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Working document

Compilation of Opinions of the Advisory Committee relating to Article 3
of the Framework Convention for the Protection of National Minorities (3rd cycle)

"Article 3

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

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

Table of contents

1.	<i>Albania Opinion adopted on 23 November 2011</i>	4
2.	<i>Armenia Opinion adopted on 14 October 2010</i>	7
3.	<i>Austria Opinion adopted on 28 June 2011</i>	10
4.	<i>Azerbaijan Opinion adopted on 10 October 2012</i>	12
5.	<i>Bosnia and Herzegovina Opinion adopted on 7 March 2013</i>	14
6.	<i>Bulgaria Opinion adopted on 11 February 2014</i>	19
7.	<i>Croatia Opinion adopted on 27 May 2010</i>	23
8.	<i>Cyprus Opinion adopted on 19 March 2010</i>	26
9.	<i>Czech Republic Opinion adopted on 1 July 2011</i>	30
10.	<i>Denmark Opinion adopted on 31 March 2011</i>	32
11.	<i>Estonia Opinion adopted on 1 April 2011</i>	34
12.	<i>Finland Opinion adopted on 14 October 2010</i>	37
13.	<i>Germany Opinion adopted on 27 May 2010</i>	38
14.	<i>Hungary Opinion adopted on 18 March 2010</i>	40
15.	<i>Ireland Opinion adopted on 10 October 2012</i>	43
16.	<i>Italy Opinion adopted on 15 October 2010</i>	46
17.	<i>Kosovo* Opinion adopted on 6 March 2013</i>	51
18.	<i>Lithuania Opinion adopted on 28 November 2013</i>	53
19.	<i>Malta Opinion adopted on 11 October 2012</i>	56
20.	<i>Moldova Opinion adopted on 26 June 2009</i>	57
21.	<i>Norway Opinion adopted on 30 June 2011</i>	58
22.	<i>Poland Opinion adopted on 28 November 2013</i>	60
23.	<i>Portugal Opinion adopted on 4 December 2014</i>	63
24.	<i>Romania Opinion adopted on 21 March 2012</i>	64
25.	<i>Russian Federation Opinion adopted on 24 November 2011</i>	68
26.	<i>Serbia Opinion adopted on 28 November 2013</i>	70
27.	<i>Slovak Republic Opinion adopted on 28 May 2010</i>	75
28.	<i>Slovenia Opinion adopted on 31 March 2011</i>	77
29.	<i>Spain Opinion adopted on 22 March 2012</i>	79
30.	<i>Sweden Opinion adopted on 23 May 2012</i>	82
31.	<i>Switzerland Opinion adopted on 5 March 2013</i>	83
32.	<i>"the former Yugoslav Republic of Macedonia" Opinion adopted on 30 March 2011</i>	85
33.	<i>Ukraine Opinion adopted on 22 March 2012</i>	88
34.	<i>United Kingdom Opinion adopted on 30 June 2011</i>	90

As of 13 May 2016, the Advisory Committee on the Framework Convention for the Protection of National Minorities had adopted a total of 36 opinions, of which 34 opinions on Article 3.

* 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.

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 23 NOVEMBER 2011

Article 3 of the Framework Convention

Personal scope of application of the Framework Convention

Recommendation from the two previous cycles of monitoring

In the previous cycles of monitoring, the Advisory Committee considered that the authorities should step up their dialogue with representatives of the Bosniac community and with Egyptians, with a view to meeting their needs for protection and applying the provisions of the Framework Convention to them.

Present situation

The Advisory Committee notes that there has been no change since the 2nd monitoring cycle in the position of the Albanian authorities concerning the scope of application of the Framework Convention. The authorities recognise two concepts of "national" and "ethno-linguistic" minorities, and according to this view, the essential difference between the two concepts is the existence of a "kin-State", which is a necessary attribute of a "national" minority as compared to an "ethno-linguistic" minority. The Advisory Committee acknowledges the Albanian government's assertion that this differentiation does not result in any discriminatory treatment for either of the two groups.

As already acknowledged by the Advisory Committee in its previous Opinions, the authorities recognise as national minorities the Greek, Macedonian, Montenegrin and Serb national minorities. The Roma and the Aromanians/Vlachs are recognised as "ethno-linguistic" minorities. The requests of persons belonging to other groups, such as Egyptians and Bosniacs, who have expressed in the past their wish to be recognised as persons belonging to a national minority and to benefit from the protection of the Framework Convention, have not been examined by the Albanian authorities and their existence as distinct groups with specific identities has not been acknowledged.

The Advisory Committee notes in this context that the adoption of a comprehensive law on national minorities is planned within the framework of the implementation of the National Plan for the implementation of the 2006 Stabilisation and Association Agreement between Albania and the European Union. The Advisory Committee considers that the adoption of such a law would fill the existing gap in the legal and institutional framework pertaining to national minorities in Albania and would help to clarify Albania's policy towards its minorities in particular by establishing proper legal criteria required for recognition as a national minority.

Recommendations

The Advisory Committee urges the authorities to consider without further delay the adoption of a comprehensive law on national minorities to fill the existing gaps in legislative provisions and to clarify Albania's policy towards its minorities.

The Advisory Committee considers that the authorities, while taking into consideration both the subjective choice and the objective criteria relevant to a person's identity, should favour a more flexible and open approach to the scope of application of the Framework Convention. It requests the authorities to examine, in consultation with those concerned, the possibility of including persons claiming Bosniac and Egyptian identities, in the application of the Framework Convention, in particular as regards their linguistic and cultural interests.

The Advisory Committee also urges the authorities to review regularly the established criteria of eligibility for protection under the Framework Convention, as applied to requests from persons belonging to these groups, in order to ensure that these criteria do not have the effect of excluding people from the scope of application of this Convention in a way that is arbitrary or discriminatory, in particular as regards their linguistic and cultural interests.

Census and birth certificates

Recommendations from the two previous cycles of monitoring

In the previous cycles of monitoring, the Advisory Committee encouraged the authorities to include a question on ethnic belonging in the general census in 2011 and to ensure that the choices were explained by means of information campaigns.

The Advisory Committee also urged the authorities to take the necessary action to ensure that the practice of mandatory recording of people's ethnicity on their birth certificates was abolished.

Present situation

The Albanian Government decided in May 2011 to abolish the practice, carried over from the communist regime, of mandatory recording in birth certificates of the ethnicity of persons belonging to the Greek and Macedonian national minorities, based on the parents' birth certificates rather than on a free declaration by the persons concerned. This practice, which was restricted only to the Greek and Macedonian minorities and practiced only in the former "minority zones", constituted discrimination among persons belonging to different national minorities.

The ethnicity of persons belonging to the Vlach/Aromanian minority and to the Roma minority who, according to the terminology of the State Report, are defined as "ethno-linguistic" minorities, had not been recorded in birth certificates or otherwise by the authorities. This resulted in the impossibility for persons belonging to these minorities to exercise rights granted to the other ethnic groups, recognised as national minorities.

While welcoming the end of this practice, which raised issues of compatibility with the principles of Article 3 of the Framework Convention, the Advisory Committee notes that data on ethnicity contained in the civil registers have been used by the authorities to grant certain rights to persons belonging to national minorities, for instance to decide on opening classes in a minority language. The Advisory Committee is of the view that, in the absence of *ex-officio* recorded data on ethnic origin, the authorities must systematically review requests from persons belonging to national and “ethno-linguistic” minorities, based on a voluntary and free declaration of ethnicity and the principle of self-identification.

The Advisory Committee notes that there are no reliable statistics on the ethnic composition of Albania, since the question of ethnic affiliation has not been asked in any census since the end of the communist dictatorship in Albania. In this respect, the Advisory Committee recalls that already in its first Opinion, it noted the extremely wide variation in the estimated number of persons belonging to national minorities.

The Advisory Committee notes that a population census has recently been conducted in October 2011 in Albania. The Advisory Committee further notes that the questionnaire used in the census was drafted in accordance with the United Nations Economic Commission for Europe and the Statistical Office of the European Communities (EUROSTAT) Recommendations for 2010 Censuses of Population and Housing. This questionnaire contained, for the first time since the fall of the communist regime in Albania, optional open-ended questions on ethnic origin (nationality), and religion. The Advisory Committee is concerned that the available options did not allow the respondents to indicate more than one ethnic affiliation or more than one language as mother tongue, which is contrary to the Conference of European Statisticians Recommendations for the 2010 Censuses of Population and Housing.

The Advisory Committee notes with concern that the Law on the General Census of Population and Housing of 26 October 2000 was amended in July 2011 just three months before the census. National minority organisations in Albania have expressed concerns regarding the newly introduced Article 20 of this Law, which both introduced a 100.000 ALL (700 EUR) fine for incorrect replies to the questionnaire and determined that a reply would be considered incorrect if it did not correspond with data contained in the civil registry.

The Advisory Committee considers that the provision introducing a fine for an incorrect reply to the question on ethnic origin (nationality), in conjunction with the reliance on the data on civil registry, which (given the shortcoming and inaccuracies inherent in the system in existence until recently) cannot be considered to be reliable and accurate, raises issues of compatibility with the principles enshrined in Article 3 of the Framework Convention. In particular, persons belonging to the Greek and Macedonian minorities residing outside the former “minority zones”, whose ethnicity was not entered or was entered incorrectly in their birth certificates, and persons belonging to other minorities, in particular the “ethno-linguistic” ones whose ethnicity was never recorded, have not been granted the right to declare freely their ethnic origin.

The Advisory Committee considers that the mere threat of a fine constitutes an intimidating factor and gravely compromises the right to self-identification of persons belonging to national minorities. This view was confirmed by representatives of national minorities, who discussed this issue at length with the Advisory Committee. In this context, the Advisory Committee regrets to note that a number of organisations representing national minorities called for the boycott of the census. At the time of the adoption of this Opinion, the Advisory Committee is not in a position to ascertain how many persons refused to answer the question on ethnicity (nationality) and whether the threat of a fine influenced the persons who did answer this question. However, given the possibility of applying fines and the resulting calls for a boycott of the census, the Advisory Committee considers that the results of the census must be viewed with the utmost caution and calls on the authorities not to rely exclusively on the data on nationality collected during the census in determining its policy on national minorities.

The Advisory Committee considers that, given the controversies surrounding the census and its identified shortcomings, the authorities should systematically respect the principle of free self-identification, while taking into consideration both the subjective choice and the objective criteria relevant to a person's identity, when granting rights to persons belonging to national and "ethno-linguistic" minorities. This is particularly important as regards opening classes in a minority language, when deciding on the right to use a minority language in relations with administrative authorities and for displaying local names, street names and other topographical indications.

Recommendations

The Advisory Committee calls on the authorities to observe strictly the right to self-identification, while taking into consideration both the subjective choice and the objective criteria relevant to a person's identity, and to abstain from any pressure impacting on the free choice of the persons concerned. In particular, the Advisory Committee urges the authorities not to apply any fines on persons exercising their right to free self-identification.

The Advisory Committee encourages the authorities to process the census data in strict conformity with the principle of self-identification and with the recommendations of the Conference of European Statisticians, in order to ensure that reliable figures in respect of the ethnic composition of the population are collected.

The Advisory Committee encourages the authorities to adopt additional measures aimed at collecting reliable socio-economic data disaggregated by ethnicity (nationality), age, gender and geographical distribution, 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 on personal data protection.

The Advisory Committee calls on the authorities not to condition the exercise of any rights provided for in the Framework Convention on the results of the census of 2011.

2. ARMENIA

OPINION ADOPTED ON 14 OCTOBER 2010

Article 3 of the Framework Convention

Personal scope of application of the Framework Convention

Recommendations from the two previous cycles of monitoring

In the previous cycles of monitoring, the Advisory Committee encouraged 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.

Present situation

The Advisory Committee notes with satisfaction that there has been no change since the second monitoring cycle in the inclusive approach taken by the authorities of Armenia concerning the scope of application of the Framework Convention. The authorities continue to show an open approach and co-operate with all national minority communities irrespective of their involvement in the Coordinating Council.

The Advisory Committee finds that there are still debates among some representatives of the Kurds and the Yezidi as to whether they have distinct national identities or are rather a part of the same national group with distinct religious identities. In this connection, the Advisory Committee finds it essential to reiterate that the right of every person belonging to a national minority to choose freely to be treated or not as such, must be respected, in line with Article 3 of the Framework Convention.

The Advisory Committee notes however with concern that persons belonging to the national minorities which are not represented in the Coordinating Council do not benefit on an equal footing with those minorities which are represented, from the opportunities afforded to larger minorities. This is particularly pertinent as far as the consultation process and allocation of funds are concerned.

Recommendations

The Advisory Committee encourages the authorities to maintain an inclusive approach in the scope of application of the Framework Convention.

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

The Advisory Committee invites the authorities to maintain the possibility for persons belonging to other groups, including non-citizens where appropriate, on an article-by-article basis to be included in the application of the Framework Convention.

The draft Law on National Minorities

Recommendations from the two previous cycles of monitoring

In the previous cycles of monitoring, the Advisory Committee encouraged the authorities to pursue consultations on the draft Law on Minorities with the representatives of national minorities and to ensure compliance of such legislation with international standards in the field of minority protection.

Present situation

The Advisory Committee notes that according to an overwhelming consensus among persons belonging to national minorities in Armenia, there is no need for the adoption of a law on national minorities in Armenia. The interlocutors of the Advisory Committee consider that such a law would create more problems than it would solve, and that the current sectoral legislative and administrative arrangements (for example in the fields of education, culture and media) are satisfactory.

Recommendations

The Advisory Committee encourages the authorities to continue the dialogue with representatives of national minorities on the most suitable way of guaranteeing effectively to persons belonging to national minorities the enjoyment of the protection of the Framework Convention.

The Advisory Committee urges the authorities to ensure that persons belonging to national minorities have access to full information about their rights under the provisions of the Framework Convention, where possible in their own language.

Data collection and self-identification

Recommendations from the two previous cycles of monitoring

In the previous cycles of monitoring, the Advisory Committee welcomed the application of the principle of self-identification of persons belonging to national minorities.

Present situation

The Advisory Committee notes that a new population census is planned for 2011 and that the authorities have already begun preparations for this.

The Advisory Committee notes however with regret the fact that the representatives of the national minorities have not been consulted either on the wording of the questions or on the selected methodology of the questionnaire. The Advisory Committee is further concerned that according to the information obtained from the National Statistical Service the answers to questions on nationality/ethnicity, language and religion are mandatory and the questions themselves not open-ended.

The Advisory Committee wishes to recall that census questions relating to nationality/ethnicity and language (and religion) must be optional and open-ended as stipulated in the Recommendations for 2010 Censuses of Population and Housing by the

United Nations Economic Commission for Europe (UN ECE) and the Statistical Office of the European Communities (Eurostat). The Advisory Committee wishes to emphasise that the questionnaire should also include the possibility for multiple identity affiliations (e.g. for children of mixed marriages) – in order for the census results to reflect effectively each individual's choice.

The Advisory Committee wishes to emphasise that the questionnaire, in its present form, does not afford to persons belonging to national minorities the freedom to choose to be treated or not to be treated as such and is thus contrary to Article 3 of the Framework Convention. Moreover, it is not in line with the Recommendations of the UN ECE and the Eurostat cited above.

Recommendations

The Advisory Committee calls on the authorities to review, in consultation with the representatives of national minorities, the current wording of the questions relating to a person's affiliation with a national minority and to his or her minority language or the selected methodology of the questionnaire.

The Advisory Committee calls on the authorities to take specific measures to include persons belonging to national minorities, and persons speaking a minority language, among the census officials. It also encourages the translation of the census questionnaires into minority languages.

The authorities should undertake awareness-raising activities among persons belonging to national minorities well in advance of the next census, particularly via the media and in co-operation with minority representatives. These activities should underline 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.

3. AUSTRIA

OPINION ADOPTED ON 28 JUNE 2011

Article 3 of the Framework Convention

Scope of application of the Framework Convention

Recommendations from the two previous cycles of monitoring

In the previous monitoring cycles, the Advisory Committee encouraged the Austrian authorities to explore ways of ensuring an inclusive and consistent application of the rights of persons belonging to national minorities, including those living outside the traditional

settlement areas. It further invited them to continue to examine the claims for recognition of persons belonging to groups that are not covered by the Law on Ethnic Groups of 1976 and to consider the possibility of extending the protection of the Framework Convention to such groups, including where appropriate on an article-by-article basis.

Present situation

The Austrian authorities continue to apply the Framework Convention in line with the Declaration deposited by Austria upon its ratification. While the authorities continue to fund projects that benefit persons belonging to national minorities outside their traditional area of settlement as well as, in the case of Roma, persons without citizenship, the Advisory Committee regrets that there has been no general development towards a more consistent application of national minority rights throughout Austria. As regards access to minority language education, for instance, persons belonging to national minorities who move away from their traditional area of settlement lose their guarantees. Since this situation affects a significant part of the national minority population today, it has a crucial negative impact on their ability to maintain their language and culture (see further comments on Article 14).

The Advisory Committee notes several initiatives aimed at amending the Law on Ethnic Groups in order to provide for a more inclusive and consistent application of the rights enshrined in the Framework Convention throughout Austria. Independent experts as well as minority representatives had provided their views on how to standardise the varying levels of protection for all national minority groups in line with Article 7 of the State Treaty of Vienna. In June 2011, however, a new proposal for amendments to the Law on Ethnic Groups was swiftly approved by the Council of Ministers and is expected to be adopted by Parliament before Summer. The Advisory Committee notes with concern that despite the fact that the amendments, if adopted, will have a considerable impact on the enjoyment of rights of persons belonging to national minorities in Austria, consultations with national minority representatives were not comprehensive as, for instance, Croat and Hungarian minority representatives from Burgenland were not included (see further comments on Article 15).

The Advisory Committee further notes that representatives of the Polish community continue to seek their recognition as an ethnic group in line with the Law on Ethnic Groups. Their initial request of 1996 was rejected by the Federal Chancellery in 2001 with reference to an academic research that denied continuous residence of the Polish community in Austria and concluded from the available statistics that a majority of members of the Polish community were in fact not Austrian citizens but Polish immigrants. Polish representatives contest that their community has been active in Vienna since 1894, which is well-documented, and that census results between 1923 and 2001 show a continuous presence of Austrian citizens with Polish as their main language. The Advisory Committee stresses that the Austrian authorities should take a more flexible approach and engage in a constructive dialogue with Polish representatives rather than limiting their consideration of the request for recognition to the analysis of statistics which are frequently incomplete and, therefore, favour a narrow interpretation.

Recommendations

The Advisory Committee urges the Austrian authorities to consider, in close consultation with minority representatives, comprehensive amendments to the Law on Ethnic Groups and relevant constitutional provisions in order to ensure a more consistent and inclusive application of minority rights in Austria. Appropriate resources must be made available to guarantee the adequate implementation of comprehensive minority protection legislation.

The Advisory Committee further calls upon the Austrian authorities to enter into a constructive dialogue with the Polish representatives to review their request for recognition as an ethnic group while taking into account all relevant aspects, including but not limited to statistics.

4. AZERBAIJAN

OPINION ADOPTED ON 10 OCTOBER 2012

Article 3 of the Framework Convention

Scope of application of the Framework Convention

Recommendations from the two previous cycles of monitoring

In the previous monitoring cycles, the Advisory Committee encouraged the authorities to maintain their inclusive approach with regard to the scope of application of the Framework Convention, among others by reflecting it in any new legislation pertaining to national minorities that was being drafted. In addition, it noted that consultations should be held with representatives of other relevant groups with a view to considering their inclusion in the Framework Convention's scope of application.

Present situation

The Advisory Committee notes no changes in the overall inclusive approach of the authorities towards the scope of application of the Framework Convention. In practice, the Advisory Committee is unaware of any requests by the small number of persons belonging to Roma communities living among others in the Baku and Khachmaz areas, as well as in the border region with Georgia, to be protected under the Framework Convention. It was, however, informed that numerically small communities have faced difficulties when attempting to register national minority cultural organisations, which effectively limits their ability to benefit from the protection afforded by the Framework Convention. While persons belonging to national minorities are thus reportedly free to identify as such, this identification, even if officially recognised, appears not to automatically grant them access to rights under the Framework Convention (see comments hereafter and in Article 7 below).

Recommendation

The Advisory Committee encourages the authorities to pursue their inclusive approach and to ensure that all persons who may benefit from inclusion into the scope of application of the

Framework Convention are made aware of this possibility and are effectively granted access to protection under the Framework Convention in line with its Article 3.

Census questionnaires and the right of self-identification

Recommendations from the two previous cycles of monitoring

In the previous monitoring cycles, the Advisory Committee reminded the authorities that all questions related to an individual's ethnic and national origin in the census should be optional and that the choice not to answer the question should not result in a count as member of the majority population. It underlined that in the preparations for the census of 2009, minority representatives should be comprehensively consulted and informed of their rights, including through the use of questionnaires in minority languages.

Present situation

The Advisory Committee is pleased to note that the census of 2009 appears overall to have been prepared and conducted in line with international standards, notably those prepared by the Eurostat office. Enumerators were reportedly trained to inform respondents of the voluntary nature of any questions related to ethnic background as well as of the principle of free self-identification. Minority representatives confirmed during the visit that they had been encouraged during the 2009 census to freely indicate their ethnic background and numerically smaller minorities, such as Qriz, Khinalig and Budug, indeed registered for the first time as a separate ethnic group.

