within the groups concerned.

Whereas the census data on ethnicity is based on the principle of self-identification by the individuals concerned, there are other data collection contexts in which the said principle needs to be employed more consistently. This is the case, for example, in the field of accommodation, where the local authorities carry out an annual count of Traveller families as a basis for evaluating their accommodation needs. The Advisory Committee is aware of the fact that this issue is being examined by the authorities.

Recommendations

The authorities are encouraged to pursue further their plans to improve data on issues concerning Travellers and minorities in general. In this context, they should pay increasing attention to the voluntary nature of data collection on individuals’ ethnicity and to the principle that such data collection is to be consistently based on self-identification by the individuals concerned.

17. Italy

Opinion adopted on 24 February 2005

Demarcation of specific territorial areas of protection

Findings of the first cycle

The Advisory Committee’s first Opinion and the corresponding Committee of Ministers’ Resolution welcomed the adoption of a coherent legislative framework designed to secure protection, at the national level, for the twelve recognised historical linguistic minorities but stressed that this framework would not become fully operational until the protection perimeters applying to each minority had been defined. Similarly, the Advisory Committee and the Committee of Ministers stressed the need to pay continued attention to the implementation of

the Law on the Protection of the Slovene linguistic minority of the Friuli-Venezia Giulia Region.

Present situation

a). Positive developments

The geographic scope of application of Law No. 482 of 15 December 1999 “setting a normative framework as regards the protection of the historical linguistic minorities” (hereinafter referred to as: Law 482/99) has been fixed through a number of decisions taken by the provincial councils at the initiative of a third of the municipal councillors concerned or 15% of the citizens of a given municipality. This represents a commendable “bottom-up” procedure. This process has resulted in the drawing up of a rather comprehensive list of municipalities in which persons belonging to the minorities concerned have been able to avail themselves of many of the rights and measures enshrined in Law 482/99. There may, however, be a need in the future to adjust these specific territorial areas of protection: it is important not to consider such a list of municipalities as being rigidly set in time and to bear in mind the need for it to evolve over time.

While the process of demarcating the geographic scope of Law No 38 of 23 February 2001 on the protection of the Slovene linguistic minority of the Friuli-Venezia Giulia Region (hereinafter referred to as: Law 38/01) has experienced serious difficulties (see outstanding issues below), it is nevertheless encouraging that the overwhelming majority of the communes concerned have been identified without any particular difficulties in the provinces of Udine and Gorizia.

b). Outstanding issues

The demarcation of specific territorial areas of protection under Law 38/01 is also based on a “bottom-up” process giving a third of the municipal councillors concerned or 15% of the citizens of a given municipality the possibility to ask for the inclusion of their municipality or part of it in the list. This demarcation process has, however, not been completed despite the fact that nearly four years have elapsed since the entry into force of Law 38/01.

This regrettable state of affairs, which has so far hampered the proper implementation of almost all provisions contained in Law 38/01, is due to a number of factors, both of a technical and political nature. For example, it appears that the Joint Institutional Committee set up under article 3 of Law 38/01, whose main task consists of drawing up a list of the communes - or part of the communes - in which the Slovene minority has traditionally been present and forwarding it to the Presidency of the Republic for approval, is not functioning in an adequate manner. The Joint Institutional Committee’s work is indeed hampered by various factors, including the alleged systematic obstruction by some of its members, the difficulty to meet the quorum, the cumbersome process of nomination of its members, including the replacement of outgoing members (see related comments under article 15 below).

This lack of progress is all the more regrettable in the light of the fact that the inclusion of the overwhelming majority of the communes concerned in the draft list, particularly in the provinces of Udine and Gorizia, has not raised any particular difficulties: the main point of divergence lies in the municipality of Trieste, where certain central districts may or may not be included in the final list. The Advisory Committee, however, notes that no matter the choice eventually made in this respect, practical consequences will not substantially differ, since article 8, paragraph 4 of Law 38/01 anyway provides for the setting up of a single administrative desk dealing with all Slovenian requests in the central districts of Trieste. The largely symbolic and political dispute over the status of Trieste should, therefore, not serve as a reason to justify the continuous lack of implementation of Law 38/01 in the other already identified parts of the territory of the region Friuli-Venezia Giulia (see also related comments under articles 5 and 14, below). In this context, it is worth recalling that the protection of the Slovenian minority in Friuli-Venezia Giulia is also internationally entrenched in particular through the Special Statute on Trieste annexed to the London Memorandum of 1954. This protection is to be made effective by legislation, especially in the sphere of education and culture, but also by the Osimo

Agreement signed by Italy and the Socialist Federal Republic of Yugoslavia on 10 November 1975.

Recommendations

Italy should take the necessary measures to ensure the prompt implementation of Law 38/01 in the numerous municipalities whose inclusion in the list raises no objection. This should be done without necessarily waiting for the settlement of the dispute over the municipality of Trieste, a matter that needs increased attention by the authorities.

As regards both Law 482/99 and Law 38/01 whose respective territorial scope of application are to be based on a list of municipalities endorsed by the competent political authorities, Italy should bear in mind the importance not to consider such lists as rigidly set in time, as their extension may in the future be needed to reflect demographic and other changes resulting *inter alia* from increased mobility.

Status of Roma, Sinti and Travellers

Findings of the first cycle

The Advisory Committee's first Opinion welcomed the inclusion of the Roma, Sinti and Travellers in the scope of application of the Framework Convention by the Italian authorities but noted at the same time the absence of a legal instrument at national level granting them comprehensive protection. The Advisory Committee also noted that efforts to support Roma, Sinti and Travellers' culture were only sparingly supported by the authorities. In its corresponding Resolution, the Committee of Ministers emphasised that the existing statutory provisions for safeguarding the identity and culture of the Roma were not yet adequate.

Present situation

a). Positive developments

After the exclusion of the Roma, Sinti and Travellers from the scope of Law 482/99 at the parliamentary deliberation stage on the grounds that their situation needed to be addressed by an *ad hoc* piece of legislation, three bills were submitted to the Chamber of Deputies in 2001, with a view to dealing with the status and rights of the Roma, Sinti and Travellers.

During its visit to Italy, the Advisory Committee noted with interest plans by the Ministry of Interior to ask the Technical Committee entrusted with the implementation of Law 482/99 to look into the possibility of extending the scope of the said law to address also the situation of the Roma, Sinti and Travellers as well as of enlarging the Committee's composition with a view to including Roma representatives and representatives from the other ministries concerned (see related comments under article 15 below).

b). Outstanding issues

Despite the aforementioned attempts to tackle the situation of the Roma, Sinti, and Travellers in the legislative sphere at national level, there appears to be no real will amongst main political forces in Italy to carry forward the project of developing a specific piece of legislation to protect the language, culture and identity of these persons, as evidenced by the fact that the aforementioned bills have not been adopted by the Parliament.

While the inclusion of the Roma, Sinti and Travellers in the scope of application of the Framework Convention by the Italian authorities is a positive step, there is reason for concern about the lack of attention paid to the specific needs of those who are not citizens of the European Union, as their treatment by the authorities is tackled under the immigration perspective only. In this context, the Advisory Committee stresses that a general application of the citizenship criterion may cause problems linked to certain guarantees relating to important areas covered by the Framework Convention, such as non-discrimination and education.

This is a particular matter of concern since the existing statutory provisions on the Roma, Sinti, and Travellers adopted by several regions are clearly inadequate in that they are disparate, lack coherence and focus too much on social questions and immigration issues at the detriment of the promotion of their culture, which is not perceived as a valuable contribution enriching Italian society. Such regional legislation often reduces Roma, Sinti, and Travellers' culture to the alleged itinerant way of life of these persons, which tends to be treated as a problem. Even when these regional laws contain useful elements for the promotion of the Roma language and culture, they tend to be regarded as a priority in state policies neither at national nor at regional levels. For example, Law 11/88 adopted in March 1988 by the region Friuli-Venezia Giulia has not been coupled with any budgetary appropriation since 2001.

The lack of adequate legal protection for the Roma, Sinti, and Travellers is aggravated by the fact that there is still no comprehensive and coherent strategy to which all authorities - be it at the state, regional, provincial or municipal level - would feel committed (see related comments under article 6, below).

Recommendations

The Italian authorities should as a matter of priority take the necessary measures in the legislative field to ensure legal protection for the Roma, Sinti, and Travellers in order for these persons to be able to better preserve and further develop their identity and culture. More generally, a greater commitment from the authorities at all levels is needed to achieve tangible improvements in the situation of the Roma, Sinti and Travellers, including those who are not citizens of the European Union.

As far as the living conditions of the Roma, Sinti, and Travellers living in camps are concerned as well as the discrimination these persons continue to face in practice, the Advisory Committee refers to its recommendations under articles 4 and 6, below.

Data collection

Findings of the first cycle

In its first Opinion, the Advisory Committee pointed out the lack of ethno-linguistic statistical data, stemming *inter alia* from the fact that nation-wide censuses conducted had not included any question concerning the affiliation with a national or linguistic minority, except in the Bolzano province. Moreover, the Advisory Committee considered that the system of individual declaration of linguistic affiliation used in the Bolzano province did not adequately safeguard the principle of free affiliation and protection of ethno-linguistic data.

a). Positive developments

Following the demarcation of specific territorial areas of protection, the implementation of Law 482/99 has now advanced significantly, particularly in the fields of education and public use of minority languages, in which numerous projects have been supported. There is, therefore, a range of valuable data and figures that can be extracted from this pattern of local experiences and processed in a co-ordinated way at national level. For example, the Ministry of Education has started its own evaluation mechanism of the educational projects supported under Law 482/99 and this could serve as a useful tool to guide further state action in this field in favour of minorities.

In January 2005, the Department for Civil Rights and Immigration of the Ministry of Interior produced a monitoring report on the situation of Roma, Sinti and Travellers, based on information provided by the municipalities concerned through the channel of the prefectures. Although not covering each and every province where Roma, Sinti and Travellers reside, this report contains valuable statistical information *inter alia* on the estimated number of Roma, Sinti and Travellers residing in the various municipalities at issue, their settlements, the elements hampering their socio-economic equality and their degree of participation in public life.

As regards the modalities of the system of individual declaration of linguistic affiliation used in the Bolzano province, it is positive to see that they are kept under constant review, as explained by the Government in its comments on the first Opinion of the Advisory Committee.

b). Outstanding issues

More comprehensive monitoring of the implementation of Law 482/99 that would be co-ordinated at national level is still missing. Such monitoring could provide valuable statistical data not only on the estimated number of persons belonging to minorities in the various municipalities listed in the table, but also on the three main pillars of Law 482/99, namely media, public use of minority languages and education. This could in the future help the authorities to target and develop more focused measures to meet the needs of persons belonging to minorities.

Information like the one contained in the aforementioned monitoring report on the situation of the Roma, Sinti and Travellers has so far not been collected systematically at the local level and not processed in a co-ordinated way by the state authorities. It also appears that the Roma, Sinti and Travellers and the various NGOs promoting respect of their rights have neither been sufficiently involved by the authorities in the development of such studies, nor in the process of collecting these data.

Amendments made to Presidential Decree 752/1976 governing the general census of the population in the Bolzano province following the adoption of the first Opinion of the Advisory Committee do not seem to have significantly reinforced the guarantees of confidentiality concerning data inserted in the individual declaration forms in question. Further adaptations may have to be worked out in the context of the preparation of the next general census in order to better comply with all the requirements of article 3 of the Framework Convention. In this context, particular attention will have to be paid to the optional character of the issue of ethno-linguistic affiliation and the requirement that no disadvantage shall result from the choice made by the respondent.

Recommendations

The authorities are encouraged to consider the introduction of a comprehensive monitoring mechanism at national level aimed at gathering practical information and relevant statistical data on the implementation of Law 482/99, with a view to guiding state policies on minorities.

Italy should pursue further, in consultation with those concerned, its efforts to gather relevant statistical data on the Roma, Sinti and Travellers with a view to facilitating the preparation of a proper strategy to ensure their effective participation in cultural, social and economic life and in public affairs.

Consideration will in the future have to be given to improving the modalities of the system of individual declaration of linguistic affiliation used in the Bolzano province in the context of the preparation of the next general census so as to better comply with the requirements of article 3 of the Framework Convention.

18. Kosovo*¹

Opinion adopted on 5 November 2009

Personal scope of application

Findings of the first cycle

In its first Opinion, the Advisory Committee noted disagreements and inconsistencies as regards the specific identities, in particular of the Egyptian and Ashkali communities. The Egyptian

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.

community was often treated as part of the Roma and/or Ashkali communities and the Ashkali community as part of the Roma. This did not reflect the self-identification of persons belonging to these groups. The Advisory Committee appealed to the international and local authorities to avoid using such a designation to ensure that each community's specific identity is respected.

a) Positive developments

The Advisory Committee is pleased to note that the authorities have refrained from including the citizenship criterion in the Law on the Rights of Communities adopted by the Assembly of Kosovo in March 2008. As a result, persons belonging to minority communities living in Kosovo* are able to enjoy the rights guaranteed in this law irrespective of their citizenship. The Advisory Committee considers that this is in line with its approach (see also related work of the Venice Commission).

The Advisory Committee welcomes that the legislation and other relevant texts, such as the Strategy for the Roma, Ashkali and Egyptian communities, appear to distinguish between the aforementioned communities. Moreover, the Advisory Committee notes with satisfaction that the Ashkali, Egyptians and Roma are represented as separate communities in the Community Consultative Council (see also comments in paragraph 240 under Article 15).

b) Outstanding issues

The Advisory Committee understands that the abbreviated term 'RAE' is still used in official documents and statistics, in particular by the international organisations, to designate the Roma, Ashkali and Egyptian communities. Moreover, concerns have been expressed by representatives of these communities over the lack of awareness-raising amongst the population as well as the authorities and international organisations on their distinct identities.

The Advisory Committee notes that representatives of the Montenegrin community expressed interest in benefiting from the measures taken by the authorities in favour of minority communities. The fact that persons belonging to the Montenegrin community were not referred to either in the 2008 Constitution or in any subsequent legislation, including in the Law on the Rights of Communities, prevents them from enjoying certain specific rights guaranteed in the aforementioned legislation. For example, they are not entitled to reserved seats for representation of minority communities in the elected bodies at central and local levels, as provided for in the Kosovo Constitution. Nevertheless, the Advisory Committee notes with interest that, notwithstanding the lack of recognition of the Montenegrin community under the law, its representative takes part in practice in the work of the Community Consultative Council. Moreover, the Advisory Committee finds it commendable that a working group has been established within the Consultative Council with a view to considering the issues relating to the Montenegrin community (see also comments in paragraph 243 under Article 15).

Recommendations

The Advisory Committee encourages the Kosovo* authorities to maintain their flexible and open approach towards the scope of application of the Framework Convention. Further consideration should be given to the inclusion of persons belonging to the Montenegrin community in its application and the possibility to provide them with opportunities for representation in elected bodies. The authorities are encouraged to continue the dialogue with community representatives on this issue and to pursue and develop existing measures of support for the preservation of the culture and identity of the Montenegrin community.

Population and housing census

Findings of the first cycle

While stressing the importance of a population and housing census for the proper implementation of the Framework Convention, the Advisory Committee recommended in its first Opinion to delay its organisation until a maximum level of participation of all communities could be ensured.

Noting that data on individuals' ethnic affiliation is collected in various contexts, including at the municipal level, the Advisory Committee emphasised the need for adequate legal safeguards, notably as regards the protection of personal data.

a) Positive developments

The Advisory Committee notes that the preparation of the population and housing census is underway, with the understanding that it is expected to take place in the near future. In this connection, two pilot census projects were carried out in selected municipalities between 2006 and 2008 to evaluate the level of preparation as regards technical and other aspects of the census process. As indicated by the Statistical Office of Kosovo*, the questions on ethnic, religious and linguistic affiliation included in the census questionnaire will be optional which is in line with the principles of Article 3 of the Framework Convention. Moreover, the Advisory Committee was informed that the questionnaire will be made available in the Albanian, Serbian and Turkish languages.

b) Outstanding issues

The Advisory Committee stresses that in order to implement effectively certain legal and policy measures in the field of minority protection, there is a need for reliable data on the ethnic composition of the population in Kosovo*. The population and housing census is the main tool available to obtain such data. At the same time, the Advisory Committee recognises that the participation of sufficient numbers of persons belonging to some communities, in particular the Serbs and a number of Roma, remains an important challenge in the planning and implementation of the census.

The Advisory Committee notes that technical and other shortcomings were encountered during the pilot census projects. No proper information campaign nor any other related activities appear to have been carried out in order to raise the confidence of all communities in the census process. In remedying any shortcomings, the recommendations of the United Nations Economic Commission for Europe (UNECE) prepared in co-operation with the Statistical Office of the European Communities (EUROSTAT) should be duly taken into account. There is also a need to conduct a thorough analysis of the reasons behind the refusal of members of some minority communities to participate.