At the same time, the Advisory Committee was surprised to learn that only 306 persons indicated an ethnic Armenian origin in the 2009 census, particularly considering the regularly cited official estimate that some 30,000 ethnic Armenian citizens of Azerbaijan live in the territory outside the Nagorno Karabakh region. This raises obvious questions as to why only one per cent of this group feel inclined to indicate their ethnic background in line with the right to free self-identification contained in Article 3 of the Framework Convention, or whether, indeed, the group is smaller than estimated.

Recommendation

The Advisory Committee encourages the authorities to continue their active co-operation with Eurostat and to ensure that all persons belonging to national minorities are aware of their right to freely self-identify and encouraged to make use of it, in line with Article 3 of the Framework Convention.

5. BOSNIA AND HERZEGOVINA
OPINION ADOPTED ON 7 MARCH 2013

Article 3 of the Framework Convention

Scope of application

Recommendations from the two previous cycles of monitoring

In its previous monitoring cycles, the Advisory Committee invited the authorities to pursue a flexible approach with regard to the scope of application of the Framework Convention and to consider, as appropriate, its application to groups other than those recognised in the State Law on National Minorities. It also called on the authorities to address as a priority the problems faced by those Roma and other persons belonging to national minorities whose legal status remained uncertain.

Present situation

The Advisory Committee notes that according to the State Law on National Minorities, the scope of the term “national minorities” is limited to citizens, a limitation reinforced by the similar wording used in the relevant laws of the Entities. Moreover, while the list of 17 national minorities expressly recognised in the State Law is open-ended, the recognition of persons as belonging to any possible further national minorities is conditional on their fulfilling the same criteria as the minorities already recognised, including having citizenship.

The Advisory Committee again draws attention to the fact that conflicts in the region and their aftermath have left many persons without a clear legal status, and that this situation affects Roma in particular. While progress has been made in remedying the lack of personal documents of many Roma (see further below under Article 4), this issue has not been fully resolved and has in turn created difficulties regarding the confirmation of their citizenship. The Advisory Committee considers that the authorities should take these difficulties into account when considering the personal scope of application of minority rights in Bosnia and Herzegovina and should especially ensure that Roma whose citizenship has not been confirmed are not excluded from benefitting from the protection provided by the Framework Convention.

Recommendation

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

Persons belonging to the constituent peoples in a minority situation

Recommendations from the two previous cycles of monitoring

In previous monitoring cycles, the Advisory Committee invited Bosnia and Herzegovina to consider, in consultation with those concerned, giving persons belonging to constituent peoples in a minority situation the possibility of relying on the protection of the Framework Convention, as an additional tool to respond to specific needs.

Present situation

The Advisory Committee notes that persons belonging to constituent peoples who live in areas where they do not belong to the majority continue to experience discrimination in daily life, including in access to employment and pension rights. While the entry into force of comprehensive anti-discrimination legislation is welcome (see below, Article 4), this alone will not suffice to remedy entrenched and wide-ranging discrimination against persons in this situation. The Advisory Committee notes that extending the protection of the Framework Convention to persons belonging to constituent peoples in a minority situation, on a case-by-case basis, could provide an additional tool for addressing the issues faced by these persons without this implying a weakening of their status as constituent peoples, and may as such be of interest to persons in this situation. It furthermore emphasises that such an approach would be fully in line with the provisions of the Framework Convention.

Recommendation

The Advisory Committee encourages the authorities to consider, in close consultation with those concerned, extending the application of the Framework Convention to persons belonging to constituent peoples in a minority situation. It observes that this approach could be examined on a case-by-case basis.

National minorities in the State and Entity Constitutions

Recommendation from the two previous cycles of monitoring

In its previous monitoring cycles, the Advisory Committee invited the authorities to consider introducing more adequate terminology to refer to national minorities at the constitutional level, drawing on the terminology used in the State and Entity laws on national minorities, in order to put an end to their exclusion from public affairs.

Present situation

While it is welcome that all of the legislation specifically devoted to national minorities in Bosnia and Herzegovina – including new legislation adopted at cantonal level (see below, Article 5) – refers expressly to national minorities, the Advisory Committee notes with regret that there has been no change in the language used at constitutional level to refer to national minorities. The Constitutions of Bosnia and Herzegovina and of the Entities still distinguish between Bosniacs, Croats and Serbs, as constituent peoples, and “Others”. The Advisory Committee observes once again that the use of the term “Others” is problematic for several

reasons: national minorities are not recognised as such at constitutional level; the term “Others” is felt by those that it designates to be offensive and to place them in a situation inferior to that of the constituent peoples; and the term is ambiguous in that it applies both to persons belonging to national minorities and to persons who neither belong to a national minority nor identify themselves as belonging to one of the three constituent peoples.

The Advisory Committee observes that the *Sejdić and Finci* judgment of the European Court of Human Rights requires amendments to be made to the Constitution of Bosnia and Herzegovina. The necessary process of executing this judgment accordingly also creates an opportunity to rectify the language used to refer to national minorities in the Constitution of Bosnia and Herzegovina.

Recommendation

The Advisory Committee again calls on the authorities to introduce adequate terminology at constitutional level to refer to national minorities and invites them in this context to draw on the terminology used in the State, Entity and cantonal laws on national minorities.

Right to self-identification

Recommendations from the two previous cycles of monitoring

In its previous monitoring cycles, the Advisory Committee expressed concern at frequent open references to individuals’ ethnicity, in particular in the context of access to political posts and public service jobs, without adequate safeguards of the right to be treated or not to be treated as a person belonging to a given ethnic group, and called on the authorities to ensure that adequate guarantees for the protection of personal data were provided in relevant legislation.

Present situation

While recognising the importance of the availability of data on ethnic origin (see comments in respect of Article 4 below), the Advisory Committee again 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, must be fully respected. Against this background, it is particularly problematic that the Election Law as well as a number of provisions of Entity constitutions and legislation governing access to public service employment still require that candidates for a wide variety of posts declare their ethnic affiliation. 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, the Advisory Committee continues to be deeply concerned by this prolonged and exaggerated emphasis on ethnicity.

Recommendation

The Advisory Committee calls on the authorities to take resolute measures to ensure that the right to free and optional self-identification as guaranteed by Article 3 of the Framework

Convention is fully respected in legislation governing access to political and public service posts and is duly applied in practice.

Population census

Recommendations from the two previous cycles of monitoring

In its previous monitoring cycles, the Advisory Committee stressed that a future census should make questions relating to ethnic or national affiliation optional, recommended that possibilities of self-identification should not be limited to affiliation either with one of the constituent peoples or with a national minority and encouraged the authorities to promote debate in society at large on this subject.

Present situation

The Advisory Committee notes with interest that a population census in Bosnia and Herzegovina is planned for October 2013 – the first such exercise to be conducted since 1991 – although it deeply regrets that the census has been subject to significant delays due, *inter alia* to difficulties in enacting the necessary legislation. The census is expected to provide up-to-date information on the population of Bosnia and Herzegovina for the first time since the end of the war, including information broken down by ethnic affiliation, religion and language. Census forms have been translated for information purposes into the languages of all 17 national minorities, along with background information in these languages. The Advisory Committee also welcomes the fact that in the pilot census conducted in 60 localities in October 2012, the questions related to ethnic affiliation and religion were optional and a semi-open list was used for these categories. Enumerators were instructed not to read out the various pre-defined answers and it was possible for individuals to specify their ethnicity and religious conviction freely or to choose not to answer at all. However, the Advisory Committee notes with concern reports that little was done to consult national minorities as to the contents of the census form prior to the pilot census, which has led to a certain loss of trust in the census process amongst persons belonging to national minorities. It welcomes the indication from the Agency for Statistics that the latter is seeking to co-operate with the State Council of National Minorities regarding the final census form.

As regards the contents of the questions relating to ethnic affiliation, religion and language and the different options provided for answering these questions, the Advisory Committee notes that it was not possible to tick multiple boxes for any of the questions related to self-identification in the pilot census, although multiple answers were possible for other questions. Moreover, it was not possible to tick one box from the pre-defined list and specify an additional ethnic affiliation in the space provided for free answers. The Advisory Committee is concerned that this situation may create confusion in cases of persons identifying with more than one ethnic group and may even dissuade them from expressing multiple affiliations. It emphasises the importance for individuals in this situation of being able to express their multiple ethnic identities as an integral part of the process of free, voluntary self-identification, and of having this factor duly taken into account in subsequent analyses of

the relevant data. The Advisory Committee underlines moreover that in line with UNECE and EUROSTAT recommendations, census questions relating to ethnicity must be optional and open-ended, and include the possibility of multiple affiliations, in order for the census results to reflect effectively each individual's choice.

The Advisory Committee has also been given to understand that terms such as "Catholic" and "Orthodox", which are pre-defined categories on the census form, are generally understood in Bosnia and Herzegovina as referring to the dominant churches in the country (i.e. the Roman Catholic and Serbian Orthodox churches), and that persons who adhere to other branches of these religions (such as Ukrainian Greek-Catholic or Russian Orthodox) will specify this spontaneously. The Advisory Committee considers that the results of the pilot census should be analysed carefully in this respect, to assess the extent to which this supposition is borne out in practice and whether any modifications need to be introduced in the census form to avoid confusion.

The Advisory Committee welcomes the fact that the Agency for Statistics is seeking to co-operate with the State Council of National Minorities so as to ensure that, for the full census, persons belonging to national minorities are present in municipal census committees and amongst census enumerators, in particular in areas where national minorities are present in substantial numbers. It notes that these measures may help to increase the trust of persons belonging to national minorities in the census process, and observes that this is especially important for the Roma, who are often reluctant to declare their ethnicity (on this point, see also below, Article 4). It moreover emphasises the importance of ensuring that all enumerators are fully trained to inform respondents of the voluntary nature of questions related to ethnicity and religion as well as of the principle of free self-identification. It also draws the attention of the authorities to the need to raise awareness among persons belonging to national minorities, both via the media and in consultation with the representatives of the national minorities, as to the importance of the census, in order to promote full participation.

Finally, it has been reported to the Advisory Committee that a significant proportion of respondents in the pilot census identified themselves as "Bosnian" – an interesting development as it may tend to show the emergence of a common civic identity. However, the Advisory Committee regrets that this has led to some public calls by politicians not to self-identify as Bosnian, as in these politicians' view such declarations may be detrimental to one or other of the constituent peoples. The Advisory Committee deeply regrets this discourse and emphasises that, in line with the principles of Article 3 of the Framework Convention, persons should never be pressured to identify themselves as belonging to any particular group but should rather be encouraged to feel safe in expressing their identity freely and voluntarily.

Recommendations

The Advisory Committee calls on the authorities to make all questions relating to ethnic or national affiliation in the forthcoming census optional. It encourages the authorities, in

consultation with representatives of national minorities, to ensure that the possibilities of self-identification allow clearly for the expression of multiple ethnic affiliation and for identification with groups other than one of the constituent peoples or national minorities. It also encourages the authorities to ensure that any problems encountered during the pilot census regarding free self-identification in the fields of ethnic affiliation, religion and language are resolved rapidly, in consultation with national minorities, and to pursue their efforts to ensure the latter's effective participation in the census.

The Advisory Committee recommends that the authorities undertake awareness-raising activities among persons belonging to national minorities in advance of the census, in co-operation with minority representatives. These activities should include information about the importance and usefulness of the collection of data on the ethnic composition of the population, as well as about the guarantees in place to ensure the protection of personal data.

6. BULGARIA

OPINION ADOPTED ON 11 FEBRUARY 2014

Article 3 of the Framework Convention

Personal scope of application

Recommendations from the two previous cycles of monitoring

In its previous monitoring cycles, the Advisory Committee urged the authorities to engage in a dialogue with persons belonging to groups interested in the protection offered by the Framework Convention 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.

Present situation

The Advisory Committee notes that in accordance with Article 54 of the Bulgarian Constitution, "Everyone shall have the right to avail himself of the national and universal human cultural values and to develop his own culture in accordance with his ethnic self-identification, which shall be recognised and guaranteed by the law." Both objective criteria (the existence of distinctive identifying characteristics) and subjective criteria (self-identification as belonging to a national minority) need to be met in order for a person to be recognised as belonging to such a minority in Bulgaria.

The Advisory Committee notes that the Bulgarian authorities maintain the position that they will not recognise the existence of the Pomak and Macedonian minorities as such, based on the understanding that there are no objective criteria for distinguishing persons belonging to these communities from the majority population. The authorities have, however, indicated that groups other than those currently represented in the National Council for Cooperation on

Ethnic and Integration Issues (NCCEI; see further below, comments under Article 15) – such as Russians or Chinese – may be eligible to participate in the work of this body, provided that they satisfy the relevant objective and subjective criteria.

The Advisory Committee held an exchange of views with representatives of the Macedonian community, who consider that some actions of the authorities aim at actively discouraging them from self-identifying as Macedonian, for whom the recognition of their ethnic identity is crucial, and who expressed their desire to benefit from the protection of the Framework Convention.

The Advisory Committee also held discussions with representatives of the Pomak community, who indicated that labels such as “Bulgarian Muslims” or “Bulgarian-speaking Muslims” that are usually attributed to them by the authorities do not adequately reflect their Pomak identity. They reaffirmed the identity of Pomaks as a distinct ethnic minority with its own cultural heritage and traditions and expressed the wish to benefit from the protection of the Framework Convention.

The Advisory Committee again acknowledges that States Parties have a margin of appreciation in determining the personal scope of application of the Framework Convention. However, it considers that it is part of its duty to examine the interpretation of the personal scope of application used by the authorities in implementing the Framework Convention, in order to ensure that no arbitrary or unjustified distinctions are made in practice.

The Advisory Committee recalls in this context that the right to self-identification is an essential element of Article 3 of the Framework Convention. As regards the application of objective criteria to the recognition of groups as beneficiaries of the protection of the Framework Convention, the Advisory Committee emphasises that these criteria must not be defined or construed in such a way as to limit arbitrarily the possibility of such recognition, and that the views of persons belonging to the group concerned should be taken into account by the authorities when conducting their own analysis as to the fulfilment of objective criteria. It underlines that the Framework Convention was conceived as a pragmatic instrument to be implemented in diverse and evolving situations, and its application with respect to a group of persons does not necessarily require the formal recognition of the latter as a national minority, a definition of this concept or the existence of a specific legal status for such groups of persons.

The Advisory Committee remains concerned that the authorities have not organised any consultations or discussions on the protection offered by the Framework Convention with groups potentially concerned and that have repeatedly expressed their interest in the extension of its application to them. It strongly regrets that numerous direct requests of Pomaks to meet the authorities in order to discuss inter alia the possibility of applying the provisions of the Framework Convention to them, including requests made to the Deputy Prime Minister chairing the NCCEI, have been to no avail.

Recommendation

The Advisory Committee strongly urges the authorities to engage in a direct and constructive dialogue with persons belonging to groups interested in the protection offered by the Framework Convention, in particular persons self-identifying as Macedonians or Pomaks. It recommends that the authorities 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, in particular Article 3.1.

Census

Recommendations from the two previous cycles of monitoring

In its previous monitoring cycles, the Advisory Committee recommended that, during preparations for the 2011 census, the authorities consult representatives of minorities about questions relating to individuals' affiliation with a national minority and mother tongue, include persons belonging to minorities and persons speaking minority languages among census officials, and undertake awareness-raising activities among persons belonging to national minorities well in advance of the census, in co-operation with minority representatives.

Present situation

A population and housing census, including optional questions on ethnic affiliation, mother tongue and religious belief and denomination, was held in 2011. The Advisory Committee notes with interest that during preparations for the census, consultations were held with the NCCEI and the minority groups represented in it regarding the definition of the concepts behind these questions. It also notes with satisfaction that census enumerators were issued with clear instructions to allow respondents to declare their ethnic affiliation, mother tongue and religious belief themselves, and, if a group other than a pre-defined group was chosen, to record precisely the answer given by the respondent.

The Advisory Committee notes, however, that as far as ethnic affiliation was concerned, only three pre-defined groups (Bulgarians, Turks and Roma) were listed in the final census questionnaire; moreover, it finds highly regrettable that an initial proposal by the National Statistical Institute (NSI) to enumerate additional ethnic affiliations in the list, including Macedonian and Pomak, was met with violent criticism in both leading political circles and the media, and several NSI officials were dismissed following the pilot census.

The Advisory Committee takes note that according to the census results, more than 98% of persons who answered the question on ethnic affiliation declared themselves to belong to one of the three pre-defined groups and that it was possible for respondents to declare any affiliation they wished under the "Other" category. It is, however, deeply concerned at reports from both Macedonians and Pomaks that persons belonging to these groups were actively discouraged or even prevented from declaring these affiliations. Numerous representatives of these groups conveyed reports to the Advisory Committee of cases in which census

enumerators filled in individuals' ethnic affiliation as Bulgarian on their own initiative, skipped over ethnic affiliation and related questions in areas where Macedonians and Pomaks live, filled in census forms in pencil or sought to convince respondents, sometimes through threats, that the identity they wished to declare did not exist. The Advisory Committee also takes note in this context that – even though they were later reinstated – the above-mentioned, highly publicised dismissals of NSI officials were interpreted by representatives of both Macedonians and Pomaks as aimed inter alia at intimidating any persons who might wish for greater recognition of these identities. As a result of these factors, many Macedonian organisations took the position that the census figure regarding Macedonians would necessarily be much lower than reality and must be rejected as a matter of principle. The number of persons having declared themselves as Pomaks was moreover not published with the overall census results and does not appear to have reached the groups concerned. This situation regrettably results in the invisibility of the identities concerned.

The Advisory Committee considers that denial of the right of self-identification in the census context is not only a serious irregularity in itself but, in so far as the realisation of certain minority rights is linked to numbers, may also have far-reaching consequences in terms of the protection of such rights. It therefore considers it vital that the Bulgarian authorities engage in an open and constructive dialogue with representatives of the Macedonian and Pomak minorities in order to determine the full extent to which such irregularities occurred in practice during the 2011 census. It furthermore emphasises that by engaging in genuine dialogue, seeking to identify problems together with Macedonians and Pomaks and find ways to remedy them, the authorities could also help to build confidence amongst these groups that state policy towards them is not based on unjustified and arbitrary distinctions and that the state is willing to protect them on an equal footing with other minority groups.

Finally, the Advisory Committee notes that the number of persons having declared a Roma ethnic affiliation is much lower than unofficial estimates and moreover declined by more than 45 000 between the 2001 and 2011 censuses. Roma representatives indicate that this is in contrast with expert assessments, and ascribe the low census figure essentially to Roma's fear of discrimination and harassment on ethnic grounds (see further below, comments with respect to Articles 4 and 6). The Advisory Committee also notes that nearly 10% of persons chose not to answer the optional question on ethnic affiliation in the 2011 census at all – compared with less than 1% of respondents in the previous census, in which the equivalent question was also optional. The Advisory Committee considers that the reasons behind such a sharp increase in the number of persons preferring not to disclose their ethnic affiliation should be carefully examined, in particular in so far as they may throw light on the overall climate of tolerance and situation of persons belonging to national minorities in Bulgaria.

Recommendations

The Advisory Committee recommends that the authorities carry out an in-depth analysis regarding the reasons underlying the increase in the number of persons who chose not to declare any ethnic affiliation in the 2011 population census.

It again strongly urges the authorities to engage in an open and constructive dialogue with representatives of the Macedonian and Pomak communities, with a view to identifying any irregularities that may have occurred during the 2011 census. The authorities should furthermore review census practices in order to guarantee the right to free self-identification, eliminate any unjustified and arbitrary distinctions in this regard and ensure that no negative consequences arise from this choice.

7. CROATIA

OPINION ADOPTED ON 27 MAY 2010

Article 3 of the Framework Convention

Scope of application

Recommendations from the two previous cycles of monitoring

In the previous cycles of monitoring, the Advisory Committee regretted that only some of the national minorities were explicitly mentioned in the preamble of the Constitution of Croatia while the rest were referred to as “others”. In this context, the Advisory Committee requested the authorities to take seriously the concerns expressed by those persons belonging to national minorities who are not explicitly mentioned in the preamble to the Constitution and urged them to ensure 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 Act on the Rights of National Minorities.

The Advisory Committee also urged the authorities to clarify, in co-operation with the persons concerned, their approach to the category “Muslims” in a manner which accords with the right to self-identification under Article 3 of the Framework Convention.

Present situation

There has been no change as regards the scope of application of the Framework Convention in Croatia. The list of the ten minorities enumerated in the preamble to the Croatian Constitution remains unchanged. Likewise, the list of twelve other minorities included in the scope of application of Article 16 of the Law on the Election of the Deputies to the Croatian Parliament of 9 April 2003, which was welcomed by the Advisory Committee, has not changed.

Various interlocutors informed the Advisory Committee about the unresolved status of persons who declared themselves as “Muslim” in the Census of 2001. The legislation of Croatia does not afford “Muslims” recognition as a national minority, which in consequence excludes persons belonging to this group from enjoying the rights afforded by the Constitutional Act on the Rights of National Minorities. The authorities of Croatia decided however, on an ad hoc basis, that persons listed as “Muslim” on the electoral register be entitled to vote (but not to stand) in the 2007 elections of members of national minority councils which further added some ambiguity to the situation.

Recommendations

The Advisory Committee encourages the authorities to adopt an inclusive approach in dealings with persons belonging to minority groups living in Croatia.