The Advisory Committee considers it particularly useful that, in the areas traditionally inhabited by minority communities, enumerators are recruited amongst the persons belonging to them. Careful attention should be paid to the right to self-identification of persons belonging to communities, *inter alia*, by providing for an open list of ethnic affiliations and for a possibility of choosing a multiple identity in the census questionnaire. It should also be ensured that the question on ethnicity is not mandatory. The authorities should also do their utmost to ensure that the results of the census are not misused for political purposes. No disadvantage should result for persons belonging to minority communities from their choice to affiliate with a minority community or for the exercise of any related right.

In connection with the population census, the situation of persons belonging to minority communities, who fled Kosovo* following the 1999 conflict, in particular the Serbian, Roma, Ashkali and Egyptian communities, has raised specific concerns. Considering the population movements within these groups, there is concern that the census will not properly reflect their numbers and this might have a negative impact on the adoption of policies and measures of support in respect of persons belonging to these communities.

The Advisory Committee also understands that there is a risk of excluding those persons belonging to minority communities forcibly returned to Kosovo* who are without a place of residence. Measures should therefore be taken to ensure that those concerned are included in the census.

The Advisory Committee notes at the same time that the legal and practical measures to safeguard effectively the data on individuals' affiliation have not yet been fully put in place. In this respect, it wishes to remind the authorities that, when information about individuals' ethnic

origin is collected, processed and disseminated, this should fully respect personal data protection and comply with the international data protection safeguards which appear *inter alia* in the Committee of Ministers' Recommendation No. (97) 18 concerning the protection of personal data collected and processed for statistical purposes.

Recommendations

In view of the particular importance of a population census, the Advisory Committee urges the authorities to do their utmost to ensure the participation of all persons concerned in the next census, including by persons belonging to minority communities that were forcibly returned to Kosovo*. There is a need to raise the confidence of all communities in the census process.

Efforts should be made to remedy the technical and other shortcomings identified during the pilot projects before the census is carried out. The right to self-identification of persons belonging to a minority community must be strictly respected, as well as the voluntary nature of any questions relating to such affiliation. In addition, persons belonging to minority communities should be provided with a possibility of expressing their multiple identity in the census questionnaire.

The Advisory Committee encourages the authorities to pay due attention to the situation of those persons belonging to minority communities who fled Kosovo* and to address this issue in accordance with international standards in this field.

Recalling that the collection of data on ethnic affiliation needs to be coupled with adequate safeguards, the Advisory Committee urges the authorities to take legal and practical measures to ensure that existing international data protection standards are fully respected.

19. Latvia

Opinion adopted on 18 June 2013

Article 3 of the Framework Convention

Personal scope of application of the Framework Convention

Findings of the first cycle

In its first Opinion, the Advisory Committee welcomed the overall flexible approach taken by the authorities in including “non-citizens” who identify themselves with a national minority in the personal scope of application of the Framework Convention, while noting that the exceptions prescribed by law for “non-citizens” restricted their effective access to rights in key sectors. It invited the authorities to ensure, in line with the spirit of the Framework Convention, that any exceptions were interpreted and applied so as not to inflict disproportionate restrictions of the protection offered by the Framework Convention in respect of “non-citizens”.

Present situation

a) Positive developments

The Advisory Committee notes no changes in the overall approach of the Latvian authorities towards the personal scope of application of the Framework Convention, which is reflected in the Declaration contained in the instrument of ratification of 6 June 2005. Accordingly, the so-called “non-citizens” shall “enjoy the rights prescribed in the Framework Convention, unless specific exceptions are prescribed by law”. Latvia continues to recognise four larger groups of national minorities, the Russian, Belorussian, Ukrainian and Polish minorities, as well as smaller groups such as Lithuanians, Jews, Roma, Germans, Estonians, Azerbaijanis, Armenians, Georgians and Tatars. In addition, special protection is granted to the numerically small group of Livs.

b) Outstanding issues

The above-mentioned Declaration, however, continues the policy of limiting the enjoyment by the so-called “non-citizens” of rights protected by the Framework Convention (see below comments on Articles 4, 10, 14 and 15), despite the fact that their level of protection generally is above international standards for the protection of stateless persons.

The Advisory Committee further observes that representatives of persons belonging to the Latgalian community in Latvia continue to make claims for recognition under the Framework Convention. While acknowledging the view of the Government as well as some experts that the Latgalian language constitutes a historical variant of Latvian and that speakers are not united by a common ethnic or cultural background, the Advisory Committee wishes to reiterate that the application of the Framework Convention with respect to a group of persons does not necessarily require its formal recognition as a national minority or the existence of a specific legal status for such groups of persons. In this regard, the Advisory Committee notes the views expressed by a number of persons belonging to the Latgalian community that recognition under the Framework Convention could substantially reinforce their on-going efforts to promote their language and culture (see below comments on Articles 10 and 14).

Recommendations

The Advisory Committee invites the authorities to enter into a dialogue with representatives of the Latgalian community with a view to jointly establishing suitable steps towards the more effective promotion of their language and culture, including by considering extending the protection of the Framework Convention – in particular as regards language rights – to this group.

The Advisory Committee strongly encourages the authorities to review the continued limitation of access to rights under the Framework Convention for persons belonging to national minorities by virtue of their status as “non-citizens”.

The right to free self-identification

Findings of the first cycle

In its first Opinion, the Advisory Committee invited the authorities to take necessary measures to bring legislation and practice into line with the principle of free self-identification and remove the obligation to record individuals' ethnic origin in the population register. It welcomed, however, the fact that it was no longer compulsory to state one's ethnic origin in passports.

Present situation

a) Positive developments

The Advisory Committee is pleased to note the organisation of the population and household census in March 2011, which provides a range of valuable information on the make-up of the population. As regards ethnicity, respondents were free to choose what ethnicity to affiliate with, irrespective of the record in the population registry, and there was an option to indicate “not known” or “not chosen” as a response. It was possible for the first time to indicate whether Latgalian language is being used on a daily basis, which over 160 000 persons confirmed. The adoption in February 2012 of the Resolution of the Cabinet of Ministers No. 134 removed the option for individuals to indicate their ethnicity in passports and other identity documents. This development was

in line with recommendations expressed by the Advisory Committee as well as other monitoring bodies, given that the optional ethnicity entry had not been based on the right to free self-identification but rather had to reflect the previously recorded ethnicity in the population registry (see further comments below).

b) Outstanding issues

With regard to the census, the Advisory Committee regrets that, according to the responsible authority, it was not carried out in consultation with national minority organisations but arranged strictly in line with instructions from the Cabinet of Ministers. Questions on ethnicity and languages did not provide for the option of multiple answers. Respondents had to choose from a closed list of possible answers, which had been prepared in line with a relevant Cabinet of Ministers Resolution. The Advisory Committee received expressions of concern from persons belonging to the Latgalian community that, unlike during the previous census in 2000, they were not able to indicate their ethnicity as Latgalian. The Advisory Committee reiterates in this context the centrality of the right to free self-identification as provided by Article 3 of the Framework Convention and refers to the relevant international recommendations, according to which questionnaires should include open questions related to ethnicity, without suggesting possible answers. In addition, respondents should be free to indicate more than one affiliation or a combination of affiliations if they wish so.

The Advisory Committee is further concerned by the renewed public debate relating to the indication of one's ethnic origin in personal identity documents following the adoption of the above-mentioned Cabinet of Ministers Resolution. Shortly afterwards, draft amendments were submitted by the nationalist alliance, arguing that the possibility of indicating one's ethnic affiliation would strengthen the national identity of ethnic Latvians and should be restored. The amendments were first refused but eventually adopted on 29 January 2013, thus reintroducing the optional ethnicity entry as of 1 April 2013. While acknowledging that there is no obligation to do so, the Advisory Committee reiterates its concern about the lack of respect for the right to free self-identification if one chooses to indicate one's ethnic origin. In fact, some persons have made efforts to change their records and obtain the opportunity to indicate 'Latvian' as their ethnic origin, despite records showing a non-Latvian ethnicity. The Advisory Committee notes that a draft law stipulating procedures whereby a person not recognised as an ethnic Latvian could officially change his/her ethnic belonging to ethnic Latvian were discussed in Parliament in February 2013 but rejected on 1 March. The Advisory Committee expresses its deep concern about this renewed focus on ethnic affiliation and origin in public debate, which it considers detrimental to the promotion of social cohesion in Latvia. It further considers that any unwarranted emphasis on ethnicity could deepen polarisation in society by negating experiences of multiple affiliation and possibly creating the basis for future cases of discrimination (see below Articles 4 and 6).

Recommendation

The Advisory Committee calls on the authorities to review their legislative framework related to the indication of ethnic origin in personal identity documents and ensure that any such entry is made in line with the right to free self-identification, as stipulated in Article 3 of the Framework Convention.

20. Lithuania

Opinion adopted on 27 February 2008

Scope of application of the Framework Convention

Findings of the first cycle

In its first Opinion, the Advisory Committee welcomed the flexible approach taken by the Lithuanian authorities to the scope of application of the Framework Convention, while noting that only citizens, in Lithuania, had access to the protection of this Convention.

The Advisory Committee took note of the existence of a new draft law on national minorities and expressed its concern about the risk of diminution of the level of protection enjoyed by persons belonging to national minorities in certain fields, particularly where the public use of minority languages was concerned. In more general terms, the authorities were encouraged to ensure, prior to the adoption of new legislation, that the provisions relating to national minorities were consistent and had a clear position within the Lithuanian legislative system.

Current situation

a) Positive developments

The Advisory Committee notes that the authorities have maintained their flexible approach to the scope of application of the Framework Convention, and continued to include within that scope persons belonging to a large number of groups. It should be noted *inter alia* that groups such as Koreans and Libyans are in practice included in the dialogue conducted by the Government with minorities on subjects of interest to them, and also benefit from a certain amount of financial support for their organisations' activities. The Advisory Committee expresses the hope that the authorities will continue this flexible practice, and that any new legislation on the protection of minorities will reflect this positive practice.

According to the information provided by the authorities, the Lithuanian parliament is currently examining a more recent version of the draft law "on protection of the rights of national minorities and persons belonging thereto" (hereafter referred to as the "Law on National Minorities"). Stemming from an initiative of the Human Rights Committee of the Parliament, and already approved by that Committee, the draft should soon be examined by the parliament in a plenary sitting. The Advisory Committee understands that the minorities' representatives have already been consulted on this draft, which they found acceptable overall, with the exception of the articles relating to the use of minority languages in the public sphere. According to the authorities, the new law would not restrict the rights from which national minorities currently benefit. Should the new law on minorities be adopted, other more specific laws would have to be adopted or amended with a view to its effective implementation.

The Advisory Committee notes that the draft law on national minorities, under examination at the time of its first visit to Lithuania and which was severely criticised by the national minorities, was finally not adopted. The draft was the subject of a number of questions raised by the Advisory Committee, in particular as concerns the use of minority languages in the public sphere (see related observations under articles 10 and 11 below). Following the Advisory Committee's visit and its recommendation, the draft in question was the subject of an international expert review which broadly confirmed the concerns expressed by the Advisory Committee in its first Opinion.

b) Outstanding issues

While taking account of the above comments and the complexity of legislating in a politically sensitive field, the Advisory Committee notes that the current legal framework for the protection of national minorities in Lithuania rests on a law which, while it contains significant safeguards for the protection of national minorities in the various fields of interest to them, dates back to 1989 (although it was amended in 1991). Like the authorities, the Advisory Committee considers that it would be useful for the law concerned to be reviewed with a view to its updating and modernisation. It is essential, that care is taken not to reduce the rights currently enjoyed by the persons belonging to national minorities, but on the contrary, where possible, to increase them.

This increase in the protection of minority rights is all the more important in the light of the legislative developments noted in Lithuania in recent years, which have led *inter alia* to the adoption of new laws, legislative provisions or regulations dealing with the protection of minorities (such as the new law on education and the anti-discrimination legislation). The Advisory Committee also notes that the parliament is currently examining a new draft law on the state language, which is of particular importance to the definition of the conditions in which the rights of persons belonging to minorities may be exercised as regards the use of languages. In the light of this and of the legal uncertainty to which the Advisory Committee has already drawn attention in this respect, it is essential to ensure that the future law fully reflects the principles of the Framework Convention and is in line with the legislative provisions governing the protection of national minorities in Lithuania (also see the comments below relating to Articles 5, 10 and 11).

Recommendations

The Advisory Committee encourages the authorities to pursue further their flexible approach to the scope of application of the Framework Convention. In this regard, the Advisory Committee notes that State Parties should promote mutual respect, understanding and co-operation among all persons living on their territory.

The authorities should also ensure that any new legislation on national minorities is fully in line with the principles of the Framework Convention and duly reflects the comments made by the international experts on the previous draft law on national minorities which was submitted to them for consideration.

Population census

Current situation

Positive developments

The Advisory Committee notes that a new population census is scheduled for 2011 in Lithuania, and that the authorities have already begun preparations for this. It is understood that among the questions will be an optional one on the ethnic origin (nationality) and language of the interviewees. The Advisory Committee notes that, when the previous census was carried out, the forms were also available in two minority languages, Polish and Russian, and welcomes this positive practice.

The Advisory Committee also considers it important for the representatives of national minorities to be consulted when decisions are to be taken on the methods and forms/lists to be used for collecting data of an ethnic nature. It welcomes the established practice in Lithuania of consulting, when such data is collected, the Department of National Minorities and Lithuanians Living Abroad, and it encourages the authorities concerned, especially the Department for Statistics, also to consult the National Minorities Council and the representatives of the different minorities individually.

The Advisory Committee considers that the inclusion of persons belonging to the different national minorities among the census enumerators is another means of creating the conditions necessary for obtaining reliable figures in respect of the ethnic composition of the population.

The Advisory Committee points out that, when the previous census took place, approximately 9% of the interviewees did not wish to give a reply to the question regarding ethnic origin. The Advisory Committee is aware that the historical and political conditions at the time may have accounted for the reluctance of such a large number of persons to reply to this question. It emphasizes that, as it results from the principles set out in Article 3 of the Framework Convention, the decision on whether or not to reply is one solely for the persons being questioned. This being said, it wishes to emphasise that reliable information about the ethnic composition of the population is an essential condition for implementing effective policies and measures to protect minorities and for helping to preserve and assert their identity. It therefore

considers it essential to prepare the population properly and to inform people of the implications and methodology of the census, so that the maximum number of persons give an informed and free reply, when the next census is carried out, to the questions relating to their ethnic origin and knowledge and/or use of languages.

Recommendations

During the preparatory phase for the next census, the authorities should consult the representatives of minorities about the questions relating to the persons' belonging to a national minority and to their languages. The Advisory Committee also encourages the authorities to consider having the census forms translated into minority languages, according to needs, and including among the census enumerators persons belonging to minorities, or persons with sufficient knowledge of the minority languages concerned.

The authorities should undertake well in advance awareness-raising activities among the persons belonging to national minorities, in co-operation with minority representatives. These activities should relate to the importance and usefulness of the collection of information about the ethnic composition of the population, as well as about the safeguards that exist in Lithuania for the protection of personal data.

21. Malta

Opinion adopted on 22 November 2005

Application of the Framework Convention

Findings of the first cycle

The Advisory Committee considered that, concerning persons belonging to an ethnic, linguistic or religious group other than the majority, it would be possible to consider inclusion in the application of the Framework Convention on an article-by-article basis. It encouraged the Maltese authorities to consider this issue in consultation with the persons concerned.

Present situation

a) Positive developments

By referring in their second State Report to the situation of non-citizens, including asylum-seekers and refugees, the Maltese authorities have adopted an inclusive approach in their dialogue with the Advisory Committee regarding the application of the Framework Convention. The Advisory Committee welcomes this positive attitude, particularly in light of the growing number of immigrants who, following Malta's accession to the European Union, are residing in Malta for increasing lengths of time.

b) Outstanding issues

The Advisory Committee is not aware whether any attempts have been made by the Maltese authorities to open a dialogue on the application of the Framework Convention with persons concerned in Malta.

Recommendation

The Maltese authorities should consider the possibility of applying the Framework Convention, in view of its objectives, on an article-by-article basis and in consultation with those concerned, to persons who do not share the language, religion or culture of the general population.

22. Moldova

Opinion adopted on 9 December 2004

Criterion of citizenship in the definition of the expression “national minority”

Findings of the first cycle

In its first Opinion, the Advisory Committee noted that the criterion of citizenship was included in the definition of the expression “national minority” contained in Moldovan legislation. It also mentioned the legal and procedural problems encountered by persons of foreign origin (some 4,000 to 5,000) who had been living in Moldova for several years, in their attempts to obtain Moldovan citizenship.

Present situation

a) Positive developments

The Advisory Committee welcomes the fact that the authorities are in their action maintaining a dialogue, in terms of protection of national minorities, with these persons of foreign origin, whether or not they have obtained Moldovan citizenship, and that, in accordance with this practice, these persons were included in the discussions with the Advisory Committee during its visit to Moldova. It also notes that Moldova has amended its legislation on citizenship in such a way as to facilitate naturalisation.

b) Outstanding issues

Despite this legislative development, persons of foreign origin who have already lived in Moldova for more than ten years are still encountering difficulties in their attempts to obtain Moldovan citizenship, difficulties that appear to be connected with the lack of bilateral agreements on dual citizenship with their countries of origin.

Recommendations

The authorities should continue their efforts to improve the possibilities of obtaining Moldovan citizenship in order to facilitate the integration of these persons in Moldovan society as well as their access to the protection of the Framework Convention.

The Advisory Committee also believes that it would be possible to consider, where appropriate, the inclusion of persons without citizenship of Moldova in the application of the Framework Convention on an article-by-article basis, and is of the opinion that the authorities should examine this issue in consultation with those concerned.

Data collection

Findings of the first cycle

In its first Opinion, the Advisory Committee urged the authorities to organise a new population census and, more generally to take all necessary measures to obtain reliable data on the ethnic composition of the population.

Present situation

Positive developments

The organisation of a new population census in October 2004 is to be welcomed as a significant development likely to have positive effects on the development and evaluation of policies and measures on implementation of the Framework Convention in Moldova. The fact that international observers, including from the Council of Europe, were invited to monitor the census, as well as the processing and subsequent publication of its results (planned for 2005), is also to be welcomed.

In order to foster free expression of the ethnic identity of individuals, the question on “nationality” was optional and open, leaving it to individuals to decide whether or not to indicate that they belonged to a group they themselves named, without offering a ready-made list of ethnic groups. Similarly the question on languages, which was in three parts (mother

tongue, language usually spoken, languages known), did not offer a ready-made list of languages. The census forms were bilingual (State language and Russian). Despite these precautions, the international observers concluded in their preliminary report that these questions often proved sensitive and were in some cases a source of confusion. They also noted that, while interviewees generally answered them spontaneously, the census takers appear to have tried, in some parts of the country, to influence the interviewees' choice, in particular by discouraging them from saying that they were "Romanian" rather than "Moldovan".

Non-governmental sources criticized the authorities and the media for not having prepared the population sufficiently for the census either by explaining its importance and implications or how it would be conducted, including the behaviour expected of the census takers. It has to be observed that a number of uncertainties and fears remain among the population, particularly concerning possible distortions of their declarations by census takers.

Despite the irregularities mentioned, the observers considered the conduct of the census to have been successful. They also called for special attention to be given to the processing of data on ethnicity and announced that they would be following the process closely.

Recommendations

In view of the particularly sensitive nature of the information on ethnicity and the use of languages in Moldova, the authorities should ensure, when the data collected during the census is processed and disseminated, that guarantees on the gathering of personal data are respected in accordance with existing standards in the field and the principles contained in Article 3 of the Framework Convention. Furthermore, the authorities should seek to ensure that the publication of the final results is not misused for political or other purposes. This is particularly important as regards information on the ethnic breakdown of the population.

23. Montenegro

Opinion adopted on 19 June 2013

Article 3 of the Framework Convention

Personal scope of application of the Framework Convention

Findings of the first cycle

In its first Opinion, the Advisory Committee considered that the authorities should amend the definition of national minorities included in the 2006 Law on Minority Rights in order to limit the use of the citizenship requirement only to those provisions, where it was relevant.

The Advisory Committee also noted that some minorities' identities had been fluctuating over time in Montenegro, and considered that the authorities should ensure that whatever the position taken by the persons concerned, the principle of free self-identification with a national minority was duly respected.

Present situation

a) Positive developments

The Advisory Committee notes that the Constitution of Montenegro of 2007 identifies the nations and national minorities living in Montenegro as Montenegrins, Serbs, Bosnians, Albanians, Muslims, Croats and "others" as free and equal citizens loyal to the democratic and civic state. Article 13 of the Constitution further proclaims that the Montenegrin language shall be the official language with both Cyrillic and Latin scripts being equal, but also recognises Serbian, Bosnian, Albanian and Croatian languages as

being in official use. The Advisory Committee further notes that the Law on Minority Rights does not contain a list of national minorities falling under its scope.

Both the Constitution of Montenegro and the afore-mentioned Law on Minority Rights provide a sound legal basis for the protection of national minorities. Article 79 of the Constitution of Montenegro enumerates the minority rights guaranteed in a list which closely reflects the rights guaranteed under the Framework Convention and in the Law on Minority Rights. The Advisory Committee notes with satisfaction that the Constitution, in the Article cited above, does not refer to the citizenship criterion included in the definition of national minorities contained in the Law on Minority Rights. Notably, the Montenegrin authorities' position in practice is open and flexible. The Advisory Committee welcomes the fact that the authorities continue to consider, where appropriate, the application of the Framework Convention to persons without Montenegrin citizenship on an article-by-article basis. This is of particular importance to Roma and Egyptians, a significant number of whom do not possess Montenegrin citizenship in spite of the fact that they have resided in Montenegro as IDPs for over 10 years.

The Advisory Committee commends that the right to free self-identification with a national minority was duly respected during the census conducted in April 2011 and that the respondents were free to indicate the ethnic affiliation of their choice or not in response to the census question (see paragraphs 42-45 below for details).

b) Outstanding issues

The Advisory Committee notes that no single national group constitutes the absolute majority, with Montenegrins numbering just under 45% of the population of Montenegro, according to the latest census. National and ethnic identities continue to evolve, as persons belonging to different groups are free to express their identity, which in some cases is a multiple one and requires a hyphenated definition. In this context the Advisory Committee learns with interest that some groups that appeared for the first time in the 2011 census results include: Muslims-Bosniaks, Muslims-Montenegrins, Montenegrins-Serbs, Serbs-Montenegrins, Gorani and other groups. Also, the number of persons declaring their Roma and Egyptian nationality has risen very significantly since the census of 2003. This demonstrates a greater awareness of identity and willingness to freely declare it, which is welcome.

The Advisory Committee notes with regret that the definition of national minority included in the Article 2 of the Law on Minority Rights has not been revised since the last cycle. The official approach, as embodied in the law, is that the personal scope of application of the Framework Convention applies only to citizens, although - as it was already noted - in practice, the authorities display openness and flexibility. The Advisory Committee finds that for the sake of clarity and consistency Article 2 of the Law on Minority Rights should not limit the scope of application of minority rights to citizens only in order to make it compatible with the Constitution.

Recommendations

The Advisory Committee reiterates its call on the authorities to consider amending the definition of the term "national minority" contained in the Law on Minority Rights and apply the provisions of the law in an open and flexible manner, without limiting the personal scope of application of the Framework Convention to citizens only.

The Advisory Committee encourages the authorities to continue the dialogue with representatives of national minorities, in particular those mentioned as “others” in the Preamble of the Constitution and who are not expressly recognised by the law, and to consider the possibility of including them in the scope of application of the Framework Convention.

Data collection

Findings of the first cycle

In its first Opinion, the Advisory Committee found that there was a general lack of data disaggregated by ethnicity, sex and geographical location and encouraged the authorities to step up their efforts to obtain reliable statistical data on the socio-economic position of national minorities in all relevant fields and to this end, develop adequate methods of ethnic data collection while fully respecting the principle of self-identification.

Furthermore, it also observed that the legislation of Montenegro did not provide adequate guarantees for the protection of personal data and considered that the authorities should urgently complete their planned revision of the Personal Data Protection Law in order for any personal data collection to fulfil the principles of Committee of Ministers’ Recommendation (97) 18 concerning the protection of personal data collected and processed for statistical purposes as well as international standards on the protection of personal data.

Present situation

a) Positive developments

The Advisory Committee notes that the first population census in Montenegro since the country’s independence was conducted in April 2011. The Advisory Committee commends that the questionnaire used in the census was drafted in accordance with the pertinent EUROSAT recommendations. This questionnaire contained optional, open-ended questions on ethnicity, mother tongue and religion. In accordance with the adopted methodology for preparing, organising and conducting the census, respondents were not obliged to answer these three questions. The Advisory Committee notes that 4.87% of respondents chose not to answer the question on ethnicity, 3.99% of respondents did not answer the question on their mother tongue and 2.61% chose not to answer the question regarding their religious affiliation.

The Advisory Committee notes that the census results providing data on population disaggregated by nationality, religion and mother tongue, type of settlement per municipalities were published in July 2011, and that available data can be disaggregated further by age, gender and other criteria and cross-tabulated with economic and social indicators, depending on need.

It is also to be welcomed that the census forms and explanatory notes were available in minority languages, and that persons belonging to national minorities, including Roma, were trained and enlisted as census enumerators.

In 2010, the Personal Data Protection Agency was established in Montenegro as an independent monitoring mechanism in charge of supervision of personal data protection legislation and activities relating to personal data protection. Furthermore, the Advisory Committee is pleased to note that in July 2012, amendments to the Personal Data

Protection Law were adopted, with a view of harmonising it with the European Union's standards.

b) Outstanding issues

The Advisory Committee regrets that, according to the information provided by the representatives of national minorities, Minority Councils were not consulted at the planning stage of the census and had no opportunity to provide their insight on the questions of direct interest to persons belonging to national minorities and on the approaches to be used for collecting ethnic data.

Against a climate of tolerance and inclusiveness generally observed in Montenegro, it has to be noted that, in the period leading up to the census, there was a perceptible rise of tensions with protagonists of different ethnic identifications, most notably Montenegrins and Serbs, accusing each other of pressuring respondents to affiliate with a particular identity. Also, the Advisory Committee notes with regret that a number of billboards placed in the Kotor area, encouraging respondents to declare their Croat identity were vandalised with offensive symbols and inscriptions.

Finally and importantly, according to some representatives of national minorities, the census figures do not provide an accurate indication of the number of persons belonging to national minorities living in Montenegro. For example, according to estimates of some Croat minority representatives, the number of persons belonging to the Croat national minority could be considerably higher than the official figure, and the number of undeclared persons could be explained by intimidation and tensions in the period before and during the census. Given that the census figures pertaining to ethnicity tend to fluctuate, with the number of Roma more than doubling between 2003 and 2011, the Advisory Committee considers that the results of the census must be viewed with some caution. It therefore asks the authorities not to rely exclusively on the data collected during the census when planning and implementing its policy on national minorities.

Recommendations

The Advisory Committee asks the authorities to use cautiously the data collected during the census, and not to condition the exercise of any rights provided for in the Framework Convention exclusively on the results of the census of 2011. Policies affecting persons belonging to national minorities should be drafted taking into account evidence of real needs.

The Advisory Committee invites the authorities to consult persons belonging to national minorities on the formulation of the questions on ethnic affiliation and language spoken for future censuses.

24. Netherlands

Opinion adopted on 20 June 2013

Article 3 of the Framework Convention

Scope of application

Findings of the first cycle

In its first Opinion, the Advisory Committee found that the position taken by the authorities with regard to the personal scope of application of the Framework

Convention led in practice to the exclusion of certain groups, notably Roma and Sinti, and it invited the authorities to establish an institutionalised dialogue with the groups concerned. The Advisory Committee was concerned by the approach adopted by the Dutch authorities, which refers to the citizenship criterion and territoriality principle, limiting arbitrarily the possibility for other potential groups to benefit from the provisions of the Framework Convention.

Present situation

a) Positive developments

The Advisory Committee notes that the authorities have established ad hoc consultations with Roma and Sinti communities on the local level in the framework of the activities developed by the Platform for Roma-municipalities (see Article 6 below).

b) Outstanding issues

The Advisory Committee notes that according to the Declaration submitted by the Netherlands when ratifying the Framework Convention, only persons belonging to the Frisian minority are recognised as a national minority.

The Advisory Committee has been informed by the authorities that during their consultations with the representatives of the Roma and the Sinti, these groups did not raise the issue of being recognised as a national minority. The authorities maintain that there is a great diversity of opinion within Roma and Sinti communities on this specific issue and that the majority of persons belonging to these groups who chose to settle in the Netherlands in the 1960s, and were integrated into Dutch society, do not wish to be identified as a minority. Moreover, the authorities explained that they face difficulties in engaging in effective dialogue with Roma and Sinti communities due to the lack of organised structures for consultation. They underline that the majority of the existing organisations of Roma and Sinti consist of specific family groups which are not accepted by the community as a whole as representative interlocutors.

During its visit, the Advisory Committee met with some representatives of Roma and Sinti communities. The Advisory Committee observed that, although these communities did not consistently express the wish to be protected by the Framework Convention itself, they raise serious concerns about the unsatisfactory and insufficient dialogue between their communities and the authorities. The Advisory Committee takes note of their strong interest in the establishment of an institutionalised dialogue with the authorities in order to discuss important issues for their communities.

In light of the above, the Advisory Committee finds it regrettable that the groups who might be interested by the protection of the Framework Convention have not been adequately consulted on their possible inclusion. The Advisory Committee expects that due steps will be taken by the authorities to seek means of providing these groups with the opportunity to express their views if they were to request this protection in the future. These steps could include a possible article by article application of the Framework Convention to non-citizens or persons living outside their traditional settlement areas.

Recommendation

The Advisory Committee urges the authorities to adopt a more flexible approach towards the scope of application of the Framework Convention and a dialogue-based approach in their relations with persons belonging to groups who might in the future be

interested in the protection provided by the Framework Convention, including through efficient consultation mechanisms.

Data collection

Findings of the first cycle

In its first Opinion, the Advisory Committee observed that interest was expressed by Frisian representatives in collecting data on persons identifying themselves as Frisians and it invited the authorities to further discuss with those who are supportive of collecting such data.

Present situation

a) Positive developments

The Advisory Committee notes with interest that the Department of Frisian Language and Culture of the University of Groningen is currently collecting data on Frisian speakers as part of a research project on “Landscape of Languages”. The research aims to gather better knowledge about use of the Frisian language in the province in order to develop more awareness among the population about the importance of keeping this language alive.

b) Outstanding issues

The Advisory Committee notes that no census is carried out in the Netherlands and that the legislation does not permit data to be collected on ethnic origin, religious affiliation or sexual orientation. The only personal data available is recorded in the administrative population registers. However, the Advisory Committee observes that exceptions to this prohibition are possible if the person concerned has expressly granted consent and has disclosed the data personally. It notes that this is often the case for Frisian speakers within the context of policies specifically intended to reduce existing linguistic underachievement. Although some surveys on the use of the Frisian language are being organised by cultural associations at local level, these projects are insufficient to evaluate the progress achieved in the command of the Frisian language in the province. The Advisory Committee underlines the need to collect data for the design of appropriate policies and adoption of adequate measures for the group concerned and considers that additional resources are required to extend the existing initiatives widely in the municipalities of the province.

Recommendation

The Advisory Committee encourages the authorities to make use of data collection and evidence-based tools to design effective policies for persons belonging to the various ethnic groups living in the country, and to support existing local initiatives, in co-operation with the persons concerned, while at the same time fully complying with existing international standards for the protection of personal data.

25. Norway

Opinion adopted on 5 October 2006

Personal scope of application of the Framework Convention

Findings of the first cycle

In its first Opinion on Norway, the Advisory Committee noted the existence in Norway of ethnic and linguistic groups that the Government did not view as being covered by the

Framework Convention. The authorities were encouraged to consider, in consultation with those concerned, the possibility of covering persons belonging to these groups, including non-citizens as appropriate, in the application of the Framework Convention on an article-by-article basis.

Present situation

a) Positive developments

The Advisory Committee notes that there is a considerable number of persons of immigrant background in Norway, many of whom have lived in Norway for a long time, and is pleased to observe that, in practice, special measures are taken to protect them, even though these people are not, according to the Government, covered by the Framework Convention. Such measures have been taken, in particular in the fields of education, housing and employment, to facilitate the appropriate integration of these people in Norwegian society (see also the comments under Article 6 below).

The Advisory Committee notes with satisfaction that, at the follow-up seminar organised by Norway in May 2004, the authorities displayed an open approach to the possibility of including Roma recently arrived on Norwegian territory in the measures taken to apply the Framework Convention in respect of the Roma traditionally living in the country.

The Advisory Committee also welcomes the fact that the authorities have paid particular attention to the Romani/Tatars' concerns regarding the name used to refer to them and have tried to respond in an appropriate manner to their concerns. The authorities have therefore decided, when drafting the State Report, as well as more generally, to follow the decision taken by the Romani People Association of Norway, in spring 2005, to change its name and replace the term "Romani" with the term "Romani/Tatars". The Advisory Committee considers that the authorities should respect in all circumstances the choice of name made by the persons belonging to minorities and that appropriate steps should be taken to make the public aware of this choice.

b).Outstanding issues

Notwithstanding the openness shown by the Norwegian authorities and the measures taken by them on a practical level, the possibility of including persons belonging to other minority groups in the scope of application of the Framework Convention, in particular those recently settled in Norway, has not been examined and no dialogue has been initiated on the issue with those concerned.