In particular, the authorities are encouraged to continue a dialogue with the group of persons identifying themselves as Muslims by nationality regarding the possibility of including them in the scope of application of the Framework Convention.

Citizenship criterion in the definition of the term national minority

Recommendations from the two previous cycles of monitoring

In the previous cycles of monitoring, 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, in particular by considering amending the Constitutional Act on Rights of National Minorities in so far as to avoid an *a priori* exclusion of non-citizens from its scope.

Present situation

The Advisory Committee regrets that citizenship continues to be a requirement for persons belonging to minorities to access the protection offered by the Constitutional Act on the Rights of National Minorities. While the inclusion of a citizenship requirement is not in violation of any legally-binding international instrument, the Advisory Committee would like to remind the authorities that it is considered as a restrictive element that can have discriminatory effects. Given the considerable number of persons, including Roma, who are affected by this restriction, the Advisory Committee would like to encourage the authorities to pursue an increasingly inclusive approach and to consider extending the protection of specific articles of the Framework Convention which would be consistent with current efforts at the European level to develop a more nuanced approach to the application of the citizenship criterion in the protection of national minorities.

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 are made.

The Advisory Committee notes that a considerable number of persons of Serbian, Bosniak and Roma ethnicities living in Croatia continue to face difficulties in obtaining Croatian citizenship and in consequence from being afforded the protection of the Constitutional Act on the Rights of National Minorities as well as 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.

Recommendation

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 Constitutional Act on the Rights of National Minorities, including non-citizens where appropriate, in the application of the Framework Convention, in particular as regards their linguistic and cultural rights.

Data collection

Recommendations from the two previous cycles of monitoring

In the previous cycles of monitoring, 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 be protected. The Advisory Committee also requested the authorities 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.

Present situation

The Advisory Committee notes that a new population census is scheduled for 2011 in Croatia and that the authorities have already begun preparations for this. The questionnaire to be used in the census was drafted in accordance with the United Nations Economic Commission for Europe and the Statistical Office of the European Communities (EUROSTAT) Recommendations for 2010 Censuses of Population and Housing and contains optional open-ended questions on ethnic origin (nationality), religion and language. The Advisory Committee is concerned that the available options do not allow the respondents to indicate more than one ethnic affiliation or more than one language, which is contrary to the Conference of European Statisticians Recommendations for the 2010 Censuses of Population and Housing.

The Central Bureau of Statistics of Croatia will conduct in June 2010 a Census Test covering approximately 15,000 persons. The Advisory Committee notes with satisfaction that districts inhabited by a substantial number of persons belonging to national minorities have been included in this Census Test.

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.

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

Recommendations

The Advisory Committee encourages the authorities to collect and process the census data in strict conformity with the principle of self-identification and with the recommendations of the Conference of European Statisticians.

During the preparatory phase for the next census, the authorities should 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 authorities should also carefully review the experience gained during the Census Test to eliminate any identified shortcomings.

The Advisory Committee encourages the authorities to take specific initiatives to include persons belonging to minorities, and persons speaking a minority language among the census officials. It also encourages the translation of the census questionnaires into minority languages.

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.

8. CYPRUS

OPINION ADOPTED ON 19 MARCH 2010

Article 3 of the Framework Convention

Personal scope of the Framework Convention

Recommendations from the two previous cycles of monitoring

In the previous monitoring cycles, the Advisory Committee found that the obligation on persons belonging to the three "religious groups"- the Armenians, the Latins and the Maronites - to affiliate to either the Greek Cypriot Community or the Turkish Cypriot Community, as well as their obligation to elect their respective representative to parliament, should be re-examined in the light of Article 3 of the Framework Convention.

The Advisory Committee encouraged the authorities to continue their dialogue with the Latins, in consultation with them, in order to find a designation acceptable to them, as well as to re-examine the designation of the Maronites as just a 'religious group'.

The authorities were encouraged to take a flexible approach to the Framework Convention by keeping open the possibility of using it to protect persons belonging to other groups. They were also encouraged to open a dialogue with the Roma and consider including them in the protection of the Framework Convention.

Present situation

The Advisory Committee notes with regret that the approaches made to the authorities by the Armenians and Maronites to have their groups recognised/designated as ethnic groups or national minorities rather than just “religious groups” have not been positively received. The Advisory Committee has nevertheless understood from some of its interlocutors that such a recognition/designation would not require any amendment to the Constitution. Likewise, the Latins’ wish to be designated by a term more properly reflecting the key element of their identity, their Roman Catholic religion, has not yet met with the desired response from the authorities.

The Advisory Committee notes that these demands remains of concern to the three groups. According to a number of the Committee’s interlocutors, their demands might meet a more favourable response when a new constitution is adopted in the context of an overall settlement of the Cyprus problem. The Advisory Committee expresses the hope that, in these circumstances, the authorities will pay all due attention to these demands, which express the desire for recognition of the distinctive features making up the identity of Armenians, Latins and Maronites.

The Advisory Committee has been informed that there are significant obstacles to changing the constitutionally-based obligation on persons belonging to the “religious groups” to affiliate to one of the two Communities (Greek Cypriot or Turkish Cypriot). According to the authorities, if the three “religious groups” were exempted from this obligation, they would thereby also lose the possibility of participating in decision-making which is available to them under the arrangements established by the Constitution.

As to the possibility of relaxing the requirement that members of the three “religious groups” vote at elections, the Advisory Committee was informed by academics met in Cyprus that, in their view, a constitutional amendment may in fact not be necessary. It notes that the matter is being examined by the Ministry of the Interior and that a draft amendment is to be submitted to the Council of Ministers for a decision.

The Advisory Committee is aware of the complex constitutional situation in Cyprus and the various issues and implications that must be borne in mind when trying to resolve the problems described in the previous paragraphs. It however reiterates that the situation described above is not in line with the Framework Convention. The Advisory Committee believes that the authorities should display a greater degree of openness and pursue their dialogue with representatives of the “religious groups” so as to be able to identify solutions acceptable to all parties concerned. The Advisory Committee draws attention to the fact that Article 3 of the Framework Convention protects the right of persons belonging to minorities to identify freely with an ethnic community and to express this identification freely. It is

undoubtedly of key importance that this right is recognized by the authorities. The Advisory Committee understands that, whichever solution is chosen, settlement of the conflict and the subsequent constitutional institutional changes will have an impact on the position/status and situation of the Armenians, Latins and Maronites. It therefore considers it essential in this process that the authorities ensure that the latter are systematically consulted and informed and that their views are duly taken into account (see also the comments on Article 15 below).

The Advisory Committee notes with satisfaction that, as indicated in the State Report, the Roma have access to protection under the Framework Convention in the same way as any minority group fitting the Cypriot authorities' definition of a 'national minority' and resident in territories under the government's effective control. It notes that the authorities reportedly have stepped up action to help persons belonging to this group to improve their social and economic situation and become effectively integrated in Cypriot society (see also comments on Article 6 below).

The Advisory Committee notes with satisfaction that, as stated in the State Report, the authorities are paying particular attention to the principle of free self-identification when providing assistance to the Roma. It welcomes this approach and invites the authorities to engage in a constructive dialogue with the Roma, including for ascertaining that their inclusion in the Turkish Cypriot community is not contrary to their wishes. The 2011 census represents an excellent opportunity to obtain greater clarity on this issue and, more generally, up-to-date information on the Roma population and its situation (see also the comments in paragraphs 45-46 below).

The Advisory Committee notes with satisfaction that, while persons who have settled in Cyprus more recently are not officially covered by the Framework Convention, in practice steps have been taken to support them and a strategy is being prepared to facilitate their integration into society. The Advisory Committee welcomes this approach which seems to be favoured by the authorities, faced with the ever-changing nature of Cypriot society, and encourages them to continue and strengthen their efforts to protect the fundamental rights of all and maintain a positive climate of tolerance and mutual understanding (see comments on Article 6 below for details).

Recommendations

The authorities are strongly encouraged to re-examine, in the light of Article 3 of the Framework Convention and especially in view of any subsequent revision of the Constitution, the obligation of persons belonging to the three "religious groups" to affiliate to either the Greek Cypriot Community or the Turkish Cypriot Community as well as their members' statutory obligation to elect their representative to parliament, while ensuring that this does not lead to any decrease in their current rights.

The authorities should continue the dialogue with the Armenians and Maronites concerning possible explicit recognition as a national minority rather than "religious group" and with the Latins to find a designation more acceptable to them. While stepping up measures to protect and support the Roma under the Framework Convention, dialogue with the Roma should also

be continued and up-to-date information obtained regarding their ethnic, linguistic and religious affiliations.

The authorities are encouraged to maintain their flexible approach to the Framework Convention to allow, where appropriate, for the inclusion within its scope of application of other persons having shown an interest in the protection provided by this instrument.

Collection of data

Recommendations from the two previous cycles of monitoring

In the previous monitoring cycles, the Advisory Committee encouraged the authorities, when collecting and using data on the religious and ethnic composition of the population, to 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 and to ensure that current international standards concerning protection of personal data collected and processed for statistical purposes were observed. In particular, it invited them to ensure that in future the census questions and forms were drawn up in such a way as to allow individuals to express their ethnic and religious identities freely.

Present situation

The Advisory Committee notes that a new population census is due to be held in 2011. According to the authorities, it is planned to include questions on individuals’ ethnic origin, language and religion in the census forms. However, the exact wording of these questions was reportedly not decided at the time of the visit of the Advisory Committee.

The Advisory Committee considers it important for the authorities to ensure that representatives of the various population groups, including the three “religious groups”, are consulted about the formulation of the questions and the list of options for answering them. Furthermore, flexibility is essential - optional questions and an open list of alternative answers with no obligation to affiliate to a set category and including also the possibility for multiple identity affiliations (e.g. for children of mixed marriages) - to allow the census results to reflect each individual’s actual choices. Likewise, respect for free expression of ethnic identity when processing the data collected is crucial if an accurate picture of the population’s composition is to be obtained. The Advisory Committee considers it essential for the authorities and all parties concerned to have a reliable picture of the population’s main characteristics.

It is fundamental to make the population aware of the importance of the census and to provide proper information about specific procedures. It is also important for the authorities to consider the possibility of including members of the “religious groups” and other vulnerable groups, such as the Roma as enumerators and, according to the needs, to use the different languages spoken in Cyprus, including Turkish, for the questionnaires. According to the authorities, at this stage it is planned that census questionnaires will be available in Greek and English only.

The Advisory Committee notes that other methods are being used by the authorities to obtain data about the population and its situation in various fields, such as employment and education. It wishes to stress the paramount importance of having reliable data for effectively drawing-up, implementing and evaluating policies for the various population groups and their specific needs, including the “religious groups”. The Advisory Committee reminds the authorities of the importance of ensuring that existing international standards and rights applicable in the field of personal data protection are respected.

Recommendations

When collecting and using data on the ethnic, religious or linguistic composition of the population, including in the context of the planned census in 2011, the authorities must ensure that the principles enshrined in Article 3 of the Framework Convention are scrupulously respected and that international standards on personal data protection are observed. In particular, the census questions and forms should be drawn up in such a way as to allow individuals to express or not to express their ethnic, religious and linguistic identities freely.

The “religious groups” must be duly consulted when preparing the census and its forms, and an awareness-raising campaign should be organised for the population as a whole, with special attention paid to vulnerable groups, such as the Roma. Particular attention should also be paid to the matter of the languages used for the census forms.

9. CZECH REPUBLIC
OPINION ADOPTED ON 1 JULY 2011

Article 3 of the Framework Convention

Personal scope of application

Recommendations from the two previous cycles of monitoring

In the previous cycles of monitoring, the Advisory Committee encouraged the authorities to pursue an open and flexible approach to the personal scope of application of the Framework Convention and not to use the citizenship criterion to exclude certain persons from the personal scope of application of the Framework Convention.

Present situation

The Advisory Committee notes that there has been no change since the 2nd monitoring cycle in the position of the Czech authorities concerning the scope of application of the Framework Convention. The Advisory Committee further notes that citizenship still continues to be a precondition in the law for persons belonging to national minorities to be able to benefit from minority rights. The Advisory Committee welcomes however, that in practice the Framework Convention is applied in an inclusive way, covering all groups meeting the criteria established in the definition of the concept “national minority” contained in Article 2 of the Act on the Rights of Members of National Minorities of 10 July 2001.

The Advisory Committee notes in this context that non-citizens residing in the Czech Republic can take part in activities of organisations of their kin minorities traditionally settled in the country. Thus persons of Croat and Serb nationality who moved into the Czech Republic in the last two decades, irrespective of their citizenship, can access measures taken for the protection of national minorities and thus benefit from the protection of the Framework Convention.

The Advisory Committee would like to remind the authorities that the citizenship criterion cannot be considered as the only condition for enjoying minority rights under the Framework Convention, and that undue citizenship requirements can have discriminatory effects in some areas of life. Using a citizenship requirement in a general provision dealing with the scope of application of minority rights is not fully in line with the aim and spirit of the Framework Convention for the Protection of National Minorities. Minority rights are human rights and cannot as a principle be reduced to the rights of citizens. In particular, the Advisory Committee considers that the authorities should review the use of the citizenship criterion and limit its use only to those provisions, such as those relating to electoral rights at national level, where such a requirement is relevant. This would be consistent with current efforts at European level to develop a more nuanced, i.e., flexible and contextualized approach to the application of the citizenship criterion in the protection of national minorities, as consistently pursued by the Advisory Committee in its opinions and suggested by the Venice Commission.

Recommendations

The Advisory Committee calls on the authorities to maintain an inclusive and open approach towards the scope of application of the Framework Convention.

The Advisory Committee also urges them to review regularly the established criteria of eligibility for protection under the Framework Convention, in order to ensure that the criteria does not have the effect of excluding people from the scope of application of this convention in an unjustified and arbitrary, i.e. discriminatory manner.

Collection of data

Recommendations from the two previous cycles of monitoring

In the previous cycles of monitoring, the Advisory Committee encouraged the authorities to undertake awareness-raising measures to encourage the persons concerned to use the possibility of indicating their ethnic affiliation in the next census, and 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 were respected.

Present situation

The Advisory Committee notes that a population census was organised in the Czech Republic in March and April 2011. The questionnaire used during the census contained optional open-ended questions on ethnic origin (nationality), religion and language. The Advisory Committee particularly welcomes the possibility which allowed the respondents to indicate more than one

ethnic affiliation or more than one language, in line with the Conference of European Statisticians Recommendations for the 2010 Censuses of Population and Housing.

The Advisory Committee also welcomes the translation of the census forms and explanatory notes into English, French, German, Polish, Romani, Russian, Ukrainian and Vietnamese languages and inclusion of persons belonging to national minorities among the census enumerators.

The Advisory Committee notes, however, that, according to some representatives of national minorities, the significance and meaning of census questions was not sufficiently clear, in particular as regards the difference between citizenship and nationality. In this context, given that a number of rights protected under the Framework Convention and secured in the domestic legislation (such as the right to establish Committees of National Minorities and the right to display topographical signs in a minority language, the right to set up minority language schools) are conditional on the number of persons belonging to national minorities residing in a given municipality, the Advisory Committee notes with concern that the census results may not adequately reflect the real ethnic composition of the Czech society. Consequently it should also not be considered as the only indicator of their number when implementing policies and measures to protect minorities and to help them to preserve and assert their identity.

Recommendations

The Advisory Committee encourages the authorities to process the census data with full respect for the safeguards, notably those related to the protection of personal data, as laid down in the Committee of Ministers Recommendation (97)18 concerning the protection of personal data.

The Advisory Committee invites the authorities to consider additional means of collecting information on the situation of national minorities outside the census, while fully respecting international standards in the field of personal data protection.

10. DENMARK

OPINION ADOPTED ON 31 MARCH 2011

Article 3 of the Framework Convention

Scope of application

Recommendations of the two previous monitoring cycles

In the previous monitoring cycles the Advisory Committee considered that the Framework Convention could apply outside South Jutland and called on the authorities to bear this possibility in mind.

It also encouraged the authorities to consult the Greenlanders and Faroese to determine whether they would like to benefit from the protection afforded by the Framework Convention and, if necessary, to review their position concerning the instrument's personal scope of application in relation to the members of these groups.

Lastly, taking the view that persons belonging to the Roma community could not *a priori* be excluded from the scope of the Framework Convention, the Advisory Committee encouraged the authorities to intensify their dialogue with the Roma and take account of the basic principles of the Framework Convention in their legislation, policies and practice in relation to the Roma.

Present situation

The Advisory Committee notes that the Danish authorities' position concerning the scope of application of the Framework Convention has not changed since the second monitoring cycle. According to the declaration made by Denmark when it ratified the Framework Convention, only members of the German minority living in South Jutland enjoy its protection.

The Advisory Committee notes that, as stated in its previous Opinions, the representatives of the German minority whom it met in Copenhagen and Aabenraa (*Åbenrå*) formulated no wish that the Framework Convention should apply to members of the German minority living outside South Jutland.

The Advisory Committee also notes that, in connection with the preparation of the third State Report, the authorities consulted the representatives of Greenland and the Faeroe Islands to gather their comments on the status of the Greenlanders and the Faroese under the Framework Convention. According to the authorities, the position of the Greenland and Faeroes Home Rule Governments, which is that they do not wish to benefit from the protection of the provisions of the Framework Convention, has not changed since the second monitoring cycle. This approach was confirmed to the Advisory Committee during its discussions before and during the visit with the Representations of Greenland and the Faeroe Islands in Copenhagen.

During its visit, the Advisory Committee was informed that most of the Roma who had chosen to settle in Denmark in the 1960s, and were well integrated into Danish society, did not want to be identified as a Roma community and expressed no desire to be recognised as a national minority under the Framework Convention.

In view of the growing cultural diversity of Danish society, the Advisory Committee considers that the protection of the Framework Convention could be extended to groups currently not protected by this instrument if they were to request this at some future date. The Advisory Committee encourages the authorities to bear this in mind.

Recommendation

The Advisory Committee invites the authorities to pursue a dialogue-based approach in their relations with the individuals and groups that might in future be interested in being given the

protection provided for by the Framework Convention and to retain the possibility for these persons to come under the protection of the Convention.

Collection of statistics

Recommendations of the two previous monitoring cycles

In the previous monitoring cycles, the Advisory Committee recommended that the authorities obtain reliable data on ethnicity, broken down according to age, gender and location.

Present situation

The Advisory Committee notes that no census is held in Denmark 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 central population register and solely relates to a person's place of birth, the place(s) of birth of his/her parents, his/her place of residence, age and gender.

The Advisory Committee understands the authorities' reluctance concerning the collection and dissemination of personal data deemed to belong to the private sphere, especially on ethnic origin. However, it reiterates that obtaining reliable information on the situation of persons belonging to national minorities is relevant to the implementation of the Framework Convention. This information can be obtained by collecting statistical data or by other means, such as *ad hoc* studies, surveys or specific opinion polls. The authorities could make use of such data while at the same time complying with existing standards for the protection of personal data, in order to be able to respond better to the needs of national minorities and tackle any form of discrimination.

Recommendation

The Advisory Committee invites the authorities to seek means of obtaining more data on the situation of national minorities in co-operation with the persons concerned, while at the same time fully complying with existing international standards for the protection of personal data.

11. ESTONIA

OPINION ADOPTED ON 1 APRIL 2011

Article 3 of the Framework Convention

Personal scope of application of the Framework Convention

Recommendations of the two previous monitoring cycles

In the previous cycles of monitoring, the Advisory Committee welcomed the *de facto* inclusive approach taken by the Estonian authorities with regards to the personal scope of application of the Framework Convention. At the same time, it encouraged them to codify such inclusiveness through adjustments in the relevant legal framework which, as a result of the declaration issued by Estonia at the time of ratification of the Framework Convention, formally still excludes the high number of long-term residents without citizenship.

Present situation

The Estonian authorities have maintained their *de_facto* inclusive approach as regards the personal scope of application of the Framework Convention, despite the fact that the above-mentioned declaration excludes non-citizens from its application. In practice, however, non-citizens enjoy virtually equal access to rights protected under the Framework Convention, apart from the right to stand in elections or vote in parliamentary elections. While the Advisory Committee welcomes this pragmatic approach, it notes that the source of inspiration for the restrictive declaration was the National Minority Cultural Autonomy Act of 1993 which has been considered impractical and ineffective for a number of years. According to governmental and non-governmental interlocutors of the Advisory Committee, it is in addition no longer applicable to the demographic situation of Estonia today (see further comments on Article 5 below).

Furthermore, the Advisory Committee wishes to underline in this context that the inclusion of a citizenship requirement in the declaration contained in the instrument of ratification may cause arbitrary and unjustified distinctions and can thus have discriminatory effects. Given the still very large number of long-term residents of Estonia who are affected by this restriction, the Advisory Committee would like to reiterate its call on the Estonian authorities to reconsider this formal exclusion of non-citizens belonging to national minorities in Estonia from the personal scope of application of the Framework Convention, which retains a strong symbolic importance among minority communities. This would be consistent with current efforts at European level to develop a more nuanced approach to the application of the citizenship criterion concerning the protection of national minorities.

Recommendation

The Advisory Committee encourages the authorities to further pursue an open and inclusive approach to the Framework Convention's personal scope of application and to consider also extending formally the definition of the term national minority to long-term residents without Estonian citizenship.