Recommendation

The Advisory Committee encourages the authorities to maintain and further develop the practical measures of protection adopted in respect of persons belonging to new minorities, who are not included by the authorities in the personal scope of application of the Framework Convention. In addition, the authorities are encouraged to open a dialogue with the persons potentially concerned by the protection of this Convention, including non-citizens where appropriate, about their possible inclusion in the application of the Framework Convention, on an article-by-article basis.

26. Poland

Opinion adopted on 20 March 2009

Personal scope of application of the Framework Convention

Findings of the first cycle

In its first Opinion, the Advisory Committee noted that Poland, in a declaration deposited at the moment of ratification of the Framework Convention, stated that only citizens of Poland would be protected by the provisions of this Convention. It encouraged the authorities to consider the inclusion of persons belonging to other groups, including non-citizens, as appropriate, in the

application of the Convention on an article-by-article basis. It further reminded the Polish authorities that the implementation of the Framework Convention should not be a source of arbitrary or unjustified distinctions.

The Advisory Committee further urged the Polish authorities to continue their dialogue with the Silesians and to ensure that persons claiming to belong to the Silesian group are able to express their identity.

Present situation

a) Positive developments

The Act on National and Ethnic Minorities and on Regional Language of 6 January 2005 provides a definition of a national and ethnic minority in domestic legislation in Poland. The essential difference between the two concepts, according to the Act, is the existence of a “kin-nation” organised in its own State, which is a necessary attribute of a “national” minority as compared to an “ethnic” minority. The Act enumerates nine recognised national minorities (Armenians, Belarusians, Czechs, Germans, Jews, Lithuanians, Russians, Slovaks and Ukrainians) and four ethnic minorities (Karaim, Lemko, Roma and Tatars). The Advisory Committee takes note that, according to the State Report, all provisions of the Act extend to recognised national and ethnic minorities in equal measure.

While Kashubs are not considered to be an ethnic minority under the terms of the Act, they are identified as a group of Polish nationals speaking a regional language to whom some language and culture rights contained therein shall apply. The Advisory Committee considers this to be a positive development.

As regards the status of Silesians, who are seeking recognition as a minority group, the Advisory Committee is pleased to take note of the open attitude adopted by the Parliamentary National and Ethnic Minorities Committee, which has taken the initiative to organise an open hearing on their identity, linguistic aspirations and national identification. The Advisory Committee is particularly encouraged by the initiative proposed by some members of Parliament to introduce a private members’ bill amending current legislation with a view to recognising the Silesian language as a regional language in Poland.

b) Outstanding issues

The Advisory Committee acknowledges that the Contracting Parties have a margin of appreciation in determining the personal scope of application of the Framework Convention. It considers, however, that it is part of its duty to examine the personal scope of application given to the implementation of the Framework Convention in order to verify that no arbitrary or unjustified distinctions have been made.

The Advisory Committee notes that there are persons belonging to other groups in Poland that have expressed an interest in the protection of the Framework Convention. The Advisory Committee considers that, while citizenship may be a legitimate requirement in fields such as representation in Parliament, general application of this criterion nevertheless remains problematic in relation to the guarantees associated with other important fields covered by the Framework Convention, such as non-discrimination and equality, as well as certain cultural and linguistic rights.

The Advisory Committee has been informed by representatives of Silesians of their ongoing activities, aimed at the recognition of their language, culture and ultimately national identity. The Advisory Committee recalls that the ruling of the European Court of Human Rights which found no violation of the freedom of association by the refusal of the Polish authorities to register the “Union of People of Silesian Nationality” (*Związek Ludności Narodowości Śląskiej*) did not express an opinion on whether or not the Silesians are a national minority.

The Advisory Committee regrets that, in spite of the substantial number of persons declaring, in the last census, their Silesian nationality and their use of the Silesian language at home, the legislation adopted in 2005 does not address the issue of the Silesians as a national minority.

The Advisory Committee considers it regrettable that the authorities have not considered the matter since the first monitoring cycle.

Recommendations

The Advisory Committee considers that the authorities should favour a more flexible and open approach to the scope of application of the Framework Convention. It considers that it would be possible to examine, in consultation with those concerned, the possibility of including persons belonging to groups currently not afforded the protection offered by the Act on National and Ethnic Minorities and on Regional Language including non-citizens where appropriate, in the application of the Framework Convention, in particular as regards their linguistic and cultural interests.

In particular, the authorities are encouraged to open a dialogue with persons having expressed an interest in the protection afforded by the Convention, such as the Silesians, on the possibility of including them in the scope of application of the Framework Convention. At the same time, the authorities should adopt measures to support the preservation of the culture and identity of those concerned.

Data collection and self-identification

Findings of the first cycle

In its first Opinion on Poland, the Advisory Committee considered that the compulsory nature of the replies to the questions in the 2002 census on ethnic origin and on the language used at home were not compatible with the right not to be treated as a person belonging to a national minority. It also urged caution on the part of the authorities when interpreting the census figures due to allegations of irregularities in the conduct of the census and the reliability of its results.

Present situation

a) Positive developments

The Advisory Committee notes that a new population census is scheduled for 2011 in Poland, and that the authorities have already begun preparations for this. The Advisory Committee welcomes the information that the preparation for the census, in as much as it concerns national minorities, were discussed at a meeting of the Joint Commission of Government and National and Ethnic Minorities in September 2008. It is understood that among the questions will be an optional one on ethnic origin (nationality) and on the mother tongue or the language used at home.

b) Outstanding issues

The Advisory Committee notes that, notwithstanding the compulsory nature of the replies, when the previous census took place, approximately 2% of the interviewees did not give a reply to the question on their ethnic origin. The Advisory Committee emphasizes that, as it results from the principles set out in Article 3 of the Framework Convention, the decision on whether or not to reply is one to be appreciated solely by the persons being questioned. This being said, it wishes to emphasise that reliable information about the ethnic composition of the population is an essential condition for implementing effective policies and measures to protect minorities and for helping to preserve and assert their identity. It therefore considers it essential to prepare and inform the population correctly of the implications and methodology of the census, so that, when the next census is carried out in 2011, a maximum number of persons may give an informed and free reply to the questions relating to their ethnic origin and knowledge and/or use of minority languages.

Recommendations

During the preparatory phase for the next census, the authorities should continue to consult the representatives of minorities about the questions relating to a person's affiliation with a national minority and to his or her mother tongue.

The Advisory Committee encourages the authorities to take specific initiatives to include persons belonging to minorities, and persons speaking a minority or a regional language among the census officials. It also encourages the use of bilingual forms during the forthcoming census in the municipalities where a minority language enjoys a “supporting language” status.

The authorities should undertake awareness-raising activities among the persons belonging to national minorities well in advance of the next census, in co-operation with minority representatives. These activities should relate to the importance and usefulness of the collection of information about the ethnic composition of the population, as well as about the national safeguards and international standards for the protection of personal data. Ethnic data collection should be conducted in close co-operation with national minority representatives and with full respect for the safeguards, notably those related to the protection of personal data, the specific and limited use of such data by the authorities, and the free, informed and unambiguous consent of the persons concerned, as laid down in the Committee of Ministers Recommendation (97) 18 concerning the protection of personal data.

27. Portugal

Opinion adopted on 5 November 2009

Scope of application of the Framework Convention

Findings of the first cycle

In its first Opinion, the Advisory Committee took note that the concept of national minority does not exist in the Portuguese constitutional order, even though various ethnic, cultural and linguistic groups live in Portugal. However, it expressed the view that the non-recognition of the concept of national minority should not prevent the Portuguese authorities from considering extending the protection of the Framework Convention to persons belonging to ethnic, linguistic and cultural minorities in Portugal.

The Advisory Committee urged the authorities to engage in consultations with those potentially concerned by the protection of the Framework Convention, and in particular with the Roma, whose situation was likely to deserve particular attention in this respect.

Present situation

a) Positive developments

The Portuguese legal order does not encompass the concept of national minority. The Advisory Committee understands, however, that the authorities consider, in practice, that the Roma constitute a specific ethnic minority. Additionally, it welcomes the fact that the authorities have continued to implement specific policies to tackle the difficulties faced by these persons. These policies are in line with the principles contained in various articles of the Framework Convention. The Advisory Committee welcomes this pragmatic approach and recalls that the application of the Framework Convention does not necessarily require formal recognition as a national minority, a definition of this concept or the existence of a specific legal status for particular groups of persons. It was conceived as a pragmatic instrument, to be implemented in very diverse social, cultural and economic contexts and to adapt to evolving situations.

The Advisory Committee notes with interest that, as part of the European Year for Intercultural Dialogue, a reflexion was initiated in 2008 by the Portuguese Parliament on the situation of the Roma population, including on the relevance of granting them a specific status. The fact that the Roma form an ethnic minority with a specific identity and particular needs was put forward as a reason for recognising such a status, which should contribute to improving the efficiency of public policies and programmes aimed at tackling the inequalities and specific problems they face.

b) Outstanding issues

In the absence of a country visit, the Advisory Committee held discussions with a limited number of Roma representatives (and other non-governmental organisations) in the course of a meeting held in Strasbourg on 18 August 2009. The Roma representatives expressed an interest in the protection of the Framework Convention and regretted the absence in Portugal of a public debate on this issue. Nevertheless, the Advisory Committee was not able to consult a wider range of representatives of persons belonging to ethnic, linguistic or cultural groups potentially concerned or interested in the protection of the Framework Convention.

Recommendation

The Advisory Committee encourages the Portuguese authorities to disseminate information on the Framework Convention and engage in a dialogue with persons belonging to ethnic, cultural or linguistic groups potentially concerned or interested in the protection of the Convention. The authorities should also pursue further their pragmatic approach and continue to implement the principles of the Framework Convention in respect of persons belonging to ethnic or cultural minorities.

28. Romania

Opinion adopted on 24 November 2005

Scope of application of the Framework Convention

Findings of the first cycle

In its first Opinion on Romania, the Advisory Committee encouraged the authorities to consider the possibility of including other groups in the application of the Framework Convention, adopting, where appropriate, an article-by-article approach, and consulting those concerned. The authorities were encouraged in particular to involve representatives of the Csangos in their consideration of this matter.

Current situation

a) Positive developments

The Advisory Committee welcomes the fact that, as indicated in the State Report, the scope of the Framework Convention has been extended in Romania to cover two other groups of persons considered as national minorities - the Macedonians and the Ruthenians, now represented in Parliament and in the Council of National Minorities. The following 20 national minorities are represented in the Council of National Minorities: Albanians, Armenians, Bulgarians, Croats, Germans, Greeks, Hungarians, Italians, Jews, Poles, Roma, Russian-Lippovans, Serbs, Slovaks and Czechs (represented by a single organisation), Tatars, Turks, Ukrainians, Macedonians and Ruthenians.

Much discussion has recently taken place in Romania on the definition of “national minority” and the access to the protection afforded as a result of acquiring that status, particularly in the context of the debate on a Draft Law on the Status of National Minorities. Minorities hope that, with this law, a number of clarifications will be forthcoming, offering a suitable response to more recent socio-demographic trends and formalising in law the official approach in this field. The Advisory Committee believes that these are essential issues for framing a coherent and stable policy for the protection of minorities and notes that there is a consensus in the circles concerned on the need for greater clarity in this regard.

b) Outstanding issues

Nonetheless, the Advisory Committee notes that persons belonging to other groups, the Hungarian Csangos and the Aromanians in particular, have expressed an interest in the measures taken by the State to protect national minorities and therefore in the protection afforded by the Framework Convention. The Advisory Committee is under the impression that

even though discussion on these matters has taken place within the communities in question and in academic circles, there has only been limited dialogue between the authorities and the representatives of those concerned, and a clear official response is still awaited.

This primarily concerns the Hungarian Csangos, who informed the Advisory Committee of their wish to receive support from the State for their efforts to preserve their linguistic identity and their artistic, cultural and religious traditions. The Advisory Committee notes that there are diverging opinions within the Csango community, some of whom consider that while their religion (Catholic) differentiates them from the majority population, they are nevertheless not a separate ethnic group. The Advisory Committee takes note of the demand formulated by those within the Csango community who, considering themselves a distinct group, wish to benefit from State support in areas relevant to the preservation of their identity, including the use of their languages in the context of religious ceremonies. The authorities seem to privilege the view that Csangos form a separate religious group within the majority population but do not have a distinct ethnic identity. However, the Advisory Committee notes that, in practice, members of this community have for several years been able to study Hungarian in public schools and that the number of pupils concerned has increased (from 32 in 2001/2002 to 725 in 2005/2006).

The Advisory Committee also notes that in April 2005, an association of Aromanians officially asked the authorities to recognise them as a national minority. Diverging views have also been noted within this community as to the existence of a separate Aromanian language and identity, and therefore whether such recognition is necessary. A part of this community believe that the Aromanians use a dialect of Romanian and represent a sub-group of the Romanian people, which is also the approach adopted by the authorities. It is noted in this context that, in processing the results of the latest population census (held in March 2002), the National Institute for Statistics included those who identified themselves as Aromanians in the figures for Romanians (see also the observations in paragraph 38 below).

To date, Romania does not have a list of officially recognised national minorities nor a specific procedure for recognising ethnic communities as national minorities. Nonetheless, the groups taken into account and consulted by the Government in drawing up measures for the protection of minorities are those represented in the Council of National Minorities, a consultative body comprising representatives of citizens belonging to the national minorities represented in Parliament. At the same time, with regard to elections to the Chamber of Deputies and the Senate, “within the meaning of the present law, national minority is understood to mean an ethnic group represented in the Council of National Minorities”. This implies that in the absence of an official definition of “national minority”, over and above the data provided by the population census, the authorities, in order to treat a group as a national minority, take into account the results of parliamentary elections. As indicated above, the Advisory Committee welcomes the inclusion of two new groups in the scope of application of the Framework Convention following the parliamentary elections of 2000. At the same time, the Advisory Committee considers it problematic from the point of view of Article 3 of the Framework Convention that the results obtained in elections are treated as a decisive factor for confirming the existence of a national minority. The Advisory Committee believes it is essential to ensure that such a criterion does not lead to unjustified distinctions among groups potentially eligible for the protection afforded by the Framework Convention.

The Advisory Committee also notes that the Draft Law on the Status of National Minorities, as it stands on the date of the adoption of this Opinion, includes an exhaustive list of 20 communities, representing “in the spirit of this law, the national minorities living in Romania”, and a definition of “national minority”, including, among others, the criterion of citizenship.

The Advisory Committee believes that such an approach does not adequately reflect the spirit of openness and dialogue required in relation to Article 3 and other provisions of the Framework Convention, and it considers that a non-exhaustive list would be more in keeping with a dynamic and flexible understanding of the concept of national minority. The Advisory

Committee would therefore prefer a formulation that, rather than excluding certain potentially concerned groups altogether, would leave scope for the possibility that, in the future, additional groups would fall within the scope of domestic minority legislation as well as within the scope of application of the Framework Convention.

The Advisory Committee further considers that while citizenship is a legitimate requirement in areas such as representation in Parliament, the general application of this criterion nonetheless raises problems in relation to guarantees linked to other key areas covered by the Framework Convention, such as non-discrimination and equality, and certain cultural and linguistic rights.

Recommendations

The authorities are encouraged to consider the possibility of including in the application of the Framework Convention other persons having expressed an interest in the protection afforded by this Convention, in particular the Aromanians and the Hungarian Csangos, and to engage in a specific dialogue on this matter with those concerned. At the same time, they should pursue and develop existing measures of support for the preservation of the culture and identity of those concerned.

The authorities should also ensure that a flexible and open approach to the scope of application the Framework Convention is reflected in the Draft Law on the Status of National Minorities, in order to avoid arbitrary and unjustified exclusions and to maintain the possibility of the future inclusion of other groups, including non-nationals where appropriate, in the application of the Framework Convention.

Data collection

Findings of the first cycle

In its first Opinion on Romania, the Advisory Committee urged the authorities to consult and involve representatives of national minorities in the organisation of the next population census, particularly with regard to the content of the census forms and the options and wording of the question on ethnic origin.

In view of the wide discrepancy between the official statistics and the national minorities' own estimates of their number, the authorities were also encouraged to explore different ways of obtaining reliable statistics on the number of people belonging to minorities and on their situation in various fields.

Current situation

a) Positive developments

The Advisory Committee notes that during the last population census in March 2002, three open questions enabled respondents to express their ethnic origin, mother tongue and religion, and that the forms used had been discussed in advance with the Council of National Minorities. Accordingly, persons such as Italians or Csangos, who had not been listed as acknowledged ethnic groups in the previous census of 1992, now appeared as distinct groups in the census results. Similarly, the number of Roma who identified themselves as such increased from 401,087 in 1992 to 535,140 in 2002.

The Advisory Committee noted with interest the large amount of information, broken down according to many relevant criteria (age, sex, geographical distribution, or other) available at the National Institute for Statistics, on the situation of persons belonging to national minorities in areas such as housing, employment, health and education. It welcomes the readiness of the NSI to make this information available to other interested institutions and to carry out, where necessary, further and more targeted research.

b) Outstanding issues

While welcoming the fact that a larger number of Roma chose to declare themselves as such in the last census, the Advisory Committee notes that there are wide discrepancies in respect of the Roma between the statistics emerging from the census and other estimates, both official and non-official. These estimates place the number of Roma living in Romania much higher (between 1 and 2 million).

The State Report says that, in processing the data gathered in the population census, the NSI had included people belonging to a number of numerically smaller ethnic groups in the figures for related, numerically larger groups. In particular, this occurred in respect of the Aromanians, some of whom have officially asked to be recognised as a national minority. The Advisory Committee is unclear as to the criteria used for including them in the figures for larger groups and whether the people concerned were consulted on the matter.

Recommendations

The authorities are encouraged to attach greater attention to consulting representatives of the people concerned when processing data obtained from the census, relating to ethnic origin, for official publication.

When planning protection measures for the Roma, the authorities should take appropriate account of the wide discrepancies between the figures derived from the census and other estimates as to their number.

29. Russian Federation

Opinion adopted on 11 May 2006

Scope of application*Findings of the first cycle*

In its first Opinion, the Advisory Committee encouraged the Russian Federation to examine the possibility, in consultation with those concerned, of including additional groups in the application of normative acts pertaining to the implementation of the Framework Convention on an article-by-article basis.

Present situation

Outstanding issues

In the Comments of the Government of the Russian Federation on the first Opinion of the Advisory Committee, the federal authorities disagreed with the Advisory Committee's interpretation of the statement made by the Russian Federation in connection with the ratification of the Framework Convention. According to the federal authorities, this statement should not be read as extending the Framework Convention's scope of application to minorities that have arrived relatively recently to the Russian Federation and also to non-citizens belonging to these groups. The Advisory Committee is concerned about the implications which this position might have for the inclusive approach that the Russian Federation has so far maintained in its dialogue with the Advisory Committee.

The Advisory Committee notes in this connection that the Federal Law on National-Cultural Autonomy continues to restrict the right to set up and join a national-cultural autonomy to citizens of the Russian Federation. Moreover, the references to citizens contained in a number of provisions of the 1996 Concept of the State National Policy, noted with concern by the Advisory Committee in its first Opinion, are also still present in the new draft Concept currently being considered for adoption, although in most of its provisions, the new draft Concept refers to the Russian Federation's "peoples" (see also comments under Article 5).

Meanwhile, the Advisory Committee understands through its discussion with State Duma representatives that the State Duma working group, set up in 1994 to draft a new law on the

rights of persons belonging to minorities, is working on a definition of ‘national minority’ which would accommodate the specific characteristics of the Russian Federation, including its assymmetric federal structure. While recognising these particularities, notably the needs of indigenous peoples and the arrival of increasing numbers of persons from other former Soviet republics, the Committee finds it important that the resulting definition does not result in the *a priori* exclusion of specific groups from the protection of the Framework Convention, in particular non-citizens, numerically small indigenous peoples and groups with territorial formations of their own within the Russian Federation.

According to the 1999 Federal Law on Guaranteeing the Rights of Numerically Small Indigenous Peoples, only those groups that are smaller than 50,000 persons can enjoy the status of numerically small indigenous groups. The Advisory Committee recognises the need to establish specific criteria to determine which groups fall under the scope of application of legislation aimed at protecting the rights of numerically small indigenous peoples. Nevertheless, the Committee considers that a too strict application of the numerical criterion might result in a situation whereby certain groups that number slightly above this threshold, but otherwise share the characteristics of indigenous peoples, are arbitrarily excluded from the scope of the law and/or related positive measures.

Recommendations

The Advisory Committee once again urges the authorities of the Russian Federation to ensure that all existing and future normative acts pertaining to the protection of national minorities do not result in the *a priori* exclusion of specific groups from the scope of application of the Framework Convention.

The Advisory Committee encourages the authorities to ensure that the criteria contained in the Law on Guaranteeing the Rights of Numerically Small Indigenous Peoples are applied in a coherent manner and that no group is arbitrarily excluded from the scope of the law and/or related positive measures.

Collection of ethnicity data

Findings of the first cycle

In its first Opinion on the Russian Federation, the Advisory Committee encouraged the authorities to make the optional nature of the question pertaining to individuals’ “ethnic origin” in the 2002 census questionnaire clear to both the persons responsible for carrying out the census and to its participants.

The Committee also stressed the need to ensure the optional nature of ethnicity entries in any official documents pertaining to personal identification, including birth certificates.

Present situation

a) Positive developments

During the All-Russian Population Census of 9-16 October 2002, measures were taken to ensure that data concerning “ethnic origin” were collected in accordance with the principle reflected in Article 3 of the Framework Convention and Article 26 paragraph 1 of the Constitution of the Russian Federation, whereby every person has the right to be treated or not as a person belonging to a national minority. The optional nature of the question on “ethnic origin” was emphasised in both the training received by the census-takers and in the explanatory manual produced on the procedure for filling in the census questionnaire.

The same diligence characterised the manner in which the ethnicity data were subsequently processed. An automated system which ensured that the census respondents were not identifiable was used to process the data on the basis of an Alphabetical List of Nationalities and Ethnic Names, drawn up in consultation with representatives of national minorities. Privacy

safeguards were also used by the Russian Statistical Agency (*Goscomstat*) during the process of storing and later disposing of the census data.

The Advisory Committee welcomes the removal of the obligatory ethnicity entry from the new Russian Federation passports which have now replaced the old Soviet-era internal passports. The Advisory Committee also welcomes the optional nature of the possibility provided in the 1997 Federal Law on Acts of Civil Status to include information on “ethnic origin” in other personal identity documents, including marriage and divorce records and (with respect to the ethnicity of the parents) in birth certificates as well.

b) Outstanding issues

A federal law on basic identity documents is currently being considered by the State Duma. The Committee understands that the main stumbling block in discussions surrounding this bill is disagreement over the meaning of Article 26 of the Constitution, which provides for the right to freely indicate one’s ethnic affiliation. While some argue that this means that individuals should have the right to indicate their ethnicity on all basic identity documents, including passports, others argue that the intention of Article 26 is to limit such ethnicity entries as the principle of voluntary self-identification is best guaranteed by keeping ethnicity data confidential.

Recommendations

The Committee urges the authorities to ensure that the controversy regarding personal identity documents is resolved in a manner that conforms with the principles of Article 3 of the Framework Convention and that the optional nature of any ethnicity entries permitted in personal identity documents is made clear.

30. San Marino

Opinion adopted on 2 March 2006

Application of the Framework Convention

First-cycle findings

In its first Opinion, the Advisory Committee considered, in the absence of more specific information about the composition of the San Marinese population, that the authorities could, where appropriate, consider including in the scope of application of the Framework Convention, in consultation with the persons concerned and on an article-by-article basis, persons belonging to ethnic, linguistic or religious groups other than the majority.

Present situation

In their second State Report the San Marinese authorities have not provided any recent information on the composition of the San Marinese population. They have nevertheless stated that no substantive changes relevant to the protection of national minorities have occurred in San Marino since the first monitoring cycle of the Framework Convention and that coexistence of foreign workers with the local population is not presenting any particular problems.

The Advisory Committee notes that, this being the case, the authorities have not deemed it necessary to open a dialogue at national level concerning the application of the Framework Convention in San Marino.

Recommendations

In the light of the Framework Convention’s goals, the authorities should in future consider, where appropriate, the possibility of applying the Convention, on an article-by-article basis, to persons with ethnic, linguistic or religious characteristics different from the majority. In addition, they should provide more specific information on the composition of the population in their dialogue with the Advisory Committee.

31. Serbia

Opinion adopted on 19 March 2009

Personal scope of application

Findings of the first cycle

In its first Opinion, the Advisory Committee noted that the definition of the term national minority contained in Article 2 of the 2002 Law on the Protection of the Rights and Freedoms of National Minorities (hereinafter: Law on National Minorities) included a large number of groups. At the same time, the Advisory Committee noted that limiting the scope of the term national minorities to citizens may impact negatively on the protection of those persons, in particular the Roma and other persons whose citizenship status had not been confirmed. It therefore called on the authorities to reconsider this issue.

Present situation

a) Positive developments

The Advisory Committee notes the positive approach taken by Serbia to implement the provision of the Framework Convention to a large number of groups, including numerically small ones.

The Advisory Committee welcomes the fact that the Constitution of Serbia adopted on 30 September 2006 contains a specific Chapter on the Rights of Persons belonging to National Minorities (Articles 75 to 81), which includes general guarantees for persons belonging to national minorities, independently of their citizenship status.

The Advisory Committee notes that the authorities are preparing a law on legal personality which aims *inter alia* at regularizing the situation of those persons who are currently lacking personal documents. The Advisory Committee considers that measures to regularise the situation of those whose legal status is unclear is highly important in order to ensure that they are not faced with undue restrictions in the exercise of their human and minority rights.

b) Outstanding issues

The Advisory Committee regrets that the Serbian authorities have maintained the citizenship requirement in the general definition of national minorities in Article 2 of the Law on National Minorities. As already explained in the context of its first Opinion on the then Serbia and Montenegro, the Advisory Committee finds that such a citizenship requirement can only have a negative impact on those persons whose citizenship status, following the break-up of Yugoslavia and the conflict in Kosovo*, has not been clarified. This is particularly the case of the Roma who face difficulties in obtaining confirmation of their citizenship, notably due to a lack of personal documents.

In this context, the Advisory Committee wishes to recall that in its 2006 Report on Non-Citizens and Minority Rights, the Venice Commission highlighted that “the universal character of human rights, of which minority rights are part and parcel, does not exclude the legitimate existence of certain conditions placed on the access to *specific* (emphasis added) minority rights. Citizenship should therefore not be regarded as an element of the definition of the term “minority” but it is most appropriate for the States to regard it as a condition necessary to certain minority rights”.

Recommendations

The Advisory Committee invites the authorities to pursue a more flexible approach to the use of the citizenship criterion, as already reflected in the relevant provisions of the 2006 Constitution, by removing such a criterion from the general provision on the scope of application of the Law on National Minorities and limiting its use to those provisions for which it is relevant, such as electoral rights at national level.

The Advisory Committee calls on the authorities to regularise, as a matter of priority, the situation of those persons belonging to national minorities, especially the Roma, whose legal status remains unclear by swiftly adopting the necessary legal measures and by ensuring their full and effective implementation.

Respect for the specific identity of persons belonging to national minorities

Findings of the first cycle

Noting the existing debates in Serbia on the inter-relations between different identities, in particular the Vlach and Romanian identities and the Croatian and Bunyevtsi identities, the Advisory Committee encouraged the authorities to exclude all attempts to impose a specific identity on the persons concerned, in conformity with the principle of free self-identification contained in Article 3 of the Framework Convention.

Present situation

a) Positive developments

The Advisory Committee welcomes Serbia's explicit commitment, as expressed in the State Report, not to interfere in the debates over the ethnic affiliation of persons belonging to national minorities. In practice, the authorities enabled both the Romanians and the Vlachs as well as the Croats and the Bunyevtsi to form their own national councils (see also Article 15 below).

b) Outstanding issues

The Advisory Committee finds that there are still debates as to whether the Vlachs and the Romanians on the one hand and the Croats and the Bunyevtsi on the other hand have distinct identities. It further notes, as far as the Vlach and the Romanian identities are concerned, that these controversies are on-going inside and outside Serbia. Irrespective of the context, the Advisory Committee finds it essential that the right of every person belonging to a national minority to choose freely to be treated or not as such, is respected, in line with Article 3 of the Framework Convention.

Recommendation

The Advisory Committee encourages the Serbian authorities to continue to strictly abide by the principle of free self-identification contained in Article 3 of the Framework Convention.

Ethnic data protection

Findings of the first cycle

The Advisory Committee found that data on ethnicity is collected in various contexts and that it is important that the collection of data on individuals' affiliation with a particular minority is coupled with adequate legal safeguards.

Present situation

a) Positive developments

Serbia adopted a new Law on the Protection of Personal Data on 23 October 2008 which contains enhanced guarantees regarding the collection and the processing of personal data. The law explicitly provides that sensitive data which includes data on ethnicity, language and religion can only be collected on the basis of the voluntary consent of the person concerned. It also provides for the adoption of specific regulations for the processing of such data.

The Advisory Committee also notes that Serbia ratified the additional Protocol to the Council of Europe Convention for the Protection of Individuals with regard to Processing of Personal Data on 2 July 2008.

Preparations for the next population census planned in 2011 have started with the adoption of methodological guidelines for the carrying out of the census. The Advisory Committee notes with satisfaction, based on the information received from the authorities, that this population census will include a non-mandatory question of the ethnic, linguistic and religious affiliation of the persons and that translation of census forms is envisaged into the main languages of persons belonging to national minorities. The Advisory Committee further notes that the Serbian Statistical Office has recently recommended that census committees in multi-ethnic areas will include, as census-takers, persons belonging to those national minorities living in the area concerned. The Advisory Committee finds it important that this recommendation is adequately followed up in view of the issues raised by some minority representatives in connection with the last census (see below).

b) Outstanding issues

While it is positive that Serbia updated its legislation regarding personal data protection, the Advisory Committee notes that pending the establishment of a specific supervisory mechanism, the Commissioner for Access to Public Information was appointed to the position of Commissioner for the Protection of Personal Data foreseen in the law. The Advisory Committee further notes that this decision was not coupled with the allocation of any additional human resources to his office. The necessary regulations on the processing of personal data, as provided for in the law, have not yet been adopted.

The Advisory Committee notes that representatives of the Bunyevtsi complained that they were not involved in the carrying out of the 2002 census. Representatives of this minority also claim that there have been instances of census-takers registering persons belonging to the Bunyevtsi minority as Croats because the persons concerned had declared themselves as such in the previous census.

The Advisory Committee finds that the demographic composition of Serbia has been in a state of flux over the last decades and that the ethnic affiliation of persons belonging to national minorities may have been changed over time. In addition, there are great variations between the official figures relating to the number of persons belonging to the Roma minority and figures from other sources. Against this background, the Advisory Committee expects that the next population census planned in 2011 will be adequately used to obtain up-to-date and reliable information on the ethnic composition of the country. In particular, the Advisory Committee considers that it is important that the authorities raise the awareness of the general population about the importance of the census and that they undertake adequate consultations with representatives of national minorities during the preparation of the methodology and forms to be used. Finally, it is important that persons belonging to national minorities, and especially Roma, are included among the census-takers in order to increase the trust of national minorities in the census process.

Recommendations

The Advisory Committee calls on the Serbian authorities to take the necessary measures to implement fully the existing domestic legal guarantees regarding the collection and the processing of personal data. This includes the setting up of a specific supervisory body on personal data protection which should be independent and enjoy adequate resources both in terms of budget and human resources, to fulfil its tasks efficiently.

The Advisory Committee encourages Serbia to ensure that the forthcoming population census is carried out in a manner that duly respects the right to free self-identification as set out in Article 3 of the Framework Convention. The competent authorities should also ensure that representatives of national minorities are adequately involved at all stages of the population census.

32. Slovak Republic

Opinion adopted on 26 May 2005

Citizenship criterion

Findings of the first cycle

In its first Opinion on Slovakia, the Advisory Committee encouraged the authorities to include persons belonging to other groups in the scope of application of the Framework Convention on an article-by-article basis.

Present situation

Outstanding issues

The Advisory Committee notes that the Slovak legal order seems to limit the availability of rights and facilities to those persons belonging to national minorities who hold Slovak citizenship. The Advisory Committee agrees that a citizenship criterion can be a legitimate requirement in relation to certain measures taken in accordance with the principles of the Framework Convention. This can be the case, for example, as regards certain political rights available to persons belonging to national minorities. A generally applicable citizenship criterion is, however, problematic in relation to guarantees in many fields covered by the Framework Convention.

Citizenship can in particular hardly be seen as a reasonable criterion to authorise a person belonging to a national minority to make use of his or her language in official dealings. Although the Advisory Committee is not aware of cases in which the administrative authorities concerned have refused to communicate with a person in a minority language on the ground that that person is not a Slovak citizen, Article 2(3) of the 1999 Law on the Use of National Minority Languages is excessively restrictive in that it explicitly reserves this right to “citizens” of the Slovak Republic.