Data collection

Recommendations of the two previous monitoring cycles

In the previous cycles of monitoring, the Advisory Committee encouraged the authorities to pay careful attention to data protection standards and the principles related to free self-identification contained in Article 3, and to seek to identify further ways of obtaining reliable and disaggregated data on persons belonging to national minorities.

Present situation

The Advisory Committee notes the acknowledgement of the Estonian authorities that updated figures related to national minorities remain insufficient in a variety of fields, as current data protection legislation still only allows for limited collection and processing of data on ethnic origin. The Advisory Committee agrees that the census in 2011 will be a suitable opportunity to obtain more reliable, comprehensive, and disaggregated data on persons

belonging to national minorities in order to assess better the implementation of various articles of the Framework Convention and to devise appropriate measures and programmes directed at promoting effective equality of persons belonging to national minorities (see also comments on Article 4 below). The Advisory Committee is pleased to note that the personal questionnaire used during the pilot census in early 2010 contains a question on ethnic origin where two ethnicities from an open list may be noted. However, it wishes to point out that careful attention must be paid in this context to the right to free self-identification of persons belonging to national minorities as provided by Article 3 of the Framework Convention. Questions on ethnic origin must be non-mandatory and possibilities for the indication of a multiple ethnic and linguistic identity included.

As for the planning, preparation and implementation of the census, the authorities should enter into a constructive dialogue with minority representatives to ensure that persons belonging to national minorities are actively involved in the process. In this regard, questionnaires must be made available in the languages of national minorities, and, in areas traditionally inhabited by persons belonging to national minorities, enumerators should be recruited amongst persons belonging to the minorities concerned. At the same time, the Advisory Committee deems important to reiterate that the census should not be regarded as the sole means of obtaining data on ethnicity but should be supplemented with sociological surveys and other studies on minorities (see also comments on Article 4 below).

Recommendations

The Advisory Committee encourages the authorities to use the 2011 population census to obtain reliable and disaggregated data on persons belonging to national minorities. The right to free self-identification of persons belonging to national minorities must be strictly respected, as well as the open and voluntary nature of any question relating to such affiliation. Persons belonging to national minorities should be provided with a possibility of expressing a multiple identity in the census questionnaire and enumerators should be recruited amongst persons with a minority background.

The Advisory Committee encourages the authorities to engage in a dialogue with the representatives of national minorities regarding the preparation and implementation of the census to ensure their active involvement and support of the process which will be necessary to obtain full and reliable data.

12. FINLAND

OPINION ADOPTED ON 14 OCTOBER 2010

Article 3 of the Framework Convention

Personal scope of application of the Framework Convention

Recommendations from the two previous cycles of monitoring

In previous monitoring cycles, the Advisory Committee encouraged the Finnish authorities to develop further their inclusive practice with regards to the personal scope of application of the Framework Convention and to review the applicability of the Convention to persons belonging to other groups who may be interested in its protection such as the Karelians, the Finnish speaking population in the Province of Åland, as well as Swedish-speaking Finns living in some areas. The Advisory Committee further encouraged the authorities to re-examine the distinction made between the so-called Old Russians and other Russian-speaking groups.

Present situation

Finland has continued its inclusive and pragmatic approach concerning the personal scope of application of the Framework Convention which remains based on the idea that “the existence of minorities does not depend on a declaration by the Government but on the factual situation in the country.”

The Advisory Committee is pleased to note that, in current practice, there is no difference in the enjoyment of rights under the Framework Convention in every day life for the Russian-speaking population, despite the fact that the legal distinction between the so-called Old Russians and other Russian-speaking groups is being upheld. This pragmatic approach to the Convention’s personal scope of application is commendable and should be pursued further.

The Advisory Committee welcomes the recent addition of the Karelian language to the list of non-territorial languages protected by the European Charter for Regional or Minority Languages, and invites the authorities to discuss the applicability of some of the provisions of the Framework Convention to persons belonging to the Karelian community in Finland who have expressed an interest in the protection offered by the Convention.

The Advisory Committee further notes that there are other groups whose representatives have expressed an interest in receiving the protection of the Framework Convention, including the Estonians who remain one of the largest immigrant groups in Finland, and an increasing number of Swedish-speaking Finns, given the continued decline of the presence of the Swedish language in Finnish public life (see below comments on Articles 10 and 16).

As regards the Finnish-speaking population living in the Swedish-speaking province of Åland, the Advisory Committee notes that the issue is again only sparingly addressed in the third State Report but is not aware of any expression of interest among representatives of this group in the protection of the Framework Convention nor complaints as to infringements of their rights in the light of the Convention.

Recommendation

The Advisory Committee encourages the authorities to continue to pursue an open and inclusive approach to the Framework Convention's personal scope of application and to engage in a constructive dialogue with persons belonging to other groups whose representatives have expressed an interest in the protection of this Convention.

Principle of self-identification

The Advisory Committee notes that the current population registries allow only one entry with regard to a person's mother tongue (see also comments on Article 14 below) and wishes to recall that questions relating to ethnic background and language should be optional and open-ended in line with relevant international recommendations relating to population registries and census exercises. In particular, the Advisory Committee wishes to emphasise that in accordance with the right to free self-identification as guaranteed in Article 3, the possibility for entries of multiple language and identity affiliations should be granted to persons belonging to national minorities, particularly given that this is an increasingly common phenomenon in pluri-cultural Finland.

Recommendation

The Advisory Committee invites the Finnish authorities to respect the principle of free self-identification as enshrined in Article 3 of the Framework Convention by facilitating the entry of multiple identity affiliations into population registries in order to reflect better each individual's choice. This should also be applied in the preparation and implementation of future population census exercises.

13. GERMANY

OPINION ADOPTED ON 27 MAY 2010

Article 3 of the Framework Convention

Scope of application of the Framework Convention

Recommendations of the two previous monitoring cycles

In the previous monitoring cycles, 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 Convention on an article-by-article basis.

Present situation

The Advisory Committee notes that there has been no change since the 2nd monitoring cycle in the position of the German authorities concerning the scope of application of the Framework Convention. It has, however, taken note of the requests by certain groups which, according to the Declaration made by Germany when it ratified the Framework Convention, do not currently enjoy the protection of the Framework Convention. The groups in question are, in particular, persons of Polish origin living in Germany, as well as persons belonging to

the group of East Frisians, who have expressed their wish to be recognised as persons belonging to a national minority and to benefit from the protection of the Framework Convention.

The Advisory Committee understands that persons with links to Polish culture or language now live in Germany as a result of various waves of migration during the last two centuries, especially the 19th century. The Advisory Committee also points out that persons of Polish origin have had national minority status in the past.

The Advisory Committee further notes that the 1991 Treaty on Good Neighbourly Relations and Friendly Co-operation between Poland and Germany mentions protection for persons belonging to the German minority in Poland, and persons of Polish origin in Germany. The opinion of the representatives of Polish groups whom the Advisory Committee met is that proper implementation of this Treaty would imply that persons of Polish origin should be recognised as having national minority status and should thus enjoy the protection of the Framework Convention. The purpose of this request, according to the representatives of persons of Polish origin, is to ensure the conditions which will contribute to the preservation of the Polish language and culture in Germany and prevent a process of progressive assimilation with the majority population.

The Advisory Committee has learned that the federal authorities have had discussions on this with the representatives of persons of Polish origin living in Germany. It also notes with interest that the authorities set aside some EUR 300 000 every year to support the Polish language and culture.

Given the growing cultural diversity of German society, the Advisory Committee believes that protection under the Framework Convention might as appropriate be extended to groups that do not currently enjoy the protection of this instrument so that the established criteria do not have the effect of arbitrarily excluding certain groups from the benefits of the provisions of the Framework Convention. While the inclusion of a citizenship requirement is not in violation of any legally-binding international instrument, the Advisory Committee would like to remind the authorities that this criterion is considered as a restrictive element that can have discriminatory effects. Given the considerable number of persons, including Roma, who are affected by this restriction, the Advisory Committee would like to encourage the German authorities to pursue a more inclusive approach and to consider extending the protection of specific articles of the Framework Convention to certain groups. This would be consistent with current efforts at European level to develop a more nuanced approach to the application of the citizenship criterion in the protection of national minorities.

In the case of persons belonging to the group of East Frisians, most of whom live in the *Land* of Lower Saxony, the Advisory Committee notes that they are not in principle excluded from the scope of application of the Framework Convention because the German Declaration referred to earlier says that the Framework Convention will apply to the ethnic group of the Frisians, with no further specification mentioned. The representatives of this group say, however, that in order for this protection to be real and to translate into specific measures for

their benefit, they should also be recognised as having national minority status by the authorities of the *Land* of Lower Saxony, that have responsibility in many areas of relevance to the protection of national minorities. The Advisory Committee understands that the refusal by the Lower Saxony authorities to recognise persons belonging to the East Frisian group as a national minority covered by the provisions of the Framework Convention stems from the fact that the East Frisians have no language of their own, since in essence they speak Low German. The representatives of the East Frisians, for their part, emphasise their shared perception of belonging to a group which is different from the majority population by virtue of its culture and history, and the need to preserve that culture and history by specific provisions.

Recommendations

The Advisory Committee calls on the authorities to pursue an open and dialogue-based approach in their relations with persons and groups who would like to benefit from the protection of the Framework Convention such as persons of Polish origin, language or culture, and persons belonging to the East Frisian group.

The Advisory Committee also urges them to review regularly the established criteria of eligibility for protection under the Framework Convention, as applied to requests from persons belonging to these groups, in order to ensure that the criteria do not have the effect of excluding people from the scope of application of this Convention in a way that is arbitrary or discriminatory.

Against this background it urges the authorities to take a dialogue-based approach with persons belonging to groups that might, in future, qualify for protection under the Framework Convention. The Advisory Committee also urges the German authorities to draw on the principles of the Framework Convention in their dialogue with other groups (see also remarks in respect of Article 6).

14. HUNGARY

OPINION ADOPTED ON 18 MARCH 2010

Article 3 of the Framework Convention

Criterion of citizenship in the definition of the expression
"national and ethnic minorities"

Recommendations from the two previous cycles of monitoring

In the previous cycles of monitoring, the Advisory Committee encouraged the authorities to continue their efforts to include in the personal scope of application of the Framework Convention persons belonging to groups other than the recognised national minorities.

Present situation

The Advisory Committee notes with interest that persons belonging to groups other than the thirteen recognised national minorities may ask to be covered by the national legislation on minorities by availing themselves of the popular initiative procedure.

The Advisory Committee observes that during the reference period, persons belonging to the Jewish, Russian, Hun and Bunjevci communities made use of this possibility. In the first two cases (Jewish and Russian communities), the 1,000 signatures required in support of the request were not obtained within the stipulated time of two months.

The other two initiatives (Hun and Bunjevci communities) were dismissed by Parliament, voting with a very substantial majority and thus concurring with the unfavourable opinion of the President of the Hungarian Academy of Science who, in accordance with the Act on National Minorities, was invited to indicate in an advisory capacity whether the conditions stipulated by the Act on the Rights of National and Ethnic Minorities were fulfilled.

Recommendation

The Advisory Committee encourages the authorities to continue efforts to include the possibility for persons belonging to other groups to enjoy the protection of the Framework Convention and to be covered by the national legislation on minorities.

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

Recommendations from the two previous cycles of monitoring

In the previous cycles of monitoring, the Advisory Committee highlighted the need to find a solution to the problem of persons managing, through the openness of the electoral system, to create self-governments representing a minority with whom they had no links at all. It recommended that Hungary should combat abuse of the electoral system for minority self-governments by adopting the necessary legislative changes.

Present situation

The Advisory Committee welcomes the legislative amendments made in 2005 which put an end to the problems found in previous cycles relating to the election procedure of minority self-governments. It notes that the new regulation introduced the institution of a "register of minority voters". Accordingly, only those Hungarian citizens who have voting rights to elect the representatives of a local self-government and a mayor, who belong to and identify themselves as belonging to a given national minority and are listed in the register of minority voters following a written declaration, have both active and passive rights to vote in the election of that minority self-government. Thus, only persons belonging to a given national minority may take part in the election of the self-government concerned. At the local level, on polling day, a minimum of 30 persons must be entered on the electoral list as candidates for the election to take place. The Advisory Committee recalls that it is important, when the register of minority voters is established, to respect compliance with the principles of self-identification and to follow the international standards on personal data protection.

The Advisory Committee notes with interest that, according to the information gathered from the representatives of the self-governments during its visit, the elections held in October 2005 at the local level under the new legislation in force allowed for a considerable reduction of the abuse identified in the past.

Recommendation

The Advisory Committee encourages the authorities to continue their efforts to ensure that the next elections of self-governments comply with the principles of self identification and with the international standards on personal data protection to implement all legal safeguards so that they take place in full accordance with the principles of the Framework Convention.

Data collection

Present situation

The Advisory Committee notes that a new population census is planned in 2011 and that the authorities have already begun preparations. The Advisory Committee welcomes the fact that the representatives of the national minorities have been consulted on the wording of the open questions (which will be identical to those used in the 2001 census) and on the selected methodology. The representatives of minority self-governments confirmed to the Advisory Committee during its visit that the Statistics Office had involved them in its work on the next census, including the practical details. Optional and open questions have been agreed upon by the Statistics Office in consultation with representatives of minorities, as in 2001, with regard to an individual's identification with a minority, use of the mother tongue and the culture with which the respondent identifies. The Advisory Committee wishes to emphasise that the questionnaire should also include the possibility for multiple identity affiliations (e.g. for children of mixed marriages) – in order for the census results to reflect each individual's actual choice. Public awareness campaigns and training sessions for census enumerators, which will include persons belonging to a national minority will be organised throughout the year.

The Advisory Committee draws the attention of the authorities to the need to raise awareness among persons belonging to national minorities, particularly via the media and in consultation with the representatives of the national minorities, about the importance of the census in order to promote optimal participation. This issue is of particular importance in the current climate of opinion towards the persons belonging to the Roma minority as these persons could be reluctant to register themselves as Roma.

Recommendations

The Advisory Committee invites the authorities to continue consulting the representatives of the national minorities throughout the preparatory phase of the next census in their efforts to carry out an accurate census.

15. IRELAND

OPINION ADOPTED ON 10 OCTOBER 2012

Article 3 of the Framework Convention

Personal scope of application of the Framework Convention

Recommendations from the two previous cycles of monitoring

In the previous monitoring cycles, the Advisory Committee encouraged the authorities to 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.

Present situation

The Advisory Committee notes that there has been no change since the 2nd monitoring cycle in the position of the Irish authorities concerning the scope of application of the Framework Convention. Whereas Ireland ratified the Framework Convention as part of the 1998 Good Friday (Belfast) Agreement, it has not made a declaration on the scope of application of the Framework Convention and no definition of a national minority exists in the Irish domestic legislation. Furthermore, according to the position consistently adhered to by the Irish authorities, "Ireland does not have a national minority". However, the State Report extensively addresses the matters relating to Travellers and provides substantial information on a range of issues affecting the increasingly diverse population of Ireland.

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 ensure that no arbitrary or unjustified distinctions have been made.

The Committee notes that the Government of Ireland has consistently held, in line with the Explanatory report on the Framework Convention, that not all ethnic, cultural, linguistic or religious differences point to the existence of a national minority. In this context, the Advisory Committee recalls that recognition of a minority by the state is not a prerequisite to qualify for the protection of the Framework Convention. Given the growing cultural diversity of Irish society, the Advisory Committee further believes that protection under the Framework Convention might, as appropriate, be extended to groups that do not currently enjoy the protection of this instrument.

Although they have not recognised any national minority *de jure*, the authorities maintain *de facto* an inclusive and positive approach to the scope of application of the Framework Convention. In particular, it is welcome that during the country visit, the authorities readily provided, at the request of the delegates of the Advisory Committee, information on education, access to health care, employment and social integration of immigrant groups, including the Roma. It is also worth recalling that the Framework Convention is well known to

human rights and civil society organisations and often invoked in their regular dialogue with the authorities.

Recommendation

The Advisory Committee calls on the authorities to maintain an inclusive and open approach towards the scope of application of the Framework Convention.

Recognition of Travellers as an ethnic minority

Recommendations from the two previous cycles of monitoring

In the previous monitoring cycles, the Advisory Committee asked that the authorities, taking into account the principle of self-identification stemming from Article 3 of the Framework Convention, refrain from conclusive statements affirming that the Travellers do not constitute an ethnic minority. At the same time, the Advisory Committee encouraged the authorities to ensure, both *de jure* and *de facto*, the applicability of international and domestic non-discrimination and minority rights guarantees in relation to the Travellers.

Present situation

Animated debate on the issue of recognition of Travellers as an ethnic group continues both at the domestic level in Ireland and in the international fora such as the United Nations Human Rights Council. The Advisory Committee notes that most representatives of the Travellers, representatives of human rights and civil society organisations and the Equality Authority have been advocating recognising Travellers as an ethnic group. The Advisory Committee, while not in a position to state whether the authorities should make such a formal recognition, welcomes the authorities' recent statement, made in the context of the UN Universal Periodic Review, that "there are a number of issues around the proposal of recognition of Travellers as a separate ethnic minority which need to be further considered and addressed and it is an area which is currently being given serious consideration". This statement demonstrates a more nuanced approach, away from the 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".

Recommendation

The authorities are encouraged to finalise the consideration of the proposed recognition of Travellers as an ethnic minority and to ensure, both *de jure* and *de facto*, the applicability of international and domestic non-discrimination and minority rights standards in relation to Travellers.

Data collection and census

Recommendations from the two previous cycles of monitoring

In the previous monitoring cycles, the Advisory Committee encouraged the authorities to pursue further their plans to improve data on issues concerning Travellers and minorities in general, taking into account the principle of free self-identification by the individuals concerned.

Present situation

The Advisory Committee notes with satisfaction that the authorities of Ireland collect substantial amounts of data on minority related issues, notably as concerns the Travellers. In particular, the 2010 All Ireland Traveller Health Study, carried out by the School of Public Health, Physiotherapy and Population Science at University College in Dublin and commissioned by the Ministry of Health and Children, contains a wealth of information on the situation of the Travellers not only in the field of health, but also as regards a host of socio-economic indicators including housing, access to public utilities, education, marital status and family environment, life-style and diet, disaggregated by gender and age group.

In the field of education, data on Travellers is collected through *October Returns* (enrolment statistics) submitted by schools to the Department of Education and Skills. The Advisory Committee welcomes the information that, upon the Data Commissioner's order, since 2010, schools must obtain written consent of parents before registering a student as a Traveller. This is a welcome development as it strengthens the protection of the right to self-identification. The Advisory Committee further notes that data on housing of Travellers is collected and disseminated in the form of the annual progress reports by the Department of Environment, Community and Local Government and the National Traveller Accommodation Consultative Committee (NTACC).

The Advisory Committee notes that a population census is carried out in Ireland every five years and that the last one took place on 10 April 2011. The questions concerning ethnicity, religion and languages spoken did not vary from the 2006 census questions and were of mandatory character. Given the right to self-identification expressly guaranteed by Article 3.1 of the Framework Convention, the Advisory Committee regrets the compulsory nature of the answers to these questions. At the same time, the Advisory Committee welcomes the inclusion of a national identity tick box allowing for respondents to self-identify their ethnic or cultural background. When answering the question concerning language other than English or Irish spoken at home, respondents were free to indicate any language in the space provided. This is commendable.

However, the Advisory Committee notes with concern that the census would not accurately reflect the numbers of people belonging to certain communities, such as new migrants from Central and Eastern Europe (for whom the correct response to the question on ethnic background would be "any other White background"). The answer to the question on nationality would only partially address this point, as the term "nationality" refers to

respondent's citizenship and not to ethnicity. The Advisory Committee is also concerned that the available options did not allow the respondents to indicate more than one ethnic affiliation, which is contrary to the Conference of European Statisticians *Recommendations for the 2010 Censuses of Population and Housing*.

Recommendation

The Advisory Committee invites the authorities to continue research and consultation that will allow for effective strategies and expanded and adapted enumeration procedures to be developed for future censuses, so as to ensure accurate data collection, in line with the right to self-identification as provided for in Article 3.1 of the Framework Convention and internationally recognised data protection standards.

16. ITALY

OPINION ADOPTED ON 15 OCTOBER 2010

Article 3 of the Framework Convention

Scope of the Framework Convention

Recommendations from the two previous cycles of monitoring

In the previous monitoring cycles, the Advisory Committee encouraged the authorities to take all the necessary measures to ensure prompt implementation of Law 38/01 of 23 February 2001 on the protection of the Slovene linguistic minority of the Friuli Venezia Giulia region (hereinafter 'Law 38/01') in the municipalities concerned. More generally, the authorities were encouraged to be flexible in their approach to the territorial scope of legislation on the protection of national minorities, especially with respect to Law 482/99 of 15 December 1999 'establishing a legal framework for protection of historical linguistic minorities' (hereinafter Law 482/99).

The authorities were encouraged to consider introducing a mechanism to gather practical information and statistical data on the implementation of Law 482/99. They were also invited to pursue their efforts to collect relevant statistical data on Roma and Sinti with a view to adopting a strategy and appropriate protection measures for these persons.