Similarly, the Advisory Committee is not aware of cases in which the educational authorities concerned would have refused to accept a pupil not holding the Slovak citizenship in a class held in his or her minority language. Article 34 of the Constitution and Article 3 of the Law on the System of Elementary and Secondary Schools, however, appear excessively restrictive in that they explicitly reserve this right to “citizens” of the Slovak Republic. These provisions would therefore deserve further attention by the authorities.

Recommendation

Consideration should be given to easing the current restriction of linguistic rights under the 1999 Law on the Use of National Minority Languages to Slovak citizens only. The same consideration should be given to easing the current restriction of the right to education in the mother tongue, under the Constitution and the Law on the System of Elementary and Secondary Schools, to Slovak citizens only.

Data collection

Findings of the first cycle

In its first Opinion on Slovakia, the Advisory Committee stressed the wide discrepancies between the official statistics of the Government and those of national minorities concerning the number of persons belonging to national minorities. In this context, the authorities were invited to find ways and means of encouraging persons belonging to national minorities to make use of the possibility to identify themselves as such in the context of the 2001 census.

The Advisory Committee urged the authorities to examine alleged administrative practices consisting of collecting personal ethnic data without the consent of the individuals concerned. In doing so, the authorities were invited to fully take into account, *inter alia*, the principle of personal data protection and respect the voluntary nature of such data collection.

Present situation

a) Positive developments

A general census of the population was carried out in 2001, the results of which have now been published. The Advisory Committee considers it positive that the said census contained questions, *inter alia*, on the mother tongue and the national affiliation of the respondents. These responses are considered personal data and therefore protected by Act No. 428/2002 Coll. On the Protection of Personal Data. It is also positive that the forms used were translated into minority languages, including in the Roma language, that Roma volunteers were recruited to encourage self-identification and that the Government supported an information campaign in minority languages, so as to raise awareness about the importance of the census.

The Advisory Committee welcomes the publication in 2004, by the Office of the Plenipotentiary for Roma Communities, of a demographic study on the Roma settlements in Slovakia (hereinafter: the Roma study). This comprehensive study gives a unique and detailed picture of the characteristics prevailing in most Roma settlements of Slovakia and is therefore instrumental to better understand and assess the needs of their inhabitants. The Roma study should therefore constitute an important tool of reference for the formulation and adaptation of governmental policies.

Reports indicating non-voluntary collection of personal ethnic data carried out without clear legal basis in, for example, the armed forces and governmental employment offices, have no longer been signalled to the Advisory Committee.

b) Outstanding issues

While the 2001 census produced quality data in a range of sectors and its results will be instrumental to design and implement current and future state policies for national minorities, it is at the same time important to continue to rely on additional data. Indeed census data does not always properly reflect the real situation: this is in particular the case as concerns the Roma, whose estimated number - including in the Roma study - is much higher than the 2001 census results suggest. The Advisory Committee considers that the allocation of state support for cultural initiatives and the activation of linguistic rights are two important areas where the need to take into account complementary data is crucial, as the over-reliance on census data in these sectors may be detrimental to the Roma (see related comments under articles 5 and 10 below).

Although the situation of minorities appears to be monitored fairly accurately through the collection of data in some areas, such as education, monitoring still seems to be largely insufficient in many other fields, such as access to employment and health care. The authorities need more precise data, broken down not only by minority, but also by gender and geographical area, as was the case in the Roma study, in order to ensure that policies and measures designed to help persons belonging to minorities are effective. In this respect, the Advisory Committee notes that the data protection legislation does not exclude further data collection, as evidenced by the methodology chosen and the guarantees given in the preparation of the Roma study.

Recommendation

Slovakia should seek to improve its evaluation of the practical effectiveness of measures taken to implement the Framework Convention through the collection of statistical data in different areas, such as access to medical care and employment or, in the absence of such data, by other means such as estimates based on *ad hoc* studies and special surveys. At the same time, it is essential to ensure that individual data and privacy are protected and that the individuals who provide information do so voluntarily and in full knowledge of how and what it will be used for.

33. Slovenia

Opinion adopted on 26 May 2005

Personal scope of application of the Framework Convention

Findings of the first cycle

In its first Opinion on Slovenia, the Advisory Committee encouraged the authorities to adopt a more inclusive approach to the personal scope of application of the Framework Convention and to consider the possibility of including persons belonging to other groups, in particular the German-speaking population and non-Slovenes from other parts of former Yugoslavia (SFRY), in the protection afforded by this Convention, on an article-by-article-basis.

In view of the legal and practical uncertainties raised by the concept of “autochthonous” character, used by some authorities to determine which persons belonging to the Roma community are covered by the Framework Convention, and the risks of arbitrary exclusion inherent in this concept, the authorities were also invited to review its relevance and the justification for retaining it.

Present situation

Outstanding issues

The Advisory Committee notes that, in accordance with the declaration deposited by Slovenia when it ratified the Framework Convention, the Government considers that the personal scope of application of the Framework Convention in Slovenia is still limited to persons belonging to three groups, namely the autochthonous Hungarian and Italian national communities and the Roma community. Article 64 of the Slovene Constitution specifically secures special rights to the autochthonous Hungarian and Italian national communities. Article 65 of the Slovene Constitution also guarantees the status and special rights of Slovenia’s Roma community, while stipulating that this status and these special rights shall be regulated by law. This approach is reflected, at the institutional level, in the definition of the sphere of competence of the Government Office of Nationalities, which deals only with issues concerning the three ethnic groups specifically mentioned in the Constitution.

According to the information available to the Advisory Committee, the “autochthonous” character of the population in question, closely bound up with the principle of territoriality, continues to represent a key element in the definition of the personal scope of application of the Framework Convention.

In the case of the Roma, the Advisory Committee notes that only those Roma considered “autochthonous” are included by the Slovene authorities in the scope of application of the Framework Convention, even though neither the Slovene Constitution nor the aforementioned declaration mention such a requirement in relation to them.

The Advisory Committee finds it regrettable that no progress has been made in this respect, and that the Slovene authorities have not considered the matter since the first monitoring cycle. It notes that, although legal uncertainty subsists with regard to the meaning of the term “autochthonous”, the distinction between “autochthonous” and “non-autochthonous” Roma communities is still present in the practice of most of the government bodies responsible for protecting national minorities.

The Advisory Committee considers this approach problematic in the light of the Framework Convention, and finds that it is likely to give rise to arbitrary exclusions and discriminatory practices in respect of certain persons potentially concerned by the specific policies and measures implemented under this convention.

The Advisory Committee recalls the presence in Slovenia of a significant number of former citizens of other republics of former Yugoslavia (SFRY) - of Albanian, Bosniac, Croatian, Macedonian, Montenegrin, Serbian and other ethnic origins - who do not enjoy a recognition or protection comparable to that afforded to the Hungarian and Italian minorities, or even to the Roma. It notes that most of these persons had already settled permanently in Slovenia before the country’s independence, and many of them now possess Slovene citizenship. The Advisory

Committee points out that these persons represent a significant proportion of the country's population, and that they are *de facto* in a minority position. Some of them constitute well-established communities, which the authorities acknowledge.

The Advisory Committee acknowledges that the Contracting Parties have a margin of appreciation in determining the personal scope of application of the Framework Convention. It considers, however, that it is part of its duty to examine the personal scope of application given to the implementation of the Framework Convention in order to verify that no arbitrary or unjustified distinctions have been made.

The Advisory Committee finds regrettable that the authorities have decided to address the situation of these persons as part of their policy on economic immigrants, despite their formal request to the Government that they be recognised as national minorities and, as such, be eligible to benefit from specific protection measures. It considers that the Slovene authorities ought to take into account the specific situation of these persons and be more receptive to their request. While acknowledging that sectorial dialogue has been opened, the Advisory Committee finds it particularly regrettable that no dialogue has been opened by the competent authorities on this particular issue with their representative associations.

The Advisory Committee also notes the long-standing presence in Slovenia of German-speaking persons, having identified themselves as German or Austrian in the last population census, who also remain outside the scope of application of the Framework Convention. This is also the case for a small group of people identifying themselves as Sinti, who expressly indicated that they wished to be treated by the authorities as a distinct ethnic group.

The authorities state that persons belonging to the aforementioned groups have access, in their attempts to preserve and develop their culture and identity, to project-based funding from the Ministry of Culture. They also point to Article 61 of the Constitution, which deals with the expression of national/ethnic affiliation, as the constitutional basis for the protection of such persons. It is true that this article guarantees everyone the right to express freely his or her affiliation with an ethnic group or community, and to foster and develop his or her culture and language. However, the Advisory Committee notes that this is a constitutional provision which remains very general in scope, and may prove insufficient when it comes to eligibility for specific protection measures aimed at maintaining and developing an identity, unless specific legislation is adopted to implement it in practice.

In view of the situation outlined in the preceding paragraphs, the Advisory Committee has serious doubts regarding the relevance and justification, for the purpose of the application of the Framework Convention, of the distinctions made in Slovenia between the various ethnic groups present within the country. It notes that these distinctions are based on insufficiently defined concepts - such as that of "autochthonous" - and do not take into account the specific situation linked to the dissolution of the former Yugoslavia (SFRY).

Like other national and international bodies that have looked into the matter, the Advisory Committee is of the opinion that the Slovene authorities should open a dialogue with those persons who have shown an interest in the protection of the Framework Convention and that they should adopt a more inclusive approach in order to better respond to the established reality on the ground, reflected *inter alia* in the results of the last population census. The Advisory Committee considers, in particular, that it would be possible to examine, in consultation with those concerned, the possibility of including persons belonging to other groups, including non-citizens where appropriate, in the personal scope of application of the Framework Convention.

Recommendations

The authorities are urged to open a dialogue regarding their approach, as stated in the declaration deposited when they ratified the Framework Convention, and to discuss, in this connection, the possibility of including other persons, including non-citizens where appropriate, in the scope of the relevant articles of the Framework Convention (see also comments below in relation to Articles 4, 5, 6 and 9).

At the same time, the authorities are urged to review their position as to the advisability of retaining the “autochthonous” criterion in connection with the application of the Framework Convention, in particular to the Roma, in order to avoid unjustified exclusions and differential treatment.

Collection of data

Present situation

a) Positive developments

The Advisory Committee notes that a general population census was held in Slovenia in 2002 and that its results indicate interesting tendencies as concerns the ethnic composition of the population. In particular, an increase can be noted in the numbers of persons belonging to certain groups, such as the Roma, the Germans and the Austrians. According to the authorities, this reflects the general climate of tolerance and intercultural understanding, favorable to the expression of ethnic affiliation.

b) Outstanding issues

At the same time, the Advisory Committee notes that the results of the last population census show a considerable reduction in the numbers of Hungarians and Italians. It notes, in particular, that the number of persons who identify themselves as Hungarians has diminished from 8,000 in 1991 to 6,243 in 2002 and that the number of persons who identify themselves as Italians has diminished from 2,959 in 1991 to 2,258 in 2002.

The Advisory Committee notes in this context that the authorities do not possess sufficient information on the situation of persons belonging to the various groups, in particular the Roma and the non-Slovenes from former Yugoslavia (SFRY), in various relevant sectors, such as employment, health etc. In addition to the numerical importance of different groups, reliable statistical data, differentiated by age, gender and geographical distribution, are essential when it comes to evaluating the situation of the persons concerned and adopting, where needed, special measures aimed at ensuring their full and effective equality.

Recommendations

The Advisory Committee encourages the authorities to open a dialogue on the results of the last population census with the representatives of the communities concerned, in order to better take into consideration these results and the tendencies shown by the census when devising their policies of protection of national minorities. They are in addition encouraged to conduct and support further research and studies on the possible reasons of these tendencies.

The authorities should also pay increased attention to the collection of information regarding the socio-economic situation of the persons belonging to various communities, in particular the Roma and the non-Slovenes from former Yugoslavia (SFRY). In co-operation with those concerned, they are encouraged to make use of estimations based on *ad hoc* studies, special studies or any other scientifically valid methods.

34. Spain

Opinion adopted on 22 February 2007

Scope of application

Findings of the first cycle

In its first Opinion, the Advisory Committee noted that, even though no groups are formally recognised as national minorities in Spain, the protection afforded under the Framework Convention is available to Roma.

Noting the long-standing presence of other linguistic and cultural groups on the territory of Spain, the Advisory Committee encouraged the authorities to examine more closely the question of the scope of application of the Framework Convention, in consultation with the groups potentially concerned.

Present situation

a) Positive developments

The Advisory Committee welcomes the fact that Spain views Roma as a group to be protected under the Framework Convention. In further dialogue with the Advisory Committee, the Spanish authorities appeared to express an open approach to the relevance of Article 6 of the Framework Convention in respect of persons belonging to other ethnic, cultural or linguistic groups living on the territory of Spain. In this context, the Advisory Committee welcomes the opportunity it had during the country visit to meet, in addition to Roma representatives, representatives of other groups, whose cultures, languages and traditions are different to those of the majority.

b) Outstanding issues

The Advisory Committee regrets that no consultations with potentially interested groups have been organised by Spanish authorities, nor has the question of extending the Framework Convention's scope of application been the subject of discussions within key Government departments.

Following information received from various sources, including members of the Spanish parliament, the Advisory Committee particularly regrets that such consultations have not been organised with Spain's population of Berber origin (of Muslim religion and Tamazight language). Traditional inhabitants of the Rif (an area also encompassing part of Morocco and Algeria), Berbers are estimated to form up to 50% of the population of the Spanish autonomous city of Melilla (located on the northern coast of Africa) and are present in much smaller proportions elsewhere. The Advisory Committee notes that, while the authorities of Melilla have begun to provide opportunities for students of Berber origin to learn their language in public primary schools, representatives of the Berber population have been calling for official recognition and further protection of their culture for several years.

The Advisory Committee regrets that very little information about the Framework Convention exists among groups living in Autonomous Communities with special linguistic status, whose culture, language and traditions are different to that of the majority of the Spanish population. The Advisory Committee notes that the languages of these groups are officially recognised and protected under the Spanish Constitution and statutory law, and also receive protection under the European Charter for Regional or Minority Languages. Whilst noting that the concept of "national minority" is not used by persons belonging to these groups and whilst recognising the Spanish Government's view that the Framework Convention is not applicable to them, the Advisory Committee regrets that discussions have not been held regarding the Framework Convention's potential relevance in respect of these groups, including in areas outside the territories where they are present traditionally or in substantial numbers.

Recommendations

Information about the Framework Convention should be made available to all potentially interested persons, and public authorities should consider organising consultations on the Framework Convention's scope of application also with groups other than Roma.

The Advisory Committee encourages the Spanish authorities to examine the possibility, in consultation with the persons concerned, of extending the Framework Convention's protection to the population of Berber origin and to additional groups, including non-citizens as appropriate, on an article-by-article basis.

35. Sweden*Opinion adopted on 8 November 2007***Personal scope of application***Findings of the first cycle*

In its first Opinion, the Advisory Committee encouraged Sweden to consider the inclusion of persons belonging to additional groups, where appropriate on an article-by-article-basis, in the application of the Framework Convention.

*Present situation***a) Positive developments**

The Advisory Committee notes the inclusive approach taken by Sweden to implement the provisions of the Framework Convention to persons belonging to the five minorities included in the declaration attached to the ratification of the Framework Convention, regardless of their citizenship.

The Advisory Committee notes that Sweden had dialogue with various groups that have indicated interest in being covered by the Framework Convention in addition to the five aforementioned minorities. Some governmental research has also been carried out in this area, including in relation to the potential use of the Framework Convention for the protection of sign languages.

b) Outstanding issues

The authorities have not included any additional groups in the protection of the Framework Convention and they provide only scant information on their position on the matter.

While welcoming the discussion on the introduction of specific references to national minorities in the Swedish Constitution, the Advisory Committee is of the opinion that such a reference should be formulated in a manner that does not exclude further development of the personal scope of application of the protection of national minorities.

Recommendation

The Advisory Committee encourages Sweden to pursue further its commendable inclusive approach with regard to the implementation of the Framework Convention. In this regard, the Advisory Committee notes that State Parties should promote mutual respect, understanding and cooperation among all who live in their territory. In Sweden, the application of the Framework Convention to the non-citizens belonging to the aforementioned minorities is enhancing a spirit of tolerance, intercultural dialogue and cooperation in the society.

Data collection*Present situation*

The Swedish authorities do not collect detailed statistical data on national minorities. While supporting the aim of protecting personal data, the Advisory Committee notes that this lack of information causes shortcomings in properly targeting minority policies. The Advisory Committee notes that while reservations about data collection exist within some of the national minorities need to be duly taken into account, there have been also strong calls for such data collection from persons belonging to national minorities, including by representatives of Swedish Finns. The Advisory Committee is convinced that the legitimate concerns about ensuring data protection can be reconciled with enhanced collection of data on national minorities. Possible pilot projects covering those national minorities largely supportive of such measures could be suitable first steps towards enhancing data collection. Data collection could focus on language use rather than ethnic affiliation *per se* of the persons concerned

Recommendation

The Swedish authorities are encouraged to adopt appropriate measures in order to collect reliable data on national minorities, while respecting international standards on the protection of personal data and taking into account of Article 3 of the Framework Convention.

36. Switzerland

Opinion adopted on 29 February 2008

Definition of the term “national minorities”

Findings of the first cycle

In its first Opinion, the Advisory Committee noted that the authorities had made a declaration upon ratification of the Framework Convention and welcomed that the principle of territoriality did not result in denying individuals living outside their traditional area of settlement their status of persons belonging to a minority. At the same time it encouraged the authorities not to interpret their declaration in a too rigid manner so as to better cater for the needs of *inter alia* Italian- and Romanche speakers who have left their areas of traditional settlement.

Present situation

a) Positive developments

As the Government pointed out in the State Report, the declaration includes an open-ended definition. This renders a dynamic process possible, which could include the protection of persons belonging to other groups provided they satisfy the criteria set out in the declaration. According to the authorities, this might be the case in the future for Swiss citizens belonging to certain religious communities.

Domestic case-law and reported practice suggest that permissions to receive primary education in a minority language, which is not the official language of the municipality where the pupil resides, have been granted more easily in recent years. This indicates that even though Switzerland continues to attach great importance to the traditional territorial distribution of languages, the principle of territoriality is being applied somewhat more pragmatically, at least on the language border in the cantons of Fribourg, Bern and Valais (see related comments under Articles 5 and 14, below).

b) Outstanding issues

Whilst the situation has improved on the language border for German- and French-speakers, the situation has largely remained unchanged for persons belonging to the Italian- and Romanche-speaking minorities who have left their traditional areas of settlement in the cantons of Ticino and Graubünden in order to take up opportunities for training or employment in large cities located in the North of the Alps, such as Zurich, Bern or Geneva. Possibilities to have teaching of Italian and Romanche in the public education system are still limited, even in large cities with a more significant Italian and/or Romanche-speaking population (see related comments under Article 14 below).

Recommendation

The authorities should pursue their efforts to meet the needs of persons belonging to linguistic minorities even outside their traditional areas of settlement. In this context, they are invited to pay increased attention to the situation of Italian- and Romanche-speakers who live in large cities, especially in the field of education.

Citizenship criterion

Findings of the first cycle

In its first Opinion, the Advisory Committee encouraged the authorities to consider the inclusion of persons belonging to other groups, including non-citizens as appropriate, in the application of the Framework Convention on an article-by-article basis.

Present situation

As the Government pointed out in the State Report, this has in fact been partially achieved in Switzerland. Mindful that the declaration remains very strict in that it literally excludes all foreigners from any protection, the Advisory Committee notes with satisfaction that the authorities accept that certain rights, such as those enshrined in Articles 8, 9(1) and 10(1) of the Framework Convention, are guaranteed as a minimum to non-citizens who are not regarded as belonging to national minorities within the meaning of the Swiss declaration.

The Advisory Committee welcomes the fact that, despite the explicit entrenchment of the citizenship criterion in the Swiss declaration, the competent Federal and cantonal authorities follow an inclusive approach in practice regarding efforts made to make an increasing number of stopping places and transit sites available to Travellers. It appears that a number of foreign Roma actually enjoy the use of these facilities and that the authorities do take into account their specific needs in this respect, which differ to a large extent from those of the Swiss Travellers (see related comments under Article 5, below).

Recommendations

The authorities could intensify their dialogue with persons belonging to groups which are not covered by the Swiss declaration. In this regard, the Advisory Committee notes that State Parties should promote mutual respect and understanding and co-operation among all persons living on their territory.

The authorities should continue to pursue an increasingly inclusive approach in legislation, policies and practices regarding the citizenship criterion, in particular when issues affecting Travellers are being addressed.

37. “The former Yugoslav Republic of Macedonia”

Opinion adopted on 23 February 2007

Personal scope of application of the Framework Convention

Findings of the first cycle

In its first Opinion, the Advisory Committee welcomed the authorities’ move towards a more flexible approach to the personal scope of application of the Framework Convention and thought that consideration might be given to including persons belonging to other groups, including non-citizens as appropriate, within the scope of the Framework Convention on an article-by-article basis.

The Advisory Committee also noted that the Egyptians had been dissatisfied with the authorities’ refusal to recognise their separate identity and wished to benefit from the protection of the Framework Convention. The authorities were encouraged to ensure that the identity of these persons was respected and to examine the possible inclusion of this group in the personal scope of application of the Framework Convention.

Present situation

a) Positive developments

The Advisory Committee notes with satisfaction that in “the former Yugoslav Republic of Macedonia” the personal scope of application of the Framework Convention has been extended

beyond the groups listed in the initial declaration made by the Macedonian authorities upon ratification of the Framework Convention, to cover persons belonging to the Bosniac minority. According to the revised declaration sent to the Council of Europe in June 2004, “[t]he term “national minorities” used in the Framework Convention and the provisions of the same Convention shall be applied to the citizens of the Republic of Macedonia who live within its borders and who are part of the Albanian people, Turkish people, Vlach people, Serbian people, Roma people and Bosniac people.”

The Advisory Committee noted with interest the discussions currently in progress, both domestically and in connection with bilateral cooperation, on the question of whether to include Croats in protection measures for national minorities further to their request. It welcomes the authorities’ open approach and urges them to continue these discussions in consultation with the representatives of those concerned.

b) Outstanding issues

During their dialog with the Advisory Committee, the Egyptians reaffirmed their wish to receive state funding to preserve their culture and be able to participate effectively in public affairs. According to the authorities, a dialogue has already started with their representatives, although the discussions have not really advanced concerning the community’s specific expectations and consequently there is no concrete progress to report on this score. The Advisory Committee notes, at the same time, that these persons are still considered by the authorities, as well as most of the population, to be Roma and therefore not constituting a distinct ethnic group. In addition, it seems that society’s attitude towards them has led to their marginalisation, which amongst other factors influences their self-perception.

The Advisory Committee notes with regret that, whilst the Government’s revised declaration has extended the scope of the Framework Convention to the Bosniacs, it has at the same time restricted it to persons holding citizenship of “the former Yugoslav Republic of Macedonia”. Such a step runs counter to efforts to develop a more nuanced approach to the use of citizenship criteria in minority protection.

Recommendations

The Advisory Committee urges the authorities to continue to display a flexible and dynamic approach to the personal scope of application of the Framework Convention. It encourages them to examine possible inclusion, within the scope of the Framework Convention, of persons belonging to other groups having shown an interest in the protection of this Convention. This should include non-citizens, as appropriate, on an article-by-article basis. In this connection, the authorities should review their recent decision to introduce a new citizenship criterion in the declaration.

The authorities should in particular continue their dialogue with the Egyptians in order to review with them the measures needed to preserve their identity and enable them to participate effectively in public affairs.

Data collection

Findings of the first cycle

In its first Opinion, the Advisory Committee underlined the importance of having reliable data on the ethnic composition of the population and noted that persons belonging to minorities in particular have disputed the results of the population census. The Advisory Committee therefore encouraged the authorities to consider supplementing this information with other statistical surveys, in keeping with the principles laid down in Committee of Ministers’ Recommendation No. (97) 18 concerning the protection of personal data collected and processed for statistical purposes.

Present situation

a) Positive developments

The Advisory Committee notes that the authorities possess a variety of data, differentiated according to criteria such as age, gender, geographical distribution etc., on the numbers and situation of persons belonging to the ethnic communities in different sectors, and that, in order to gather such data, sociological studies and surveys are conducted on a periodical basis.

b) Outstanding issues

The Advisory Committee notes that there are still divergent views on the results of the population census. The Advisory Committee considers that these results should be examined in connection with up-to-date information provided by the most recent demographical and sociological surveys, in order to ensure a pragmatic and flexible implementation of minority related policies in different sectors.

The Advisory Committee also notes that, in the context of the measures taken to implement the principle of equitable representation, the competent authorities are making extensive use of data related to the ethnic origin of individuals, which are regularly collected and made public. The Advisory Committee finds it essential that the authorities ensure, in this context, the optional nature of any questions relating to a person's ethnic origin and that the data collection and processing are fully in line with international norms governing the use and protection of private data.

Recommendation

The authorities in charge of collecting and processing data related to ethnic origin should pay due attention to the right of every person belonging to a national minority "freely to choose to be treated or not to be treated as such", enshrined in Article 3 of the Framework Convention, as well as to the principles enshrined in the Committee of Ministers' Recommendation No. (97) 18 concerning the protection of personal data collected and processed for statistical purposes. When planning policies and allocating resources, census data on the ethnic composition of the population should be supplemented by additional information provided by recent demographical and sociological surveys.

38. Ukraine

Opinion adopted on 30 May 2008

Personal scope of application of the Framework Convention*Findings of the first cycle*

In its first Opinion, the Advisory Committee noted that Ukraine had not established a list of national minorities and that the authorities seemed to consider that the 130 "nationalities" living in Ukraine were covered by the Framework Convention. It also noted that the authorities were using the term "ethno-graphic (sub-ethnic) groups of the Ukraine people" to describe *inter alia* Boikos, Hutsuls and Ruthenians (Rusyns), without however indicating whether these groups were protected by the Framework Convention.

The Advisory Committee also underlined that certain legislation pertaining to national minorities, notably the 1992 Law on National Minorities, only applied to citizens of Ukraine, a state of affairs which was likely to have a negative effect on certain groups such as the formerly deported peoples.

Present situation

a) Positive developments

The authorities have made it clear that they consider persons belonging to the 130 "nationalities" arising out of the census, protected by the Framework Convention. As a matter of

principle, the Advisory Committee welcomes this inclusive approach, provided the groups concerned enjoy effective protection as national minorities.

The Advisory Committee welcomes that the overwhelming majority of persons belonging to national minorities and especially to the formerly deported peoples are now Ukrainian citizens and thus benefit from all the rights provided for in the relevant legislation.

The State Report indicates that the authorities have approved a programme of action up until 2009 to promote the preservation and revival of the cultural heritage and national traditions of the Boikos, Hutsuls and Lemks, which are considered “ethno-graphic groups” by the authorities.

b) Outstanding issues

The Advisory Committee notes that the more than 130 “nationalities” that have emerged from the population census and previous classifications may include some confusion regarding the exact meaning of “nationality” as ethnic origin, or originating from a national geographical unit, or citizenship. In view of the inclusive approach taken by the Ukrainian authorities that all these groups are covered by the Framework Convention, the Advisory Committee calls attention to the important fact that the groups concerned are not just incidentally labelled as national minorities, but can also enjoy effective support including through positive measures if they express the wish to preserve, as a group, the essential elements of their identity.

The authorities have reaffirmed that ethno-graphic groups are not distinct from the Ukrainian “nation” and that, consequently, those claiming to belong to these groups could not be given protection under the Framework Convention. Although more than 10,000 persons declared themselves Ruthenians in the 2001 census, the authorities insist that their claims are essentially political in nature and at times linked with separatist claims. Against this background, the Advisory Committee reasserts that the authorities should take due account of the right to self-identification and acknowledge the right of people to voice their concerns in a peaceful manner, regardless of possible conflicting views on the classification of the group in question.

The Constitution of Ukraine and other key legislative provisions relevant to persons belonging to national minorities continue to refer to “citizens” as subjects of rights and freedoms (see related comments under Article 6, below). Article 26 of the Constitution provides, however, that foreigners and stateless persons who are in Ukraine on legal grounds enjoy the same rights and freedoms and also bear the same duties as citizens of Ukraine. The Advisory Committee expresses the wish that Article 26 is consistently applied in practice, so that the formal restriction of the rights to citizens only, has no impact on the implementation of the principles of the Framework Convention with respect to persons belonging to national minorities.

Recommendations

The Advisory Committee encourages Ukraine to pursue further its inclusive approach with regard to the implementation of the Framework Convention while taking care to ascertain the needs expressed by the national minorities concerned. In this regard, the Advisory Committee notes that State Parties should promote mutual respect and understanding and co-operation among all persons living on their territory.

The authorities should develop an improved dialogue with the Ruthenians and the so called “ethno-graphic (sub-ethnic) groups”, which could cover also issues pertaining to the implementation of the Framework Convention, with a view to better taking into account their cultural and other needs.

The Advisory Committee encourages the authorities to reflect their inclusive approach with regard to the scope of application of the Framework Convention in any new legislation on national minorities. The authorities are also invited to revisit in their on-going legislative work the systematic restriction of rights and freedoms to citizens only.

Data collection and self-identification

Findings of the first cycle

In its first Opinion, the Advisory Committee noted that the questionnaire on the basis of which the 2001 census had been conducted, contained a mandatory question on individuals' "nationality/ethnic origin" and recalled that answering such a question should be optional. It also noted that there had been extensive debate on the inter-relation between the Romanian and the Moldovan identities and stressed the need to approach this issue with full respect to the principles contained in Article 3 of the Framework Convention.

The Advisory Committee expressed deep concern at the collection of information on persons' ethnicity by law-enforcement officials without a clear legal basis and the consent of the persons concerned.

Present situation

a) Positive developments

A general census of the population was carried out in December 2001 and the findings have since been made public. The census results show that, in addition to the great majority of ethnic Russians, 14% of ethnic Ukrainians indicated that their mother tongue was Russian, as did a significant proportion of persons belonging to several national minorities. Amongst some ethnic Russians in Ukraine, there is a certain reluctance to accept as applicable to themselves the term "national minority" and Crimean Tatars see themselves mainly as an "indigenous people", but the Advisory Committee notes that this has not negatively affected the census results. Notwithstanding the discussion around their status, the Advisory Committee recalls that Crimean Tatars are entitled to claim protection of their rights under the Framework Convention. These factors need, however, to be taken into account when the authorities take measures to implement the Framework Convention, notably where language rights are at stake: indeed any measure affecting the Russian language in Ukraine has clearly wider implications than the protection of the language of the Russian national minority.

The Advisory Committee notes that the next population census, due to take place in 2011, is expected to include a question on the national/ethnic origin, which should be open, as well as a question on the mother tongue, although the formulation of the latter is expected to be changed as compared to the last census (see related comments under paragraphs 49, 52 and 53, below). The Advisory Committee is pleased to note that the State Committee for Statistics is ready to consider extending the list of minority languages into which the census forms could be translated, especially in rural areas where the local population has sometimes limited knowledge of Ukrainian. It is also positive that the State Committee for Statistics intends to recruit census enumerators with a good command of minority languages in the regions with a compact proportion of persons belonging to national minorities.

b) Outstanding issues

The Advisory Committee received information that the practice to collect "operational statistics" pertaining to criminal acts related to specific national minorities had not been completely abandoned, notably in the case of Roma who are allegedly still subject to fingerprinting and recording for data bases of criminal suspects without a clear legal basis and without their consent. The authorities have repeatedly stressed that no personal data of an ethnic nature is collected by law-enforcement officials and other authorities without the consent of the persons concerned.

The Advisory Committee notes that some controversy continues to exist in Ukraine on the relation between the Romanian and Moldovan identities, including disagreements among some representatives of the Moldovan and Romanian minorities. This controversy may be more acute in some regions than others. In the Chernivtsi *oblast*, however, information made available to the Advisory Committee suggests that no pressure was exercised at the local level to encourage

those concerned to affiliate with one minority or the other during the 2001 census. The central authorities have, on their part, repeatedly emphasised that due attention is taken to show no preference for one or the other identity claim, including in the context of the census.

With some notable exceptions, the census figures show a marked decrease, since the previous census (1989), in the number of persons declaring an ethnic origin other than that of the majority. While there may be various reasons explaining this decrease, it is important that the authorities endeavour to obtain a clearer picture of evolving demographic and other relevant trends concerning the number of persons belonging to national minorities, including at the regional level. The preparation of the 2011 census is of central importance in this respect, but selected surveys conducted by the State Committee on Statistics could also be instrumental, provided they include questions linked to the national/ethnic and linguistic affiliation and respect the principles of data protection, including the confidentiality of the respondent's information. To date, however, focused and ordinary surveys conducted have not included such questions. Additional statistical data on persons belonging to national minorities would also be welcomed by those representatives of national minorities who underline that there has been a lack of precise data in this field since the removal of the ethnic identity on personal documents.