Present situation

The Advisory Committee notes that the process of identifying the geographical areas (municipalities) meeting the requirements to be covered by the provisions of Law 38/01 on the protection of the Slovene linguistic minority has continued in the Friuli Venezia Giulia region, and, as mentioned in the State Report, the number of the concerned municipalities increased by seventy-five between June 2004 and the end of December 2008. In addition, solutions have also been found, with the help of the Joint Committee on the Slovene Minority, to the previously reported problems concerning the demarcation of municipalities traditionally inhabited by the Slovene minority. In particular, a presidential decree of 12 September 2007 confirmed the presence of Slovene-speaking communities in the central

areas of the municipalities of Trieste and Gorizia and in the town of Cividale, and these areas now form part of the territories protected by Law 38/01. The Advisory Committee welcomes these developments and especially the fact that the authorities see identification of the relevant areas and populations as a continuous and dynamic process.

In this connection, the Advisory Committee's attention has been drawn to the controversy surrounding the inclusion of populations living in the Resia, Natisone and Torre valleys (province of Udine) in the measures adopted to protect the Slovene minority. Differing views exist among the authorities, and also, it seems, among the populations concerned, as to whether they actually belong to the Slovene-speaking minority. Representatives of the Slovene minority believe that the language spoken by the persons concerned is an older dialect of Slovene which has been preserved in this form because there has been no instruction in Slovene in these municipalities. They are deeply concerned about the positions taken on this matter (in some media in the province of Udine) by a number of officials involved in local and regional politics. According to the representatives of the Slovene minority, these positions tend to deny that the persons concerned are part of the Slovene-speaking minority and entitled to the relevant protection, thus conveying a diminished and fragmented image of the Slovene minority. At the same time, the Advisory Committee notes that certain inhabitants of Resia consider themselves to constitute a group with an identity distinct from that of Slovenes and would be interested, as such, in the protection of the Framework Convention.

The Advisory Committee wishes to recall that, pursuant to the principle of free self-identification enshrined in Article 3 of the Framework Convention, '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'. It believes that, in order to gear their policies more effectively to the choices of the persons concerned, local, regional and/or central authorities should open a dialogue with these persons and ensure that, both in this dialogue and in their protection policies, the self-identification principle is fully respected.

The Advisory Committee takes note of the position adopted by Italy's Constitutional Court in relation to regional legislation on the protection of linguistic minorities. It acknowledges that, in its decision on a regional law promoting the Friulian language, the Court has also expressed a position, albeit indirectly, on the personal scope of application of the Framework Convention in Italy and the limits on regional authorities in this respect. In particular, the Constitutional Court has clearly stated that the regions do not have the power to add other languages or linguistic minorities to the list of languages or linguistic minorities officially recognised and protected by the Italian State under Law 482/99.

The Advisory Committee acknowledges that the division of powers between different levels of authority is entirely a matter for the State Parties and that the latter have a margin of discretion in deciding which groups or persons are entitled to protection under the Framework Convention. At the same time, it wishes to emphasise that only an open and flexible approach to the scope of application of the FCNM can suitably reflect the complex

demographic, linguistic and cultural realities that exist across the country and properly meet existing needs, in accordance with the principles of the Framework Convention.

Recommendations

The Advisory Committee invites the authorities to pursue an open, dialogue-based approach in relations with persons and groups having expressed an interest in the protection provided by the Framework Convention and encourages them to take due account of the principle of free self-identification enshrined in Article 3 of the Framework Convention.

More generally, the authorities are encouraged to maintain a flexible approach to the Framework Convention, so that other persons having shown an interest in the protection provided by this Convention, may, where appropriate, be included within its scope.

Status of Roma and Sinti

Recommendations from the two previous cycles of monitoring

Whilst welcoming the fact that the authorities consider that Roma and Sinti can be covered by measures of protection under the Framework Convention, the Advisory Committee encouraged the authorities to take the necessary legislative measures without delay in order to ensure statutory protection for these persons throughout the country. It further encouraged the authorities to step up their efforts to bring about tangible improvements in the situation of these persons, including those who were not citizens of the European Union.

Present situation

The Advisory Committee notes with concern that, although the authorities have pledged in the past to protect Roma and Sinti through specific legislation, Italy still has no legislative framework at national level for protecting these communities. Several draft laws have been submitted to the Parliament, but no practical progress has been made. The Advisory Committee wishes to recall that, inasmuch as the protection afforded by Law 482/99 is territory-based, Roma and Sinti, who are considered to be a nomadic population by the Italian authorities, are not covered by its provisions.

The Advisory Committee would like to point out that considerable differences exist within the different communities of Roma and Sinti and that many groups prefer a sedentary lifestyle and travel only if they are unable to find permanent accommodation. The Advisory Committee believes it important that the authorities avoid, in the absence of appropriate consultation, considering all persons belonging to the Roma and Sinti communities as nomadic. It considers that the various ways of life and specific situations existing within these communities require a more nuanced approach on the part of the authorities.

The Advisory Committee believes that adoption of specific legislation to protect Roma and Sinti, without necessarily including these groups in the list of officially recognised linguistic minorities, would be of benefit to all concerned. For the communities affected, it would afford clear and specific legal guarantees for the implementation of their fundamental rights and of the principle of full and effective equality. For the authorities in charge of adopting policies to

protect these persons, it would provide a coherent framework based on a comprehensive approach and a clear division of responsibilities.

Recommendation

The Advisory Committee urges the authorities at all levels to take all the necessary steps to elaborate and adopt without delay specific legislative framework, at national level, for the protection of Roma and Sinti. Representatives of these communities should be duly consulted as part of this process.

Ethnic data collection

Recommendations from the two previous cycles of monitoring

In the previous monitoring cycles, the Advisory Committee encouraged the authorities to consider introducing a mechanism to gather practical information and statistical data on implementation of Law 482/99 as guidance for their policies on minorities.

The authorities were also invited to pursue their efforts to gather relevant statistical data on Roma and Sinti with a view to facilitating the preparation of a strategy and appropriate protection measures for these persons.

Present situation

The Advisory Committee regrets that a proper overview of the composition of the population and current demographic changes is not entirely available. It also notes the absence, in the context of population censuses, of a question on ethno-linguistic affiliation, as well as the fact that both the authorities and minorities are divided on the desirability of including such a question in future. This information is nevertheless essential for planning, implementing and evaluating measures for the application of legislation on the protection of minorities.

In the absence of specific legislation authorising and governing the collection of such data, various means are used at different levels to remedy this lack of information: sociological surveys and research, studies by individual ministries or NGOs, etc. Under special legislation, statistical information on the number of persons belonging to linguistic minorities is gathered in two provinces: the Autonomous Province of Bolzano – South Tyrol (a mandatory question on individuals' linguistic affiliation) and Trento (an optional question).

With regard to the declaration of linguistic affiliation in the Autonomous Province of Bolzano - South Tyrol, the Advisory Committee is pleased to note that in 2005, immediately after the adoption of its previous Opinion on Italy, the system changed. Decree no. 99/2005 makes now the declaration anonymous as a rule and limits the cases when it must be disclosed. It also makes it possible to change the declaration, at any time, although in this case the effects of the new declaration only come into force after 18 months. Nevertheless, the new system continues to make the affiliation to one of the three recognized linguistic groups (German, Italian or Ladin) an obligation, with serious consequences arising for not complying, especially in areas such as access to the labour market or political rights; this is a source of concern.

However, the Advisory Committee is pleased to note that the new system represents an improvement compared to the previous situation.

The Advisory Committee notes with deep concern the serious criticism prompted by the *de facto* 'census' organised by the Italian authorities in 2008 to obtain information on the population living in 'camps for nomads'. The fact that, even though the authorities refuse to admit it, this 'census' targeted Roma and Sinti, the manner of its organisation, and especially the climate in which it was carried out, drew extremely critical responses from Roma associations, national and international NGOs working in the human rights field and many international organisations. In addition, the fact that it comprised photographing and fingerprinting of children raised many questions concerning respect for the human rights of the individuals concerned and for international standards on the protection of personal data.

While informed of the "exceptional" nature of these methods, which the authorities claim to have used as a last resort, the Advisory Committee finds it difficult to accept that practices such as the photographing and fingerprinting of children can help improving the living conditions of the persons concerned or ensuring full and effective equality in their respect. It considers, moreover, that such practices are not compatible with the right to free expression of ethnic affiliation and the principle of non-discrimination enshrined in the Framework Convention and must be avoided.

The Advisory Committee acknowledges that in order to combat effectively the discrimination which they might suffer, it is important to have reliable data on the situation of persons belonging to the different population groups in areas such as education or socio-economic life. Similarly, it is aware that in the absence of such data it is difficult for the authorities to guarantee full and effective equality *vis-à-vis* such persons.

The Advisory Committee considers, however, that, whatever the methods used to gather such data, the Italian authorities must ensure that existing safeguards and standards in the field are fully respected. In this context, the Advisory Committee refers to the principles laid down in Recommendation R (97) 18 of the Committee of Ministers to member States concerning the protection of personal data collected and processed for statistical purposes, as well as in the recommendations of the United Nations Economic Commission for Europe prepared in co-operation with the Statistical Office of the European Communities. In every case, special consideration must be given to whether the question about ethno-linguistic affiliation is optional and to the basic principle enshrined in Article 3 of the Framework Convention whereby no disadvantage must result from the choice expressed by the person answering such questions.

Recommendations

The Advisory Committee reiterates its recommendation to the authorities to consider introducing, as guidance for their minority protection policies, a mechanism in order to gather reliable statistical data on the numbers and situation of persons belonging to linguistic minorities, as well as to the Roma and Sinti communities.

The Advisory Committee further urges the authorities to ensure that adequate ways and means are used to obtain such data, in consultation with representatives of the persons concerned. In this context, the authorities must ensure that existing international safeguards and standards concerning personal data protection are fully respected, most importantly as laid down in Article 3 of the Framework Convention.

17. KOSOVO*

OPINION ADOPTED ON 6 MARCH 2013

* 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.

Article 3 of the Framework Convention

Personal scope of application

Recommendations from the two previous cycles of monitoring

In the previous monitoring cycles, the Advisory Committee encouraged the authorities to maintain their flexible approach towards the scope of application of the Framework Convention and to continue their dialogue with persons belonging to the Montenegrin community concerning their possible inclusion.

Present situation

The Advisory Committee is pleased to note that the Law on the Protection and Promotion of the Rights of Communities was amended in December 2011 and now explicitly includes the Croat and Montenegrin communities in its scope of application. This development follows continued efforts by representatives of the two communities. They contend, however, that corresponding amendments to the 2008 Constitution are still outstanding, which would provide them with reserved seats in the Assembly, as also available to other recognised communities. The Advisory Committee expects that this demand will be carefully considered and consulted upon with representatives of all minority communities (see below comments under Article 15).

Recommendation

The Advisory Committee encourages the authorities to pursue their inclusive approach to the personal scope of application of the Framework Convention and to maintain a constructive dialogue with representatives of all communities on issues that affect the protection of their rights as members of minority communities.

Population and housing census

Recommendations from the two previous cycles of monitoring

In the previous monitoring cycles, the Advisory Committee urged the authorities to take all necessary efforts to ensure maximum participation in the census that was being planned and to take all necessary measures to ensure that existing international data protection standards were fully respected. It also reminded the authorities that the right to free self-identification of persons belonging to minority communities had to be strictly respected, including as regards the possibility of expressing multiple identities.

Present situation

The Advisory Committee notes that a population and housing census was conducted in April 2011, following three pilot exercises in 2005, 2006 and 2008. It acknowledges the substantial efforts invested by the Agency of Statistics and the international organisations involved to overcome the specific challenges that had been identified, from both a technical and methodological point of view. The official results of the census were published in September 2012. The International Monitoring Operation, established to monitor the preparations, enumeration, and census result analysis, concluded that the census "could be considered as having been conducted in a reasonably satisfactory manner." Due to a boycott by residents, however, the census did not take place in the predominantly Serb-inhabited municipalities of Zvečan/Zveçan, Leposavić/Leposaviq and Zubin Potok, and in north Mitrovica/Mitrovicë.

The census provides institutions with a range of detailed and valuable information, related, for instance, to household income, employment situation and educational attainment, which is crucial for the targeted development of public policies. However, due notably to the fact that it took place only in 34 out of 38 municipalities, and to resistance to participate also among some Serb and Roma residents in other areas, the census results for these two communities, as well as other minority communities, differ quite substantially from previous estimates and available data. This is of particular concern in Kosovo* as a number of specific rights of persons belonging to minority communities are conditioned on the percentage of the community in the overall population (see below comments on Article 10 and 15). The Advisory Committee considers it regrettable that the exercise appears overall to have played a divisive role in society despite concerted efforts by authorities to raise awareness of its necessity and significance, and that the results are not considered reliable by substantial parts of the population.

As regards the actual conduct of the census, the Advisory Committee welcomes the fact that questions on ethnic background and religion were not compulsory and provided opportunity for open-ended responses, including thereby the possibility to express multiple identities. It gained the impression from discussions with national and international interlocutors, however, that insufficient efforts were made to include or at least consult representatives of minority communities regarding the organisation and preparation of the census. Representatives of smaller communities in particular indicated that few enumerators with

minority background were employed and even fewer nominated as members of the municipal census commissions, which added to the impression that data concerning these communities was not accurately reflected. During its visit, the Advisory Committee received numerous reports about enumerators who manifested insufficient awareness or training by filling out questionnaires for members of minority communities without asking questions and without respecting the respondents' right to free self-identification, as contained in Article 3.1 of the Framework Convention. While questionnaires were available in the two official languages, as well as Turkish and English, enumerators reportedly did not always come equipped with the appropriate language version, nor were they always able to speak official languages.

The Advisory Committee therefore considers that some flexibility should be applied in the analysis and processing of the census results, particularly as regards the rights of minority communities that are based on their numbers in a given municipality, and refers to data collected through alternative means such as independent surveys and research that provides useful and complementary information. In addition, it is of utmost importance that all collected data is processed and stored in strict conformity with international and regional personal data protection standards.

Recommendation

The Advisory Committee calls on the authorities to ensure that the right to free self-identification is unconditionally respected in all future efforts related to data collection and processing. It further invites the authorities to pursue a flexible approach in the use of data gathered through the census for policy development affecting the rights of persons belonging to minority communities, and to maintain close dialogue with all community representatives to ensure that all sources of data collection, including independent ones, are appropriately consulted.

18. LITHUANIA

OPINION ADOPTED ON 28 NOVEMBER 2013

Article 3 of the Framework Convention

Scope of application of the Framework Convention

Recommendations from the two previous cycles of monitoring

In the previous monitoring cycles, the Advisory Committee encouraged the authorities to pursue further their flexible approach to the scope of application of the Framework Convention and to ensure that any new legislation on national minorities reflected comments made by international experts on previous draft laws and was fully in line with the principles of the Framework Convention.

Present situation

The Advisory Committee notes the continuation of the overall flexible and inclusive approach taken by the authorities towards the scope of application of the Framework Convention, despite the absence of a coherent legislative framework pertaining to national minorities. In June 2009, following years of debate at domestic level and failed efforts to agree on new and more contemporary minority protection legislation, the 1989 Law on National Minorities was declared null and void as of January 2010. While the Advisory Committee generally does not consider specific minority legislation to be a prerequisite for the implementation of the Framework Convention, which may also be guaranteed through a set of various pieces of legislation or administrative instructions, the Advisory Committee expresses its concern at the current absence of a comprehensive framework or strategy related to the protection of minority rights. The supremacy of the State Language Law, for instance, is still cited as a reason for the non-implementation of important Framework Convention guarantees related to language rights, despite the fact that Article 1 of the Law foresees that other laws and legal acts “shall regulate the right of persons, belonging to ethnic communities, to foster their language, culture and customs” and broad provisions for the protection of minority rights also found in the Constitution (see further comments on Article 10 below).

The Advisory Committee welcomes in this context the establishment of a working group by the new government coalition in October 2012, headed by the Vice Minister of Culture, with the task of drafting a new Law on National Minorities. While pleased to note that this working group included minority representatives and that, according to most interlocutors, concerted efforts have been made to effectively consult persons belonging to national minorities throughout the process of developing the draft, concerns have been raised to the Advisory Committee by representatives of numerically smaller minorities that a future Law should be flexibly worded to ensure that new groups may be added in the future in line with set criteria. It welcomes the assurances of officials that the right to free self-identification, as contained in Article 3 of the Framework Convention, will be enshrined in any new law and that minority protection shall be extended to citizens of Lithuania or permanent residents who are characterised by another culture, religion, or language and are united by a desire to preserve their national identity. The Advisory Committee commends this approach and considers it in line with its general view that citizenship should not be regarded as an element of the definition *per se* but may appropriately be regarded by states as a precondition to access *certain* minority rights.

At the end of October 2013, the draft Law on National Minorities was submitted for inter-institutional and public consultation. The Advisory Committee regrets to have learned of first unfavourable responses from state institutions such as the State Language Commission, which contains misinterpretation of the Framework Convention and the ensuing obligations on member states (see comments on Articles 10 and 11 below). While the submission of the Draft to the Seimas is in principle still expected, the Advisory Committee notes with some concern that many of its interlocutors indicated their scepticism about the likelihood of its adoption in the near future, as issues pertaining to minority protection in Lithuania,

particularly as regards the language rights of persons belonging to national minorities, continue to be considered a highly sensitive and politicised topic, on which agreement in Parliament is unlikely to be achieved. The Advisory Committee considers, however, that urgent legislative measures must be taken to fill the current legal lacunae and contradictions and expects that the current draft will be submitted to Parliament and considered without delay.

Recommendations

The Advisory Committee calls on the authorities to maintain an inclusive approach to the personal scope of application of the Framework Convention and ensure that it is maintained also in any future legislative framework pertaining to national minorities.

The Advisory Committee urges the authorities to take the appropriate legislative measures to address without delay the absence of a coherent legal framework related to minority rights protection.

Census

Recommendations from the two previous cycles of monitoring

In the previous monitoring cycles, the Advisory Committee called on the authorities to consult minority representatives in the preparation and organisation of the population census and to provide questionnaires in relevant minority languages. In addition, it reminded the authorities of the necessity to undertake adequate and timely awareness-raising among national minority communities about the significance of the census as well as about applicable data protection safeguards.

Present situation

The Advisory Committee welcomes the range of valuable information gathered during the 2011 census in Lithuania, including on education and employment levels within the population. It notes overall positive reflections by interlocutors on the way the census was prepared and organised. Representatives of national minorities were enlisted among the enumerators, including through the Roma Community Centre, and the questionnaires were available in different languages, containing open questions relating to ethnic and language affiliation. It regrets, however, accounts from representatives of some national minorities of insufficient information being available on how to fill in the electronic questionnaire, and lack of training of enumerators to respond to queries of minority representatives during the interview, such as regarding how to adequately accommodate multiple affiliations in the questionnaires.

Recommendation

The Advisory Committee invites the authorities to make full use of the information available through the census for relevant policy development and ensure that the data provided in the questionnaires is processed in line with applicable national and international data protection

standards and respect for the right to free self-identification, including with regard to multiple affiliations.

19. MALTA

OPINION ADOPTED ON 11 OCTOBER 2012

Article 3 of the Framework Convention

Application of the Framework Convention

Recommendations from the two previous cycles of monitoring

During the previous cycles of monitoring, the Advisory Committee invited the authorities to consider the possibility of applying the Framework Convention, in the light of its objectives, on an article-by-article basis and in consultation with those concerned, to individuals who do not share the language, religion or culture of the general population.

Present situation

The Advisory Committee takes note of the fact that the authorities' position on the scope of the Framework Convention has not changed since the first monitoring cycle. According to the declaration submitted by Malta when ratifying the Framework Convention, there are no national minorities within the meaning of the Framework Convention in the territory of Malta.

Given that no full state report has been received and that there was no visit to Malta, the Advisory Committee has no knowledge of any groups of persons having expressed the wish to be recognised as national minorities in the sense of the Framework Convention. Nonetheless, it encourages the authorities to adopt a dialogue-based approach in their relations with persons and groups who might in the future be interested in the protection provided by the Framework Convention.

Recommendation

The Advisory Committee encourages the authorities to adopt a dialogue-based approach in their relations with persons and groups who might in the future be interested in the protection provided by the Framework Convention.

20. MOLDOVA

OPINION ADOPTED ON 26 JUNE 2009

Article 3 of the Framework Convention

Citizenship criterion in the definition of “national minorities”

Recommendations from the two previous cycles of monitoring

In previous cycles of monitoring, the Advisory Committee welcomed the fact that Moldova pursued in practice an inclusive approach in its relations with national minority organisations and representatives.

However, it regretted that Law N° 382 of 28 August 2001 on the rights of persons belonging to national minorities and their associations introduced Moldovan citizenship as a requirement to be able to benefit from the provisions of the said Law. Furthermore, it noted with concern that persons seeking to obtain Moldovan citizenship continued to face a number of undue difficulties.

Present situation

Notwithstanding the positive approach underlined in paragraph 34 above, the Advisory Committee regrets that citizenship continues to be a requirement for persons belonging to minorities to access the protection offered by the Law on the rights of persons belonging to national minorities and their associations.

The Advisory Committee is, however, pleased to note that the Moldovan authorities have maintained their approach in practice in communicating with the various groups living in the country and, notably, that representatives of immigrant communities are part of the Council of Ethno-cultural Organisations (see also remarks in respect of Article 15 below).

Recommendations

The Advisory Committee encourages the authorities to maintain an inclusive approach in dealings with persons belonging to minority groups living in Moldova.