A new Law on Census is due to be adopted in the near future. It should *inter alia* govern the questions posed as well as the modalities pertaining to the organisation of the 2011 census. While welcoming that the authorities have committed themselves to follow the principles and recommendations issued by EUROSTAT and the United Nations for the organisation of population and housing censuses, the Advisory Committee is concerned that the question on individuals' "nationality/ethnic origin" is expected to be mandatory. The Advisory Committee recalls that such a question should be optional to be fully compatible with Article 3 of the Framework Convention and the principles of voluntary self-identification. No question on religion is currently foreseen in the 2011 census, even though answers to such a question might give useful information also from the perspective of persons belonging to national minorities.

During its visit to Ukraine, the Advisory Committee was told that some local authorities were continuing to ask persons who change their residence to complete certain administrative forms with a mention of the ethnic belonging, without informing the persons concerned that such data can only be collected on a voluntary basis.

Recommendations

Ukraine should ensure that the practice to collect "operational statistics" pertaining to criminal acts related to specific national minorities is no longer followed.

The Advisory Committee encourages the authorities to conduct awareness-raising campaigns ahead of the 2011 population census to ensure free and informed choice by persons belonging to national minorities with regard to the declaration of their ethnic identity.

Minority representatives should be consulted on the questions regarding ethnic/national origin, language and possibly religion during the preparatory phase of the census and any question on ethnic/national origin should be optional and open-ended. The Advisory Committee also encourages the authorities to consider translating the census questionnaire into minority languages and to recruit enumerators with appropriate command of the respective minority languages.

Consideration should be given to conducting selected surveys which include questions linked to the national/ethnic or linguistic affiliation with full respect for the principles of data protection, including the confidentiality and the prior consent of the respondents. Ukraine should ensure that no ethnic data focusing on certain national minorities is collected by law-enforcement bodies without adequate legal safeguards and without respect for the voluntary identification by the persons concerned.

Ukraine should ensure that there are no attempts to indicate preference for one or the other identity on persons claiming to belong to the Moldovan minority and persons claiming to

belong to the Romanian minority. Ukraine should continue to recognise both identities concerned on an equal footing.

Legislative framework protecting national minorities

Findings of the first cycle

In its first Opinion, the Advisory Committee underlined that the existing legislation pertaining to national minorities contained some limitations and noted that there were plans to adopt new legislative provisions, including on languages.

Present situation

a) Positive developments

The Advisory Committee welcomes that according to Presidential Decree 39/2006 of 20 January 2006 on the Action Plan for the implementation of the obligations of Ukraine resulting from its membership of the Council of Europe, the need to adapt the national legislation in accordance with the relevant international legal instruments, including the Framework Convention, has been explicitly acknowledged. The State Report also expressed a commitment to take into account the findings of the first monitoring cycle and the recommendations issued by the Venice Commission when bringing the national legislation in line with relevant international standards.

A working group was established in April 2006 under the Ministry of Justice to start preparing a Draft Concept for State Ethnic Policy, with the participation of experts and some representatives of associations of national minorities. In March 2008, this Draft Concept was transmitted to the Cabinet of Ministers for consideration with a view to be adopted and subsequently transmitted to the Parliament. It is foreseen that following the adoption of the Draft Concept for State Ethnic Policy, amendments to the 1992 Law on National Minorities will be submitted by the Government to the Parliament for consideration and adoption. The Draft Concept contains a number of key principles which could help national minorities to preserve and develop their identity, as well as stimulate inter-ethnic dialogue and promote mutual respect among all components of the population of Ukraine.

Article 6 of the Draft Concept reiterates in particular the right to use minority languages in private and in public, including in relation with the authorities, which is positive. This right is, however, not unconditional and can be implemented only to the extent that this does not harm the further use and development of the State language. Provision is also made for a stronger coordination of the State policy in this field by an authority which remains to be determined. The Draft Concept also provides details on the means and funds which should make it possible to implement this State policy. A specific provision is devoted to the rights of formerly deported peoples and a commitment to design specific programmes to facilitate their socio-economic integration is included in the Draft Concept.

The Advisory Committee was also made aware that there have been attempts to develop a state language policy, including by the Presidency (see related comments under Article 10, below). In this context, the Advisory Committee wishes to recall that it is fully cognisant of the particular historical and other circumstances which led to a dramatic decrease of the use of the Ukrainian language prior to the independence of the country. The role of the Ukrainian language in the development of the Ukrainian national identity is therefore of particular importance in today's Ukraine. At the same time this objective needs to be balanced with the need to preserve the identity of persons belonging to national minorities.

b) Outstanding issues

There is a pressing need to update and complete the relevant legal and institutional framework concerning the protection of national minorities. It is outdated, lacks coherence and contains a number of shortcomings. A number of key laws, such as the 1992 Law on National Minorities and the 1989 Law on Languages no longer suit the reality of today's Ukraine. The inter-relation

between these two laws lacks clarity and the Advisory Committee already identified a number of related shortcomings in the first monitoring cycle (see comments under Article 10, below). Furthermore, there are some contradictory views as to the validity of certain provisions of these laws, which add to the current legal uncertainty. There is persisting confusion about the term “indigenous peoples” which is mentioned in Article 11 of the Constitution but it is neither defined nor regulated.

In spite of the generally recognised need to review the overall legal framework to bring it in line with the relevant international instruments, the corresponding reforms have been pending for quite a few years now and a number of different draft laws have in the meantime been presented to the Parliament, particularly on language issues. The resulting uncertainty on the direction of upcoming legislation and policy makes it particularly difficult, including for national minorities, to get a clear picture of the main principles which will underpin these reforms.

The Advisory Committee finds it particularly striking that efforts to promote and encourage a wider use of the State language in all fields of public life, including through the development of a Concept for the State language and the creation of a central state body to deal with national linguistic policy, do not seem to have been adequately coordinated with the preparation of the Draft Concept for State Ethnic Policy. Article 6 of the Draft Concept for State Ethnic Policy, which lists the main elements of the ethno-national policy to be developed by the State, could provide a useful basis to encourage a public debate with a view to striking the right balance between the promotion of the State language and the right to use minority languages in private and in public. The Advisory Committee understands that a wider public discussion is still due to start on this crucial question especially once the Parliament examines the Draft Concept. In the meantime, there have been isolated reforms, including in the field of education and media which have not been coordinated with the preparation of the Draft Concept and the ensuing planned reform of the Law on National Minorities (see related comments under Articles 9 and 10 below). The Advisory Committee is of the opinion that failure to proceed with sectoral reforms in accordance with a comprehensive and agreed vision can generate confusion and lack of ownership of the reforms among those concerned.

Recommendations

The Ukrainian authorities should accept the recommendation of the Ombudsman and facilitate a wider public debate on the Draft Concept for State Ethnic Policy in close co-operation with representatives of national minorities.

Legislative reforms regarding, in particular, the Law on National Minorities and the Law on Languages should be developed in a coherent way, without regressing from the existing level of protection and with full respect for the relevant international standards. In this context, the right balance must be struck between the legitimate aim to promote the use of the State language in various spheres of life and the necessity to provide for the use of minority languages in private and in public, as provided for by the Framework Convention.

39. United Kingdom

Opinion adopted on 6 June 2007

Scope of application

Findings of the first cycle

In its first Opinion, the Advisory Committee welcomed the United Kingdom’s approach to the scope of application of the Framework Convention, which has allowed a wide range of groups - including minority ethnic communities, the Scots, Irish and Welsh, Sikhs, Jews, Roma/Gypsies and Irish Travellers - to receive protection under the Convention. This was the result of the United Kingdom’s decision to base its first State Report on the definition of “racial group” as set out in the Race Relations Act 1976, namely: “a group of persons defined by colour, race, nationality (including citizenship) or ethnic or national origin”. The Advisory Committee also

noted that the Courts have the possibility of defining which groups amount to a “racial group” under the Race Relations Act 1976.

At the same time, the Advisory Committee noted that certain groups have not (or have not yet) been included in the definition of “racial group”, including Muslims and other religious groups (although, in many cases, the latter are also members of minority ethnic communities, which are covered by the Framework Convention), as well as the Cornish. The Advisory Committee therefore considered that there remained scope for covering further groups in the application of the Framework Convention and called on the authorities to examine this question in consultation with the persons concerned.

Present situation

a) Positive developments

The Government of the United Kingdom responded to representations made by a number of Cornish organisations and individuals by including the persons concerned in the consultations held prior to the preparation of the second State Report.

The Advisory Committee welcomes the pragmatic approach taken by the Scottish Executive, which identifies Gypsies/Travellers as a minority group with specific needs and requiring protection, both in their policies and in relation to the Framework Convention, in spite of the fact that Scottish Courts, unlike their equivalents in England and Wales, have not established that Scottish Gypsies/Travellers are a “racial group” for the purposes of the Race Relations Act 1976.

The Advisory Committee notes that, since the first monitoring cycle, the Government has extended other forms of protection to Muslims, Cornish individuals and Scottish Gypsies/Travellers notwithstanding their non-recognition as racial groups. In the case of the Cornish, in 2002, the United Kingdom recognised the Cornish language under Part II of the European Charter for Regional or Minority Languages. The measures of protection taken in respect of Muslims (and other religious groups) in Britain and Gypsies/Travellers in Scotland are described in Articles 4 and 5 below.

b) Outstanding issues

The Government of the United Kingdom maintains its position that the scope of the Framework Convention is confined to the protection of “racial groups” as defined in the Race Relations Act 1976, which in turn is a matter for the Courts to interpret. The Advisory Committee notes that there have been calls from different quarters in the United Kingdom, including from the Commission for Racial Equality, for the Government to take a broader approach to establishing which groups fall under the scope of application of the Framework Convention. The Advisory Committee considers that, while the “racial group” criterion, as interpreted by the Courts, has allowed a wide range of groups to benefit from protection under the Framework Convention, there is a risk that over-reliance on this criterion, without taking other considerations into account, may result in exclusions from the Framework Convention’s scope of application of groups that have legitimate claims to be covered.

The formal non-inclusion of Scottish Gypsies/Travellers appears particularly problematic from this perspective, including in view of the fact that Gypsies and Travellers living in England and Wales have been recognised as “racial groups” within the meaning of the Race Relations Act 1976, and therefore as falling under the Framework Convention’s scope of application. According to the information received by the Advisory Committee, Scottish Gypsies/Travellers have endeavoured, without success, to take cases of discrimination, on grounds of their ethnicity, to the Courts. The Equal Opportunities Commission of the Scottish Parliament has responded to this situation by requesting the Government of the United Kingdom to amend the Race Relations Act 1976 with a view to explicitly including Scotland’s Gypsy/Traveller community within the meaning of “racial group”.

The Advisory Committee notes that the Government of the United Kingdom has not accepted the representations made by Cornish organisations and individuals concerning the possible inclusion of the Cornish under the Framework Convention's scope of application. These representations, which began as the submission of information concerning the Celtic identity and the specific history, language and culture of the Cornish, have gained in magnitude over the years, culminating most recently in an application for judicial review concerning the Government's non-inclusion of the Cornish in the second State Report. The Advisory Committee considers that the "racial group" criterion, which requires a Court to determine liability in a claim of racial discrimination, appears to be too rigid to accommodate the situation of the Cornish, whose "separate identity and distinctiveness" is recognised by the Government of the United Kingdom in their second State Report.

Representatives of the Muslim population in the United Kingdom have also requested recognition and protection for Muslims as a minority group under the Framework Convention. The Advisory Committee notes that, as most Muslims in the United Kingdom are also members of minority ethnic communities, they are in practice already largely covered by the Framework Convention. Nevertheless, a percentage of Muslims are British converts to Islam, who are not covered by the Framework Convention, and many Muslims consider that their religious identity, rather than their ethnic identity, should be the basis for their inclusion. The Advisory Committee notes, in this context, that some members of the United Kingdom's parliament, as well as the Commission for Racial Equality, have questioned whether there is justification for interpreting the scope of the Framework Convention as confined to the protection of "racial groups", resulting in the exclusion of British Muslims, for example, but not of Jews and Sikhs.

Recommendations

The Government should consider supplementing its current criterion based on recognition as a "racial group" in case law with additional criteria to ensure that the Framework Convention is applied in a fair and consistent manner. This concerns in particular the situation of Scottish Gypsies/Travellers whose formal exclusion from the Framework Convention's scope of application appears problematic, particularly in view of the inclusion of Gypsies and Travellers living in England and Wales.

The Advisory Committee encourages the Government to consider this question also in relation to the Cornish, whose claims for recognition under the Framework Convention deserve further examination, in consultation with the persons concerned.

The Advisory Committee encourages the Government to launch consultations with representatives of the Muslim population in order to address their concerns regarding the Framework Convention's scope of application.

Census categories

Findings of the first cycle

In its first Opinion, the Advisory Committee noted that persons belonging to certain groups (including the Welsh, Cornish, Ulster-Scots and Roma/Gypsies) regretted not having the possibility to declare their affiliation with a particular group in the context of the 2001 census, even though the possibility of writing in an affiliation to an "other" group existed for certain census categories. The Advisory Committee called on the authorities to provide greater clarity, in the context of future censuses, on the possibilities for affiliating to other particular groups.

Present situation

a) Positive developments

The Advisory Committee is pleased to note that the ethnic identity questions to be included in the 2011 censuses are currently subject to review and consultations by each of the United Kingdom administrations. The wide-ranging nature of the consultations, which have included meetings with representatives of minority ethnic communities, and also with Cornish

organisations and individuals, are to be welcomed in view of the important role that census categories play not only in the collection of census data but also in the monitoring arrangements used by public authorities in order to meet their obligations under the Race Relations (Amendment) Act 2000 (see comments under Article 4 below).

The Advisory Committee understands that census test questions have been prepared and pilots are being organised in various parts of the country. The Advisory Committee welcomes the fact that, in each jurisdiction, the test questions include a pre-determined specific category for Gypsies and Travellers. This is an improvement on the 2001 censuses, where only Northern Ireland included a specific Traveller category.

The Advisory Committee also understands that the respective administrations are considering the inclusion in the 2011 census of a general question concerning language proficiency, in contrast to the 2001 census, which only queried persons' possible proficiency in Gaelic (for respondents in Scotland), Welsh (for respondents in Wales), and Irish (for respondents in Northern Ireland). The Advisory Committee considers that this will provide useful information for meeting the linguistic needs of minorities.

b) Outstanding issues

The Advisory Committee notes that concerns have been expressed that the proposed categories for the 2011 census would not capture the numbers of persons belonging to certain minority ethnic communities, including the increasing number of new migrants. Some local authorities are reportedly concerned that inadequate population estimates concerning these non-visible minority ethnic communities have led to insufficient central funds to meet service demands. The failure of the census to capture these communities may also contribute to the reported tendency of certain public authorities to view "race relations" as referring to established and "visible" minorities only, and not to new and often "White" migrants.

The Advisory Committee also notes that Cornish organisations and individuals have criticised the decision not to include a separate tick-box for Cornish in the census test question, which, in their view, prevents the Government from obtaining accurate data about the strength of Cornish identity.

Recommendations

The authorities should continue their inclusive approach also in the later stages of the census reviews taking place in each of the United Kingdom jurisdictions.

While recognising the limitations in terms of space and capacity to process information in the context of a census, the authorities are encouraged to identify ways of improving the scope and accuracy of data concerning non-visible minority ethnic communities, if necessary, by means other than a census, and to consider the proposals of other groups, including the Cornish.

Efforts are needed to raise awareness among public authorities on the relevance to new migrant communities of promoting good race relations.

Principle of free self-identification

Present situation

The Advisory Committee takes note of the duties placed on employers by Northern Ireland's fair employment legislation as regards work force monitoring (see also comments under Article 4 below). Under this legislation, employers are required to submit annually a monitoring return giving details of the "community background" of their employees, trainees and applicants, meaning their affiliation to the Protestant or Roman Catholic community in Northern Ireland. Whereas the principal method for collecting this data relies on the free self-identification of each employee, trainee or applicant, where the latter do not respond to a direct question on their "community background", employers are encouraged to make such a determination themselves based on written information supplied by the person concerned. Persons belonging to minority

ethnic groups are also subject to these monitoring requirements and have the option of indicating that they are not a member of either community.

The Advisory Committee notes that the data collected under the fair employment legislation remain anonymous and may be used purely for statistical purposes, in order to determine whether members of each community are enjoying fair participation in employment and, if not, to identify additional measures that could be adopted to secure fair participation. The Advisory Committee reminds the Government that restrictions on the right to free self-identification by persons belonging to national minorities are not consistent with Article 3 of the Framework Convention. However, the Advisory Committee considers that, in the specific context of Northern Ireland, and at this particular moment in time, the determination by employers of the community background of their employees, trainees and applicants may be relevant in order to secure the fair participation of under-represented groups.

Recommendations

The Government should regularly review the authorisation given to employers in Northern Ireland to make a determination of the “community background” of employees, trainees and applicants, when the latter do not provide this information, in order to ensure its continuing relevance to the objective of securing equality in the field of employment.