The Advisory Committee invites the authorities to preserve the possibility for persons belonging to other groups, including non-citizens where appropriate, to be included in the application of the Framework Convention and to be covered by domestic legislation on minorities.

21. NORWAY

OPINION ADOPTED ON 30 JUNE 2011

Article 3 of the Framework Convention

Personal scope of application of the Framework Convention

Recommendations from the two previous cycles of monitoring

In the previous monitoring cycles, the authorities were encouraged to further develop the measures of protection taken in respect of persons not included in the scope of the Framework Convention and to consider the possibility of their inclusion.

Present situation

The national minorities which the Norwegian authorities include in the scope of application the Framework Convention are Jews, Kvens, Roma, Romani/Taters and Skogfinns. Nonetheless, Norway pursues an inclusive approach in respect of other groups. The Advisory Committee notes with satisfaction that migrants who have recently arrived in Norway, and who wish to identify with ethnic groups with national minority status in Norway, can benefit from the same measures as those intended for the national minorities.

The Advisory Committee takes note that the Norwegian Sami are protected in Norway as an indigenous people and have expressed the wish not to benefit from the protection under the Framework Convention.

As regards the Kven minority, the Advisory Committee has been informed that for some years there have been internal debates and differences of opinion within this group over the use of the term "Kven" employed by the authorities. For instance, the representatives of the Norwegian-Finnish Association ("Norsk-Finsk Forbund") would like the authorities to call them "Kvens/Norwegian Finns". Other persons belonging to this minority regret that the authorities sometimes designate their language as "Kven/Finnish", which does not reflect that Kven is a separate language. Information available to the Advisory Committee also indicates that a number of persons of Kven origin do not wish to be identified as belonging to a national minority.

In this context, bearing in mind that the right to free self-identification is applied in Norway, particularly in the event of disagreement within a minority group, the authorities opened a dialogue in 2010 with the Kven associations concerned.

The Advisory Committee stresses the importance of respecting the choice of persons belonging to national minorities as regards the way in which they are to be designated by the authorities. This implies an obligation for the authorities to continue the dialogue with the persons belonging to the Kven minority and to take due account of their wishes as to changing or maintaining of names.

Recommendation

The Advisory Committee encourages the authorities to pursue an approach based on dialogue and compliance with the right to free self identification in their dealings with persons belonging to the Kven minority. It also calls upon them to maintain their flexible and open approach to the scope of application of the Framework Convention, in particular regarding migrants who have recently arrived in Norway and who wish to identify with ethnic groups with national minority status.

Collection of ethnic data

Recommendations from the two previous cycles of monitoring

In the two previous monitoring cycles, the authorities were invited to develop initiatives for obtaining reliable data on the situation of persons belonging to national minorities in various sectors.

Present situation

The Advisory Committee notes that no census is organised in Norway and that the legislation does not permit the collection of data on ethnic origin. It is further informed that persons belonging to national minorities express reluctance over the collection and dissemination of personal data, especially on ethnic origin.

The Advisory Committee understands this attitude in view of very negative experiences in the past, but reiterates the importance of obtaining reliable information on the situation of persons belonging to national minorities in order to implement adequate measures and policies concerning them. This information can be obtained by the collection of statistical data or by other means, such as selective studies, or enquiries. The authorities could make use of such data, while complying with the existing personal data protection standards, in order to be in a position to meet the needs expressed by national minorities more fully and to remedy any form of discrimination. In this context, it notes with interest that an enquiry is expected to be conducted in co-operation with the Norwegian Association of Local Authorities in order to understand better the situation of minorities at local level (see also comments under Article 4 below).

Recommendation

The Advisory Committee invites the authorities to seek means of obtaining more reliable data on the situation of national minorities, in close consultation with the persons concerned, while fully complying with international standards on personal data protection.

22. POLAND

OPINION ADOPTED ON 28 NOVEMBER 2013

Article 3 of the Framework Convention

Personal scope of application of the Framework Convention

Recommendation from the two previous cycles of monitoring

In the previous cycles of monitoring, the Advisory Committee considered that the authorities should favour a flexible and open approach to the scope of application of the Framework Convention, and 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 the Regional Language in the application of the Framework Convention, in particular as regards their linguistic and cultural interests.

Present situation

The Advisory Committee notes no changes in the overall approach of the Polish authorities towards the personal scope of application of the Framework Convention. The Act on National and Ethnic Minorities and on the Regional Language of 2005 enumerates nine recognised national minorities (Armenians, Belarusians, Czechs, Germans, Jews, Lithuanians, Russians, Slovaks and Ukrainians) and four ethnic minorities (Karaim, Lemko, Roma and Tatars). All provisions of the Act extend to both national and ethnic minorities in equal measure. The Act further identifies Kashubian as a regional language to which some language and cultural rights contained in the Act apply.

The Advisory Committee notes that, according to the preliminary results of the census of 2011, 847 000 persons declared their Silesian ethnicity, of whom 376 000 declared it as their only ethnic identification and 431 000 jointly with Polish identification. Diverging opinions remain as to the options available regarding protection of the Silesian identity and language. The authorities should pursue the dialogue and explore the implications of different options in consultation with those concerned.

The Advisory Committee further notes that different varieties of the Silesian spoken language coexist in Silesia and that some efforts have been made towards its standardisation. The Advisory Committee notes the view of the Government, as well as experts, that the Silesian language constitutes a variety of Polish. The Advisory Committee considers that the authorities should assist standardisation efforts in close co-operation with the language group concerned and only if there is such a request. The Advisory Committee further notes that the lack of common understanding as to the ways the Silesian language can be expressed in writing hampers the exercise of certain linguistic rights of persons belonging to this group.

The Advisory Committee wishes to reiterate its view that the application of the provisions 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.

The Advisory Committee welcomes in this context the authorities' support for Silesian culture, traditions and heritage (see related comment under Article 5 below). The Advisory Committee welcomes the on-going dialogue concerning the Silesian identity and language. In particular, the Advisory Committee notes the existence of the parliamentary multi-party Panel for the Preservation of the Silesian Spoken Language grouping 17 members of the *Sejm*. The Panel's stated objective is "to support regional tradition of Silesians with particular emphasis on the Silesian spoken language as a multigenerational platform for transmitting identity and to stimulate parliamentary knowledge and discussion on the role and condition of the Silesian spoken language as an element of the broadly understood culture of the Republic of Poland".

The Advisory Committee further notes that following earlier drafts of 2007 and 2010 a proposal for amending the Act on National and Ethnic Minorities and on the Regional Language was introduced in 2012 as "members' bill" with the aim of giving the Silesian language the same status as is currently enjoyed by the Kashubian language. This draft is currently discussed within the Parliamentary Commission on National and Ethnic Minorities (see related comment under Article 15 below).

Recommendation

The Advisory Committee invites the authorities to continue the dialogue with Silesian community representatives with the view of finding the most appropriate solution for the recognition, preservation and promotion of the Silesian language, culture and heritage. The authorities are asked to assist with the standardization efforts, if there is such a wish among the speakers of different varieties of the Silesian language.

Data collection and self-identification

Recommendations from the two previous cycles of monitoring

In the previous cycles of monitoring, the Advisory Committee asked the authorities to consult the representatives of minorities during the preparatory phase for the census of 2011 about the questions relating to a person's affiliation with a national minority. Furthermore, the Advisory Committee encouraged the use of bilingual forms during the census in the municipalities where a minority language enjoyed a "supporting language" status.

The Advisory Committee also asked that the authorities to undertake awareness-raising activities among the persons belonging to national minorities well in advance of the census, in co-operation with minority representatives and to include persons belonging to minorities among census enumerators.

Finally, the authorities were asked to adopt measures aimed at collecting reliable socio-economic data, disaggregated by age, sex and geographical distribution, in particular in relation to employment, so as to be in a position to elaborate targeted minority policies in this field.

Present situation

The Advisory Committee notes that a census was conducted in Poland between April and June 2011. Representatives of national minorities were consulted about the formulation of the questions on national or ethnic identity (including the possibility of indicating two affiliations), and the mother tongue. The proposal on specific wording of these questions made by the Joint Commission of Government and National and Ethnic Minorities was broadly followed. In this regard, the Advisory Committee commends that the questionnaire used in the census was drafted in accordance with the pertinent EUROSTAT recommendations. This questionnaire contained optional, open-ended questions on ethnicity, mother tongue and the language used at home as well as religious denomination. The last two of these questions were asked for the first time since the census of 1931. The Advisory Committee also welcomes the translation of the census forms and explanatory notes into the languages of national and ethnic minorities, the Kashubian language and English.

The Advisory Committee notes that the Census of 2011 was conducted using a variety of techniques. In addition to an interview, respondents could choose to fill in the electronic questionnaire using the Internet. However, most of the data was collected during the census from the electronic official registers without any direct input from the respondents. The Advisory Committee notes that, in order to obtain the fullest possible data, the census was conducted by means of an interview in all 86 municipalities inhabited by over 10% of persons who in 2002 indicated ethnicity other than Polish.

The Advisory Committee notes that 3,93% of respondents availed themselves of the opportunity to indicate more than one ethnic affiliation. In this context, the Advisory Committee notes that the majority of the persons who identified themselves as Silesians indicated Polish ethnicity as their other identification. Also, the vast majority of Kashubians declared Polish ethnicity as their other identification.

The census of 2011, like the previous one of 2002, aimed to collect detailed information on education, employment, place of residence, marital status, age and territorial distribution of persons belonging to national minorities. The Advisory Committee notes that the data of the census of 2011 is progressively being cross-tabulated and released providing an up-dated picture of the demographic situation in Poland. It notes, however, that long delays in the release of census data, decreases rapidly its accuracy - and thus usability - because of the dynamic changes, in particular due to migrations out of and into Poland.

The Advisory Committee notes that many representatives of national minorities have raised concerns as regards the accuracy of the data collected from sources other than direct interview. Furthermore, the fact that the full information on ethnic composition of the country has not been published over two years after the census was conducted deepens this scepticism. The Advisory Committee stresses the importance of the publication of census results for the enjoyment of certain minority rights at the local level. Such publication should fully respect relevant international standards including the safeguards, notably those related

to the protection of personal data, as laid down in the Committee of Ministers Recommendation (97)18 concerning the protection of personal data.

Recommendation

The Advisory Committee encourages the authorities to process and release the census data without any further undue delay, with full respect for the safeguards, notably those related to the protection of personal data. The authorities are asked to ensure that the central statistical office is given the necessary resources enabling it to carry out this task.

23. PORTUGAL

OPINION ADOPTED ON 4 DECEMBER 2014

Article 3 of the Framework Convention

Scope of application of the Framework Convention

Recommendations from the two previous cycles of monitoring

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

Present situation

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 this aspect in order to ensure that no arbitrary or unjustified distinctions have been made.

While being fully aware of the fact that the concept of “national minority” does not exist in the Portuguese legal order, 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, a definition of this concept or the existence of a specific legal status for such groups of persons. The Framework Convention was conceived as a pragmatic instrument, to be implemented in very diverse social, cultural and economic contexts and to adapt to evolving situations. Therefore, the Advisory Committee welcomes the fact that the authorities continue to consider that the Roma constitute a specific ethnic minority and that the protection offered by the Framework Convention is extended *de facto* to them. Nonetheless, the Committee remains concerned by the fact that the authorities have not organised any consultations or discussions on the protection offered by the Framework

Convention with other groups potentially concerned and have decided *a priori* that this protection should be extended only to the Roma.

The Advisory Committee welcomes the fact that the linguistic rights of persons speaking Mirandese are protected in national legislation by Law No. 7/99 on Official Recognition of Linguistic Rights of the Mirandese Community. In this context the Advisory Committee notes, however, that Portugal has not signed the European Charter for Regional or Minority Languages.

Recommendations

The Advisory Committee invites the Portuguese authorities to engage in a dialogue with persons belonging to ethnic, cultural or linguistic groups living in Portugal about possible protection under the Framework Convention.

The Advisory Committee invites the authorities to start a dialogue with the Mirandese community with a view to finding appropriate solutions for strengthening the existing protection and promotion of the Mirandese language, culture and heritage, including by considering a possible extension of the protection offered under the Framework Convention and also by signature and ratification of the European Charter for Regional or Minority Languages.

24. ROMANIA

OPINION ADOPTED ON 21 MARCH 2012

Article 3 of the Framework Convention

Scope of application of the Framework Convention

Recommendations from the two previous cycles of monitoring

In the previous cycles of monitoring, the Advisory Committee encouraged the authorities to consider the possibility of including in the application of the Framework Convention persons identifying themselves as belonging to national minorities who expressed an interest in the protection afforded by the Convention, and in particular persons identifying themselves as Aromanian and Hungarian Csangos.

The authorities were also encouraged to ensure that an open and flexible approach to the scope of application of the Framework Convention was reflected in the draft Law on the Status of National Minorities.

Present situation

The Advisory Committee notes that the personal scope of application of the Framework Convention has not changed since the last cycle of monitoring. The Advisory Committee welcomes the ongoing dialogue between the Romanian authorities and some representatives of the Aromanian and the Hungarian Csango communities, who maintain their separate identities and do not consider themselves to be part of the other recognised national minority groups. Nevertheless the Advisory Committee notes that, even though discussion on these matters has been ongoing between the authorities and some representatives of the communities in question, the dialogue has not yielded substantial results. The Advisory Committee further considers that, in spite of the steps taken by persons identifying themselves as Aromanian and Hungarian Csangos expressing their interest in the protection afforded by the Framework Convention, the situation of these minorities has remained unchanged.

The Advisory Committee notes that representatives of the Aromanian community have continued, since 2005, to petition the authorities to be recognised as a national minority and to be afforded the protection of the Framework Convention. The Advisory Committee notes with concern that, in spite of the sustained efforts to maintain their self-identification and in spite of the number of persons declaring their Aromanian ethnicity in the last census, the authorities have not examined this issue since the first monitoring cycle.

The Advisory Committee has also been informed by representatives of the Hungarian Csango community of their current activities, aimed at the preservation of their language, culture and their identity.

The Advisory Committee notes that since the last cycle of monitoring, Romania has adopted neither clear criteria nor a specific procedure for the recognition of national minorities. As a consequence, only the minorities that are represented in the Council of National Minorities are afforded the protection of the Framework Convention. The Advisory Committee regrets that there has not been any revision and there is no institutional mechanism concerning the possible revision of representation and participation in the Council for National Minorities since its establishment.

In this context, the Advisory Committee notes that in its declaration contained in the instrument of ratification of the European Charter for Regional or Minority Languages, Romania stated that the provisions of the Charter shall apply to twenty languages of national minorities. The Advisory Committee notes that the list of languages to which the Charter applies, coincides fully with the list of minorities represented in the Council of National Minorities. Such a uniform approach to both the Framework Convention and the Charter can be seen as an illustration of the difficulty to extend the protection of either instrument to the groups or languages which constitute regional expressions of minority identities, such as Aromanian and Hungarian Csango.

The Advisory Committee further notes with regret that the draft Law on the Status of National Minorities, which has been under consideration in various forms for a number of years, has still not been adopted and continues to be discussed in Parliament. The draft law contains a list of the 20 communities which “represent the national minorities living in Romania”. It is particularly regrettable that this law has not been adopted in spite of the fact that the draft had already been elaborated in 2005, and has since been examined by the Venice Commission for conformity with applicable international standards.

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 is possible to examine, in consultation with those concerned, the possibility of including persons belonging to groups currently not represented in the Council of National Minorities, in the application of the Framework Convention, in particular as regards their linguistic and cultural interests. It also encourages the authorities to take due account, when considering the draft Law on the Status of National Minorities, of the principle of self-identification enshrined in Article 3 of the Framework Convention.

In particular, the authorities are encouraged to continue the dialogue with persons having expressed an interest in the protection afforded by the Convention, such as the Aromanians, and the Hungarian Csangos, 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 persons concerned.

The Advisory Committee urges the authorities to step up their efforts and take all the necessary measures in order to adopt the draft Law on the Status on National Minorities, and to ensure that all the provisions of the law are fully in line with international standards.

Terminology applied to Roma

Present situation

The Advisory Committee notes with concern the attempts that have been made in the past year by some representatives of the authorities, with the support of the Romanian Academy and without consultation with the representatives of the Roma communities, to change the use of the term Roma to “tsigan”, which is generally considered in the Romanian language, to carry a pejorative undertone when referring to this community. The Advisory Committee also notes that this initiative does not enjoy general support within the government, with a number of notable public figures showing public opposition to this endeavour. The Advisory Committee notes in addition that similar attempts have been made by some Romanian politicians at the European level to change the terminology used when referring to Roma communities.

The Advisory Committee notes that such attempts to change the terminology when referring to the Roma community have also been made by some media. In 2009, a daily newspaper initiated a campaign to start a legislative proposal for the use of the term “tsigan” instead of Roma. The Advisory Committee notes with satisfaction that the public rejected these initiatives and the campaign failed to collect the necessary number of signatures to be presented as a legislative proposal.

Recommendation

The Advisory Committee encourages the authorities to respect fully the right of Roma to self-identification. The authorities should consult closely with the representatives of the Roma community about any initiatives concerning their designation and avoid any initiatives which reinforce negative stereotypes about a particular minority group.

Data collection

Recommendations from the two previous cycles of monitoring

In the previous monitoring cycles, the Advisory Committee urged the authorities to consult and involve representatives of national minorities in the organisation of the next population census. It also encouraged the authorities to take into account the wider discrepancies between the figures derived from the 2002 census and other estimates when planning protection measures for the Roma.

Present situation

The Advisory Committee notes that the population census was organised in Romania in October 2011. It notes that the questions on nationality (ethnic origin), and mother tongue were optional and have not changed since the previous population census of 2002. The Advisory Committee welcomes the fact that the questionnaire forms were translated into the Hungarian language to be used in municipalities where the number of persons belonging to the Hungarian minority exceed 20% of the total population. However, the Advisory Committee regrets that the census forms were not translated into other minority languages.

The Advisory Committee notes that the list of possible answers to the question on ethnic origin contains, as it did in the 2002 census, the “Csango” category. However, it is to be noted that persons declaring themselves as Csango will be considered, when the census data is processed, as belonging to the Hungarian national minority. Similarly, persons declaring themselves as Aromanians, Vlachs, Macedo-Romans and Istro-Romanians are to be aggregated with persons declaring Romanian ethnicity. The Advisory Committee considers that such methodology applied to interpret the data collected during the census may not be in conformity with the principle of free self-identification, as enshrined in Article 3 of the Framework Convention.

The Advisory Committee regrets that the available options did not allow the respondents to indicate more than one ethnic affiliation. This situation is contrary to the Conference of

European Statisticians Recommendation for the 2010 Censuses of Population and Housing. Representatives of the Roma community have expressed their concern about this provision, as Roma are reluctant, in general, to declare their ethnicity due to the fact that “Roma” is not seen as such to designate ethnicity, but rather to indicate a way of living. According to these Roma representatives, this is the principal reason why in the census of 2002, only 535,140 persons declared themselves as Roma.

In this regard, the Advisory Committee welcomes measures taken by the authorities to train 1,000 Roma census enumerators with an aim to encourage Roma to declare their ethnic identity. However, given that some estimates put the number of Roma in Romania much higher than the figures of the census of 2002, the Advisory Committee regrets to note that the number of census enumerators may be insufficient to encourage all persons concerned to declare their ethnic identity.

Recommendations

The Advisory Committee encourages the authorities to continue their efforts to develop adequate methods of ethnic data collection, while fully respecting the principle of free self-identification.

The Advisory Committee also encourages the authorities to process the census data in strict conformity with the principle of self-identification and with the recommendations of the Conference of European Statisticians, in order to ensure that reliable figures in respect of the ethnic composition of the population are collected.

25. RUSSIAN FEDERATION

OPINION ADOPTED ON 24 NOVEMBER 2011

Article 3 of the Framework Convention

Scope of application

Recommendations from the two previous cycles of monitoring

In the previous monitoring cycles, the Advisory Committee encouraged the Russian Federation to consider the possibility of including additional groups in the application of normative acts pertaining to the implementation of the Framework Convention, and urged the authorities to ensure that the criteria used, among others, in the Law on Guaranteeing the Rights of Numerically Small Indigenous Peoples, do not result in arbitrary or *a priori* exclusion of specific groups.

Present situation

The Advisory Committee notes that the approach towards the personal scope of application of the Framework Convention in the Russian Federation has not changed since the second cycle of monitoring. The draft law on the rights of persons belonging to minorities, which contained

a definition of the term 'national minority', was not adopted. The Federal Law on National-Cultural Autonomy continues, after amendments in 2009, to restrict the right citizens of the Russian Federation to set up and join a national-cultural autonomy. At the same time, however, the Advisory Committee is pleased to note a general level of flexibility and pragmatism on the side of regional and federal authorities as regards the creation of national-cultural autonomies or other minority associations.

The Advisory Committee notes that the 1999 Federal Law on Guaranteeing the Rights of Numerically Small Indigenous Peoples still defines that only those groups that are smaller than 50,000 persons can enjoy the status of numerically small indigenous groups and related guarantees. The Advisory Committee is aware of a request by some representatives of the Siberian Tatars in Tyumen *Oblast* for recognition as a numerically small indigenous group due to their shared perception of belonging to a group which is different from the broader Tatar population by virtue of its specific traditional lifestyle, culture and history in Siberia. In this regard, the Advisory Committee invites the authorities to consider the applicability of the provisions of the Convention to numerically small and distinct groups within larger national minorities, in line with the principle of free self-identification as contained in Article 3 of the Framework Convention.

Recommendation

The Advisory Committee encourages the Russian authorities to maintain their generally flexible approach towards the recognition of national minorities and the scope of application of the Framework Convention. It calls on federal and regional authorities to enter into a constructive dialogue with numerically smaller groups, including those within established minority communities, requesting to be recognised as numerically small indigenous people, in line with the principle of free self-identification.

Collection of data on ethnic origin

Recommendations from the two previous cycles of monitoring

In the previous monitoring cycles, the Advisory Committee stressed the necessity to ensure the optional nature of any ethnicity entry in official documents pertaining to personal identification, as well as the fact that during census exercises, both the participant and the census taker should be aware of the optional nature of ethnicity related questions.

Present situation

The Advisory Committee is pleased to note that the questionnaire used during the nation-wide census that was conducted in the Russian Federation from 14 to 24 October 2010 contained an optional question on the individual's "ethnic origin", in line with Article 26 of the Constitution of the Russian Federation. The Advisory Committee expects that the analysis of the collected data, which according to official information will be published in 2013, will take place in full compliance with internationally accepted data protection standards, as provided in the Committee of Ministers Recommendation (97) 18 and the Council of Europe

Convention ETS 108 concerning the personal data collected and processed for statistical purposes.

The Advisory Committee is concerned by reports regarding efforts to combine the two languages of Mordovia, Moksha and Erzya, into one, thereby creating only one minority group out of two, called “Mordvins” (see further comments on Article 10 below). In this regard, the Advisory Committee notes with concern that pressure has reportedly been placed by federal and regional authorities on persons belonging to the Moksha as well as Erzya national minorities in Mordovia to declare themselves as ‘Mordvins’ in the 2010 census, which would constitute a violation of the principle of free self-identification contained in Article 3 of the Framework Convention.

With regard to personal identity documents, the Advisory Committee notes recent discussions in the State Duma concerning the question whether to reintroduce indication of ethnic origin into passports. Given the nationalistic undertones of at least some parties in the election campaign of 2011/2012, the Advisory Committee understands the concerns of some minority representatives that a reintroduction of an ethnicity entry in Russian passports could lead to a situation where the non-indication of one’s ethnic background based on Article 26 of the Constitution could in practice be interpreted as meaning ‘non-Russian’ or ‘not supporting the Russian state’, which would not be in line with the principle of free self-identification contained in Article 3 of the Framework Convention.

Recommendation

The Advisory Committee reiterates its call on the Russian authorities to ensure that any discussion regarding the indication of ethnic origin in personal identity documents is led in full awareness by all involved that all such entries – or lack thereof – are entirely optional and carry no negative consequences for the persons concerned.

26. SERBIA

OPINION ADOPTED ON 28 NOVEMBER 2013

Article 3 of the Framework Convention

Personal scope of application

Recommendations from the two previous cycles of monitoring

In its previous monitoring cycles, the Advisory Committee invited the authorities to pursue a more flexible approach to the use of the citizenship requirement, by removing this criterion from the general provision on the scope of application of the Law on the Protection of Rights and Freedoms of National Minorities (hereinafter “Law on National Minorities”) and limiting its use to those provisions for which it is relevant. It also called 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 remained unclear.

Present situation

As regards the question of citizenship, the Serbian authorities maintain their previous approach, namely, that the citizenship criterion cannot be removed from the definition of national minorities contained in the Law on National Minorities; however, non-citizens who speak one of the national minority languages used in Serbia can benefit from the same rights as citizens belonging to national minorities, except where a citizenship requirement is expressly laid down by law (for example, in the field of electoral law).

The Advisory Committee welcomes the fact that in practice, non-citizens sharing a language with a national minority in Serbia are able to benefit from many of the same rights as persons recognised as belonging to national minorities. It also welcomes the steps taken by the Serbian authorities to facilitate the acquisition of Serbian citizenship by persons who were citizens of the former Socialist Federal Republic of Yugoslavia and who meet the other criteria laid down in the definition of the term “national minority” contained in Article 2 of the Law on National Minorities. However, it notes with concern reports that there have been problems as regards both the contents and the application of new legislation aimed at facilitating birth registration through non-contentious proceedings, which have a direct impact on acquisition of citizenship (see further below, Article 4, Situation of the Roma). The Advisory Committee again underlines the importance of ensuring that persons whose citizenship status has not yet been clarified following the break-up of Yugoslavia and the conflict in Kosovo* – in particular Roma lacking personal documents – are not negatively impacted by the citizenship criterion. In this context it recalls its general view that citizenship should not be regarded as an element of the definition *per se* but may appropriately be regarded by states as a precondition to access *certain* minority rights.

Recommendations

The Advisory Committee encourages the authorities to continue to apply a flexible approach in practice towards access to minority rights for non-citizens who speak one of the minority languages used in Serbia, and again invites them to consider reviewing the citizenship criterion included in the Law on National Minorities.

It recommends that the authorities pursue vigorously their efforts to regularise the situation of persons whose citizenship and/or legal status remains unclear and for whom this may constitute an unnecessary obstacle to their exercise of the rights of national minorities.

Respect for the specific identity of persons belonging to national minorities

Recommendations from the two previous cycles of monitoring

In its previous monitoring cycles, the Advisory Committee encouraged the Serbian authorities to continue to strictly abide by the principle of free self-identification contained in Article 3 of the Framework Convention.

Present situation

The Advisory Committee notes that debates about the Bunjevci and Croat identities and the Romanian and Vlach identities are ongoing. It observes that regardless of this context, the right of individuals freely to choose to be treated or not to be treated as belonging to a national minority must be strictly observed, in line with Article 3 of the Framework Convention.

The Advisory Committee welcomes the authorities' consistent stance that it will not interfere in debates concerning the ethnic affiliation of persons belonging to national minorities, in so far as this reflects a commitment not to arbitrate in disputes about ethnic affiliation or to impose an identity on any community. It again notes in this context that the authorities have not stood in the way of the creation of the Romanian, Vlach, Croat and Bunjevci national councils, although the last of these was subsequently dissolved (see also Article 15 below).

At the same time, it observes that the effect of these prolonged controversies over identities is to allow differences to be instrumentalised for political purposes. This deflects attention from the realisation of the rights of the persons belonging to the national minorities concerned. The Advisory Committee considers that the authorities should seek to support the enjoyment of these rights by promoting constructive dialogue between the groups concerned, in order to allow long-term arrangements to be found that will allow the rights of persons belonging to the relevant national minorities to be protected to the highest possible level.

Recommendations

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

In parallel, it encourages them to take steps – while maintaining strict neutrality as to outcomes – to promote constructive dialogue between persons identifying themselves as belonging to the Romanian and Vlach national minorities, and between persons identifying themselves as belonging to the Croat and Bunjevci national minorities.

Census

Recommendations from the two previous cycles of monitoring

In its previous monitoring cycles, the Advisory Committee encouraged Serbia to ensure that the 2011 census was carried out in a manner that duly respected the right to free self-identification as set out in Article 3 of the Framework Convention and that representatives of national minorities were adequately involved at all stages of the population census.

Present situation

The Advisory Committee welcomes the fact that the 2011 census included entirely open questions about persons' national affiliation, mother tongue and religious affiliation, with no pre-defined lists, and census enumerators were instructed to record exactly the answers given to these questions. In accordance with Articles 43 and 47 of the Constitution and Articles 27, paragraph 3 and 30(2) of the Law on the Census of Population, Households and Dwellings 2011, questions on ethnic and religious affiliation were optional and fines could be imposed on enumerators, coordinators, supervisors and other persons involved in conducting the census who required individuals to declare their ethnicity or religion against their will. Census forms were translated into eight minority languages (Albanian, Bulgarian, Hungarian, Macedonian, Romany, Romanian, Ruthenian and Slovakian) under the care of the relevant national minority councils, as well as English, and the methodological guidelines on carrying out the census were also translated into Albanian. The Advisory Committee also welcomes the measures taken by the authorities to ensure that persons belonging to national minorities were employed as enumerators and were represented in local census committees in areas inhabited by national minorities and that Roma participated in these processes, although it has received reports that in some areas where several thousand Roma live, no Roma were included on local census committees or employed as enumerators. It notes in this context that the number of people who declared themselves as Roma increased by more than one-third from the 2002 census to the 2011 census, where 147 604 persons declared themselves to be Roma, although unofficial estimates still place the actual number much higher, at between 250 000 and 500 000.

The census provides the authorities with valuable statistical information in areas such as educational attainment, employment and household income, which can play an important role in the development of targeted public policies. The Advisory Committee regrets, however, that, due to a boycott in some areas with a predominantly ethnic Albanian population, the scope of the census was significantly affected in Preševo and Bujanovac, as well as, to a lesser extent, Medveđa. Around 85-90% of Albanians appear to have boycotted the census, in a move that appears to reflect a certain lack of confidence of the Albanian minority in the central authorities' capacity to improve the overall situation of this minority in Serbia (see further below, comments and recommendations under Article 15).

In view of the extent of the boycott, the Advisory Committee observes that considerable flexibility may need to be applied in the analysis and processing of the census results with respect in particular to the Preševo, Bujanovac and Medveđa area, especially as regards the exercise of any rights based on the number of persons living in a given municipality. In this respect, the Advisory Committee refers to the importance of additional data collected through independent surveys and research, which may provide crucial complementary information. Such data must of course be collected, processed and stored in full conformity with international and regional data protection standards (see below).

Recommendation

The Advisory Committee calls on the authorities to pursue a flexible approach in the use of data gathered through the census for policy development affecting the rights of persons belonging to national minorities, in particular as regards Roma and in areas where a boycott had a significant impact on the results of the census. It recommends that the authorities maintain a close dialogue with representatives of the Albanian minority to ensure that alternative data sources, including independent research data, are appropriately consulted.

Ethnic data protection

Recommendations from the two previous cycles of monitoring

In its previous monitoring cycles, the Advisory Committee called on the Serbian authorities to implement fully the existing domestic legal guarantees regarding the collection and the processing of personal data, including by setting up a specific, independent supervisory body on personal data protection with adequate resources to fulfil its tasks efficiently.

Present situation

The Advisory Committee notes that a single body, the Commissioner for Information of Public Importance and Personal Data Protection, is still responsible for monitoring the implementation of both the Law on the Protection of Personal Data and the Law on Free Access to Information of Public Importance. According to this body, the number of complaints it receives regarding personal data protection is rapidly increasing and is likely to overtake the number of complaints under freedom of information legislation in the coming years. The Advisory Committee notes with concern that no regulations governing the methods and safeguards to be applied to the collection of particularly sensitive data, relating inter alia to individuals' ethnicity, language or religion, have yet been adopted. In addition, while budgetary appropriations allowing for the Commissioner's office to be fully staffed have been approved in the past, the Commissioner was for a long time unable to recruit the necessary staff, reportedly due to a lack of sufficient office space. Although the Advisory Committee has been given to understand that progress has recently been made on the latter issue, it notes that the lack of staff continues to significantly hamper the timely examination of complaints.

Recommendation

The Advisory Committee calls on the Serbian authorities to issue the necessary implementing regulations to ensure that the existing domestic legal guarantees regarding the collection and processing of sensitive personal data relating in particular to individuals' ethnic affiliation, language and religion are fully operational in practice. It again calls on the authorities to ensure that the Commissioner for Information of Public Importance and Personal Data Protection has all the necessary resources to fulfil his tasks efficiently.

27. SLOVAK REPUBLIC
OPINION ADOPTED ON 28 MAY 2010

Article 3 of the Framework Convention

Citizenship criterion

Recommendations from the two previous cycles of monitoring

In previous cycles of monitoring, the Advisory Committee noted that the Slovak legal order provided access to minority rights and facilities only to those persons belonging to national minorities who held Slovak citizenship, and it encouraged the authorities to consider easing this restriction, in particular in relation to minority language and educational rights.

Present situation

The Advisory Committee notes that the twelve groups represented in the Consultative Council are officially recognised as national minorities and thus covered by the protection of the Framework Convention. However, the Advisory Committee further notes that citizenship still continues to be a precondition for persons belonging to national minorities to be able to benefit from minority rights, as stipulated in the Constitution of the Slovak Republic. In this regard, the Advisory Committee considers that persons belonging to national minorities should be able to enjoy certain rights guaranteed in the legislation on national minorities, including those related to education and the use of minority languages, irrespective of their citizenship (see also related work of the Venice Commission).

The Advisory Committee was informed by the Deputy Prime Minister of the authorities' intention to initiate a process of drafting of comprehensive legislation on the rights of national minorities (see also comments in paragraph 73 under Article 5). The Advisory Committee finds it important that the authorities apply a more flexible approach to the use of the citizenship criterion when drafting new legislation of relevance to national minorities and that they maintain their open approach towards the personal scope of application of the Framework Convention, for instance with regard to Roma without citizenship.

Recommendations

The Advisory Committee invites the authorities to consider the application of certain rights guaranteed by the Framework Convention, in particular language and educational rights, to all persons belonging to national minorities, irrespective of their citizenship. More generally, the authorities are encouraged to maintain an inclusive and open approach towards the scope of application of the Framework Convention.

Population and Housing Census

Present situation

The 2001 census revealed population changes, including in some municipalities traditionally inhabited by persons belonging to national minorities. In some municipalities, the 2001 census showed a marked decrease in the number of persons declaring an ethnic origin other than of

the majority. The statistics gathered during the 2001 census showed that the number of persons belonging to the Ruthenian and the Roma minorities had increased whereas those belonging to the Hungarian and Ukrainian minorities had decreased in comparison with the 1991 census. Some representatives of national minorities indicated that this decreasing trend has persisted in the period under review. If this trend continues in future, it may have a negative effect on the rights of persons belonging to a national minority, in particular with respect to the use of their minority language which, in the Slovak Republic, is subject to numerical conditions. In this context, the Advisory Committee notes with regret that no thorough analysis of the trends related to the decreasing number of members of national minorities has been carried out by the authorities, in particular at the local level.

The Advisory Committee further notes disparities regarding the number of persons belonging to the Roma minority. Whereas official statistics indicate that around 89,000 Roma are living in the Slovak Republic, unofficial sources estimate that their number could be five times as high. The Advisory Committee considers the forthcoming population census to be held in 2011 as an opportunity to gather accurate data on the composition of the population. It notes that a question on the ethnic origin will be included in the census questionnaire and welcomes that official questionnaires will be made available in the languages of national minorities. In this context, the Advisory Committee considers it particularly useful that, in the areas traditionally inhabited by persons belonging to national minorities, enumerators be recruited amongst the persons belonging to the minorities concerned. Careful attention should be paid in this context to the right to free self-identification of persons belonging to national minorities, *inter alia* by not only providing an open list of ethnic affiliations and making the question on ethnicity non-mandatory but also by foreseeing the possibility to opt for a multiple ethnic and/or linguistic identity in the census questionnaire. At the same time, the Advisory Committee deems important to reiterate that the census should not be regarded as the sole means of obtaining data on ethnicity (see also remarks under Article 4).

Recommendations

In view of the population and housing census to be conducted in 2011, the Advisory Committee invites the authorities to make sure that the right to free self-identification of persons belonging to a national minority is strictly respected, as well as the open and voluntary nature of any question relating to such affiliation. Persons belonging to national minorities should be provided with a possibility of expressing a multiple identity in the census questionnaire and enumerators should be recruited amongst persons with minority background. In order to gather more reliable data on the situation of persons belonging to national minorities, including the Roma, the authorities are also invited to supplement the census results with sociological surveys and other studies on minorities, as well as to introduce the possibility for individuals to indicate their ethnic affiliation in household surveys or labour force surveys.

The Advisory Committee encourages the authorities to engage in a dialogue with the representatives of national minorities on trends in the demographic evolution of the population as identified in the latest population census and their consequences. A

comprehensive study containing an analysis of these trends should be prepared in order to assess better their practical impact on the State policies for the protection of national minorities.

28. SLOVENIA

OPINION ADOPTED ON 31 MARCH 2011

Article 3 of the Framework Convention

Scope of application of the Framework Convention

Recommendations from the two previous cycles of monitoring

In the previous cycles of monitoring, the authorities were urged to review their position as regards the distinction made between “autochthonous” and “non-autochthonous” minorities, in order to avoid unjustified exclusions from the scope of application of the Framework Convention and differential treatment.

The authorities were also invited to discuss the possibility of including other persons in the scope of application of the Framework Convention than those mentioned in the declaration made by Slovenia upon ratification of the Framework Convention.

Present situation

In accordance with the declaration made by the Slovenian authorities upon ratification of the Framework Convention, only persons belonging to the autochthonous Hungarian and Italian minorities, as well as to the Roma community, are covered by this instrument. Persons belonging to these three groups also enjoy special protection under the Slovenian Constitution. The Advisory Committee regrets that this approach has not evolved since the previous cycle of monitoring.

The Advisory Committee welcomes the fact that the distinction between “autochthonous” and “non-autochthonous” Roma no longer plays a role in policy-making and programmes or projects for Roma. However, the Advisory Committee regrets that it still has an impact in the field of participation of Roma in public affairs at the local level as only “autochthonous” Roma communities are entitled to elect their representatives in 20 designated municipalities. Moreover, the Advisory Committee notes that this distinction continues to be referred to by various stakeholders. It believes that the authorities should do their utmost to avoid that this results in differential or discriminatory treatment in practice. In particular, it is important to make sure that all Roma communities are able to participate in public affairs at the local level and are effectively consulted by the authorities at all levels (see also remarks in respect of Article 15 below).

The Advisory Committee has been informed that persons belonging to other groups, notably to the “new national communities” and the German-speaking community, continue to claim recognition as national minorities under the Slovenian Constitution, as well as protection under the Framework Convention. They regret the absence of a legal basis to protect them on the same level as recognised national minorities and to allow them to benefit from adequate support to maintain and develop their respective culture and languages.

In this context, the Advisory Committee notes with satisfaction that a dialogue between representatives of the “new national communities” and the authorities was initiated in 2007. Furthermore, it welcomes the initiatives that were recently launched with a view to improve the integration of these persons into Slovenian society (see also remarks under Article 6 below). It hopes that these steps forward are a sign of an increased willingness on the part of the authorities to promote equal treatment for persons belonging to these groups and to fight prejudices against them (see also remarks in respect of Article 6 below).

Persons belonging to the German-speaking community informed the Advisory Committee that, due to their non-recognition as a national minority, they lack support for the preservation of their language and culture. In their view, the mere existence of a co-operation agreement with Austria in this field does not make it possible to cover adequately their needs and only legal recognition as an “autochthonous” national minority would make it possible for them to be treated on an equal footing with other communities and to preserve their language and culture in a sustainable manner.

Recommendations

The Advisory Committee calls on the authorities to confirm their increasingly inclusive approach to the protection of persons belonging to the Roma minority and ensure that in practice persons belonging to all Roma groups can effectively enjoy the rights protected under the Framework Convention. They should in particular ensure that the distinction between “autochthonous” and “non-autochthonous” Roma no longer results in practice in any differentiated treatment. Specific emphasis should be placed on effective participation of all Roma in public affairs, including at the local level.

The Advisory Committee calls upon the authorities to pursue the dialogue with representatives of the “new national communities” and the German-speaking community on the issue of the protection afforded to them. The authorities are invited to ensure that, in practice, no discrimination arises from them not being recognised as a national minority and adequate resources are allocated for the preservation of their languages and culture.

The Advisory Committee invites the authorities to reconsider their approach to the scope of application of the Framework Convention. They should consider the possibility, where appropriate, for persons belonging to other groups to benefit from the protection of this Convention, including on an article-by-article basis, and in close consultation with representatives of these groups.

Ethnic data collection

Recommendations from the two previous cycles of monitoring

In the previous cycles of monitoring, the Advisory Committee encouraged the authorities to take better into consideration the results of the 2002 population census indicating a marked decline in the numbers of Hungarians and Italians and to conduct further research on the possible reasons for this tendency.

Present situation

The Advisory Committee understands from representatives of the Hungarian and Italian minorities that one of the factors that might explain the decline in the numbers of persons belonging to these two groups is the failure of the census to allow respondents to declare more than one ethnic affiliation (see also remarks under Article 5 below). The Advisory Committee is of the opinion that, in general, censuses should include a possibility to declare multiple ethnic and linguistic affiliations, in order to obtain a more reliable picture of the situation of persons belonging to national minorities. Against this background, it is informed that the population census being carried out in 2011 is a register-based census, with no data collected on ethnic origin. It regrets that opting for a register-based census will result in a lack of data on the situation of persons belonging to national minorities. Consequently, it expects that the authorities will continue to collect information on the situation of persons belonging to national minorities, disaggregated by age, gender, geographical origin, in order to be able to design policies that adequately meet the needs of these persons.

Recommendation

The Advisory Committee invites the authorities to consider means of collecting information on the situation of national minorities outside censuses, while fully respecting international standards in the field of personal data protection. The collection of data on the situation of minorities should include the possibility to declare multiple linguistic or ethnic affiliations.

29. SPAIN

OPINION ADOPTED ON 22 MARCH 2012

Article 3 of the Framework Convention

Scope of application of the Framework Convention

Recommendations from the two previous cycles of monitoring

In the previous monitoring cycles, the Advisory Committee invited the authorities to disseminate information on the Framework Convention to all potentially interested persons and to consider organising consultations on the Framework Convention's scope of application also with groups other than Roma.

The Advisory Committee encouraged the authorities to examine the possibility of extending the protection of the Framework Convention to the population of Berber origin, and possibly to other groups.

Present situation

While being fully aware of the fact that the concept of “national minority” does not exist in the Spanish legal order, 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, a definition of this concept or the existence of a specific legal status for such groups of persons. The Framework Convention was conceived as a pragmatic instrument, to be implemented in very diverse social, cultural and economic contexts and to adapt to evolving situations. Therefore, the Advisory Committee welcomes that the authorities continue, in practice, to consider that the Roma constitute a specific minority and benefit from the protection of the Framework Convention. Nonetheless, it remains concerned by the fact that the authorities have not organised any consultations or discussions on the protection offered by the Framework Convention with other groups potentially concerned and have decided *a priori* that this protection should be extended only to the Roma.

The Advisory Committee has, as in the previous cycle of monitoring, been approached by groups other than the Roma expressing an interest for the protection of the Framework Convention. Persons belonging to the Berber group in Melilla, who speak Tamazight and are of Muslim religion, have expressed particular interest to be included in the scope of application of the Framework Convention. The Advisory Committee notes with satisfaction that the authorities in Melilla have continued to take measures to increase the visibility of the Tamazight language and culture and are aware of the efforts needed to develop teaching of this language, which remains so far largely uncodified and is not taught at school. In this regard, it notes the views expressed by persons belonging to this group that recognition as a group protected under the Framework Convention could substantially reinforce the ongoing efforts to promote the Tamazight language and culture. Moreover, the Advisory Committee understood during its visit to Spain that representatives of some state bodies refer to persons belonging to the Berber group as a *de facto* minority, like the Roma. Therefore, it believes that the authorities should consider extending the protection of the Framework Convention to the Berber group and should engage without delay in consultations with this aim with persons belonging to this group.

Additionally, the Advisory Committee was approached by persons belonging to organisations representing the Basque, Catalanian and Galician cultures and languages. These persons have also expressed interest for the protection offered by the Framework Convention. They underlined that the Framework Convention could provide additional protection for their specific identities, languages and cultures, particularly in the fields of teaching of their minority language and media in their minority languages, where reportedly, particular difficulties have been experienced (see paragraph 32 below).

The Advisory Committee acknowledges that persons living in the Autonomous Communities with special linguistic status, and having cultures and languages different from those of the majority population, benefit from specific recognition and are protected under the Spanish Constitution, statutory laws of the respective Autonomous Communities and the European Charter for Regional or Minority Languages. It also notes the view of the authorities that the current level of protection makes it unnecessary for persons belonging to these groups to benefit from the protection of the Framework Convention. The Advisory Committee, however, reiterates that the existing protection offered to these groups through domestic legislation and through the European Charter for Regional or Minority Languages does not preclude their benefitting from additional and complementary protection under the Framework Convention, nor does it make such protection unnecessary.

The Advisory Committee understands that persons belonging to these groups who live outside their Autonomous Communities have considerably less access to protection and support for their languages and cultures. This appears to be, for instance, the case of Basques living in Navarra, and of Galician-speaking persons living in Autonomous Communities neighbouring Galicia (such as Asturias as well as Castilla and Leon). Therefore, the Advisory Committee believes that it might be beneficial for them to enjoy the additional protection of the Framework Convention, notably - but not only - as far as language-related rights are concerned. Consequently, the Advisory Committee is of the opinion that the authorities should engage in consultations with these groups, and others possibly interested in the Framework Convention, in order to ascertain whether the positions conveyed to the Advisory Committee by some representatives are shared by other persons and organisations representing the Basque, Catalanian and Galician languages and cultures.

The Advisory Committee further notes that the Val d'Aran was granted a special status in Catalonia in 1990, based on its specific culture, history and language (Occitan), with a view to preserving and developing further its specific characteristics. The special status was confirmed in the Statutory Law of Catalonia adopted in 2006, as well as through the Aranese Language Act adopted on 22 September 2010. Therefore, the Advisory Committee is of the opinion that consultations with persons living in Aran should also be held in order to ascertain whether they are interested in the protection of the Framework Convention.

Lastly, the Advisory Committee learnt with satisfaction during its visit that no distinction is made in the application of some programmes between Spanish and foreign Roma, notably in the field of education and access to health care. It also appreciated that the authorities at different levels have taken some steps to improve the situation of foreign Roma (see remarks on Article 6 below). It welcomes this inclusive approach, which is consistent with current efforts at European level to develop a more nuanced approach to the application of the citizenship criterion in the protection of national minorities.

Recommendations

The Advisory Committee reiterates its call to the authorities to consider without delay the possibility of extending the scope of application of the Framework Convention to the population of Berber origin, in close consultation with the persons concerned.

Additionally, it urges the authorities to undertake consultations with representatives of groups other than the Roma to raise their awareness of the protection offered by the Framework Convention and to ascertain whether they are interested in such protection.

30. SWEDEN

OPINION ADOPTED ON 23 MAY 2012

Article 3 of the Framework Convention

Personal scope of application

Recommendations from the two previous cycles of monitoring

In the previous cycles of monitoring, the authorities were encouraged to continue their commendable inclusive approach to the implementation of the Framework Convention.

Present situation

The national minorities included by the authorities within the scope of application of the Framework Convention at the time of Declaration are the Sami, the Swedish Finns, the Tornedalers, the Jews and the Roma.

The Advisory Committee welcomes the fact that, following an amendment introduced in the Swedish Constitution with effect from 1 January 2011, the Sami are now recognised at constitutional level as an indigenous people, which has been one of their requests for many years.

With regard to the Tornedalers, the Advisory Committee has been informed of discussions within that group concerning the authorities' use of the term "Tornedalers" to cover all speakers of Meänkieli. The Swedish Tornedalian Association, observing that Meänkieli is also spoken outside the Tornedalen area, has expressed doubts as to whether the term "Tornedalers" is apt to refer to the minority to which they belong, as it may be too restrictive to cover all speakers of Meänkieli.

The Advisory Committee underlines the importance of respecting the freedom of choice of persons belonging to national minorities as to how they wish to be referred to by the authorities. It welcomes the fact that the authorities have agreed to continue discussions on this point with persons belonging to this minority.

Recommendations

The Advisory Committee calls on the authorities to maintain an inclusive and open approach towards the scope of application of the Framework Convention.

The Advisory Committee encourages the authorities to pursue an approach based on dialogue and respect for the right to self-identification as guaranteed by Article 3, paragraphs 1 and 2 of the Framework Convention in their relations with the Tornedalers and to take due account of their wishes to change or maintain their designation.

Data collection

Recommendations from the two previous cycles of monitoring

In the previous monitoring cycles the authorities were encouraged to take appropriate measures to collect reliable data on national minorities.

Present situation

The Advisory Committee notes that the first census to have been organised in Sweden since 1990 was conducted in 2011 and did not include data on ethnic origin, as the authorities considered that such data could not be collected under the current legislation. However, the Advisory Committee notes the acknowledgement of the Swedish authorities that figures related to the situation of persons belonging to national minorities remain insufficient. It welcomes the governmental decision to instruct the Equality Ombudsman to elaborate a report on new methods to be used to collect reliable data on the situation of persons belonging to national minorities, following the recommendations of the Advisory Committee and ECRI in this field.

Recommendation

The Advisory Committee calls on the authorities to pursue and speed up their project to adopt appropriate means of obtaining reliable data on the situation of persons belonging to national minorities, while fully respecting international standards on the protection of personal data.

31. SWITZERLAND

OPINION ADOPTED ON 5 MARCH 2013

Article 3 of the Framework Convention

Scope of application of the Framework Convention

Recommendations from the previous two monitoring cycles

During the previous monitoring cycles, the authorities were encouraged to continue their efforts to meet the needs of persons belonging to linguistic minorities, even outside their traditional areas of settlement, and to devote greater attention to the situation of Italian- and

Romansh-speakers. Furthermore, the Advisory Committee recommended intensifying dialogue with persons belonging to the groups which are not covered by the Swiss Declaration and adopting an open approach to the citizenship criterion, particularly with regard to Travellers.

Present situation

In Switzerland, the Framework Convention is in practice applied to national linguistic minorities, namely the French-, Italian- and Romansh-speaking minorities, persons belonging to the German-speaking minorities residing in the cantons of Fribourg and Valais, French-speakers in the canton of Bern, Travellers and members of the Jewish community.

The Advisory Committee is pleased to note that the authorities continue to have a flexible approach regarding the scope of application of the Framework Convention. According to the authorities, the Declaration entered at the time of ratification of the Framework Convention facilitates a dynamic interpretation covering the linguistic minorities living outside their traditional area of settlement, and also persons belonging to other groups if they meet the requirements set out in the Declaration. The authorities consequently consider that other groups could be granted the protection provided by the Framework Convention if the criteria are fulfilled. The Advisory Committee notes with satisfaction that the authorities consider that this question must be regularly reconsidered and that consequently, as part of the consultations for the preparation of the third State Report, the cantons and municipalities were asked whether they thought that other linguistic, cultural or religious communities should be recognised as national minorities. Only the canton of Vaud considered that it might be justified to grant the Swiss Muslims national minority status.

The Advisory Committee notes with interest that since 2009 the federal authorities have set up a platform for dialogue between the Federal Administration and the Muslim population in order to discuss issues relevant to them. While stressing that they would continue their dialogue with the Muslim community on this subject, the authorities informed the Advisory Committee that the Muslim community had never officially expressed the wish to be recognised as a national minority. On the other hand, this community has voiced a desire to obtain religious minority status, which would enable it, in certain cantons, to finance places of worship, teach religion at school, provide burial sites and offer religious support to Muslims in hospitals and prisons.

In connection with the citizenship criterion, the authorities argue that this criterion is implemented in a flexible manner because foreign Travellers already have free access to existing transit sites and stopping places. Furthermore, the Advisory Committee is pleased to note that installing larger sites which are better suited to Travellers' needs (given that they travel in large groups) is a priority in several cantons.

The Advisory Committee takes note of this initiative and encourages the authorities to maintain a dialogue-based approach in their relations with persons and groups with a potential future interest in the protection provided by the Framework Convention.

Recommendation

The Advisory Committee invites the authorities to continue implementing their flexible approach and to ensure that all individuals who might benefit from being covered by the Framework Convention are informed of this possibility, and that they actually benefit from the protection provided by the Framework Convention, in accordance with Article 3 thereof.

32. "THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA"
OPINION ADOPTED ON 30 MARCH 2011

Article 3 of the Framework Convention

Personal scope of application of the Framework Convention

Recommendations from the two previous cycles of monitoring

In the previous cycles of monitoring, the Advisory Committee urged the authorities to continue to display a flexible and dynamic approach to the personal scope of application of the Framework Convention. It encouraged 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, including non-citizens, as appropriate, on an article-by-article basis.

The Advisory Committee also urged the authorities to 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.

Present situation

The Advisory Committee notes that there has been no change since the 2nd monitoring cycle in the position of the Macedonian authorities concerning the scope of application of the Framework Convention. The declaration deposited by the authorities of "the former Yugoslav Republic of Macedonia" on 2 June 2004 remains in force restricting the personal scope of application of the convention to citizens belonging to one of the six enumerated groups.

The status of Egyptians as a national minority has not been recognised by the authorities. The Advisory Committee notes in this context that this group had expressed an interest in the protection of the Framework Convention in the past. The dialogue with the representatives of this group, which the Advisory Committee was informed of at the time of its second visit, did not yield any concrete results. The Advisory Committee notes that the main obstacle to the recognition of Egyptians as a separate national group is the consideration by the authorities and the majority of the population, that persons identifying themselves as Egyptians are in fact Roma.

With regard to the non-recognition of Egyptians as a national minority, the Advisory Committee reiterates its view, that recognition by the state as a minority is not a prerequisite

to qualify for the protection of the Framework Convention. In this context, the Advisory Committee examines 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.

Given the cultural diversity of Macedonian society, and considering that, according to the representatives of the Albanian minority, a significant number of Albanians in “the former Yugoslav Republic of Macedonia” are not citizens of the state, the Advisory Committee believes that protection under the Framework Convention might be extended where appropriate to Albanians, who are not citizens. The Advisory Committee further believes that such protection should also be considered for non-citizens belonging to the Roma and other minorities.

The Advisory Committee would like to remind the authorities that the citizenship criterion is considered as a restrictive element that can have discriminatory effects in some areas of life. Indeed, using a citizenship requirement in a general provision dealing with the scope of application of minority rights is not appropriate as these rights are human rights and not rights of citizens. In particular, the Advisory Committee considers that the authorities should review the use of the citizenship criterion and limit its use only to those provisions, such as those relating to electoral rights at national level, where such a requirement is relevant. This would be consistent with current efforts at European level to develop a more nuanced approach to the application of the citizenship criterion in the protection of national minorities.

The Advisory Committee welcomes the conclusion in 2007 by “the former Yugoslav Republic of Macedonia” and the Republic of Croatia of an agreement on the preservation and promotion of the national identity of the respective ethnic communities living in both countries. According to the information contained in the State Report, this agreement protects the rights of persons belonging to the Croat national minority living in “the former Yugoslav Republic of Macedonia” (see also comments under Article 18). The Advisory Committee considers that it is an important step towards formal recognition of the status of persons of Croat ethnicity as a national minority.

Recommendations

The Advisory Committee encourages the Macedonian authorities to pursue a more inclusive approach and to consider extending the protection of specific articles of the Framework Convention to resident non-citizens belonging to national minorities.

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 intensify their dialogue with representatives of the Egyptian community.

The Advisory Committee encourages the authorities to consider introducing measures leading to the recognition of the status of persons of Croat ethnicity, as a national minority.

Data collection

Recommendations from the two previous cycles of monitoring

In the previous cycles of monitoring, the Advisory Committee underlined the importance of having reliable data on the ethnic composition of the population and noted that persons belonging to national minorities in particular have disputed the results of the population census. It encouraged the authorities in charge of collecting and processing data related to ethnic origin to 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”, contained 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.

Present situation

The Advisory Committee notes that a new population census, originally scheduled for April 2011 in “the former Yugoslav Republic of Macedonia” has been postponed until October 2011. The Advisory Committee further notes that the state Statistical Office conducted a Census Test in 2009 which contained questions on ethnic origin, religion and language.

The Advisory Committee notes that the law on the Census was adopted in December 2010. According to the information provided by the authorities, the questionnaire to be used in the census was drafted in consultation with representatives of national minorities. The Advisory Committee welcomes the information that the questionnaire, which has been translated into seven languages spoken by persons belonging to national minorities, contains optional open-ended questions on ethnic origin, religion and language. It is planned that the census will be monitored by EUROSTAT.

The Advisory Committee takes note of calls by some political parties to boycott the census, on the grounds that a census conducted outside the July-August period will not enumerate the 200,000 strong diaspora usually returning home for the summer holidays. According to the information obtained by the Advisory Committee, it is claimed that such timing may disproportionately affect persons belonging to the Albanian minority.

The Advisory Committee reiterates its view that it is important that in the months preceding the census, the authorities raise awareness of its importance among the persons belonging to national minorities, in co-operation with minority representatives aimed at ensuring full participation. These activities 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 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.

The Advisory Committee 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. The Advisory Committee regrets however that the available options do not allow the respondents to indicate more than one ethnic affiliation or more than one language, which is contrary to the Conference of European Statisticians Recommendations for the 2010 Censuses of Population and Housing.

Recommendations

The Advisory Committee urges the authorities that in carrying out the census care should be taken to include persons belonging to national minorities, and persons speaking the minority languages among the census officials. In particular it is important that sufficient numbers of persons belonging to relevant national minorities are included among census enumerators in the areas where substantial numbers of persons belonging to those national minorities live.

The Advisory Committee encourages the authorities to process the census data in strict conformity with the principle of self-identification and with the recommendations of the Conference of European Statisticians, in order to ensure that reliable figures in respect of the ethnic composition of the population are collected.

33. UKRAINE

OPINION ADOPTED ON 22 MARCH 2012

Article 3 of the Framework Convention

Personal scope of application of the Framework Convention

Recommendations from the two previous cycles of monitoring

In the previous monitoring cycles, the Advisory Committee encouraged the authorities to pursue their inclusive approach with regard to the scope of application of the Framework Convention and to reflect it also in the new draft legislative framework on national minorities. The authorities were further invited to improve their dialogue with the so-called 'sub-ethnic' groups and to review the formal restriction of rights and freedoms to citizens in the applicable legislation.

Present situation

The Advisory Committee regrets that no changes have been made to the legislative framework pertaining to national minorities since the second monitoring cycle. The Framework Convention thus continues to apply to citizens belonging to one of the 130 nationalities designated in the 2001 census. While not aware of particular claims of non-citizens for protection under the Framework Convention, the Advisory Committee reiterates its concern that Article 26 of the Constitution, which provides that any person who is in the country on legal grounds should enjoy the same rights as citizens, must be applied consistently. With regard to any future legislation pertaining to national minorities, the

Advisory Committee would thus like to encourage the authorities to pursue an inclusive approach and to consider extending the protection of specific articles of the Framework Convention to non-citizens. Such steps would be consistent with current efforts at the European level to develop a more nuanced approach to the application of the citizenship criterion in the protection of national minorities.

The Advisory Committee was informed that the group of approximately 10,000 persons who declared themselves as Ruthenians in the 2001 census, continues to claim specific protection as a national minority. While learning with interest in the state report that the inclusion of Ruthenians as an ethnic group in the next census was being considered, the Advisory Committee was informed during the country visit that a decision had been taken to register the Ruthenians, along with the Boikos, Hutsuls and Lemkis, as a 'sub-ethnic' group of the Ukrainians, as done in the census of 2001. According to the State Statistics Committee, this decision was made based on extensive research conducted by academics and independent experts. The Advisory Committee regrets that no direct discussions with the Ruthenian and other groups concerned appear to have been conducted and reminds the authorities that efforts should be made to find pragmatic solutions in close consultation with the groups concerned, taking full consideration of the principle of free self-identification contained in Article 3 of the Framework Convention, and in line with a generally inclusive approach to its personal scope of application.

Recommendation

The Advisory Committee reiterates its recommendation to establish a constructive dialogue concerning a possible recognition as a national minority with the groups concerned, taking full consideration of the principle of free self-identification contained in the Framework Convention, and to pursue a generally inclusive approach towards the personal scope of application of the Framework Convention.

Population census

Recommendations from the two previous cycles of monitoring

In the previous monitoring cycles, the Advisory Committee encouraged the authorities to conduct awareness-raising campaigns ahead of the 2011 population census to ensure the free and informed choice by all persons belonging to national minorities with regard to the optional declaration of their ethnic identity. In addition, it underlined that no ethnic data focusing on certain national minorities should be collected by law-enforcement bodies without adequate legal safeguards and without respect for the free self-identification by the persons concerned.

Present situation

The Advisory Committee was informed during the country visit that the population census scheduled for 2011 had been postponed due to financial reasons, and is likely to take place in 2013. While acknowledging the high cost involved in such an exercise, the Advisory Committee regrets this delay and underlines that governmental and non-governmental

interlocutors alike consider the population census as crucial to obtain accurate data on the composition of Ukrainian society which is increasingly diverse. Updated information on the population, including ethnicity and language, is particularly important in Ukraine, where questions surrounding the size of language groups in certain areas have polarised society for years. The Advisory Committee further regrets that the authorities continue to refer to the census as the sole means of obtaining such information, as other data collection systems or surveys do not inquire into the ethnic or language background of the population (see also remarks on Article 4 below).

The Advisory Committee was pleased to see, however, that the preparations for the census are already ongoing and that the responsible authorities are aware of the necessity to train carefully enumerators, including persons belonging to national minorities, ahead of the census. Close consultations with minority communities in the preparation of the census are of crucial importance, given that some minority communities claim that their numbers were not accurately reflected in the previous census of 2001. The Advisory Committee reminds the authorities that careful attention must be paid to ensure that enumerators as well as the interviewees are made aware of the right to free self-identification of persons belonging to national minorities, including by foreseeing the possibility to opt for none or a multiple ethnic and/or linguistic identity in the census questionnaire. In this context, the Advisory Committee underlines that interviewees should not be encouraged to opt for a single affiliation and that efforts should be made to ensure that multiple affiliations can be processed and accurately reflected in the results of the census rather than being counted as 'other'.

Recommendation

The Advisory Committee encourages the authorities to make all efforts to ensure that a comprehensive population census is conducted as soon as possible and that it is prepared in close consultation with minority representatives. Care must be taken to ensure that the information is gathered and processed in full compliance with the principle of free self-identification as contained in Article 3 of the Framework Convention.

34. UNITED KINGDOM

OPINION ADOPTED ON 30 JUNE 2011

Article 3 of the Framework Convention

Scope of application of the Framework Convention

Recommendations from the two previous cycles of monitoring

In the previous monitoring cycles, the Advisory Committee welcomed the United Kingdom's wide interpretation of the scope of application of the Framework Convention, which extended coverage to "racial groups" as set out in the Race Relations Act (1976), i.e. to any groups present as a minority in the United Kingdom and defined by "colour, race, nationality or national or ethnic origins".

However, the Advisory Committee considered that over-reliance on the “racial group” criterion, without evaluating the possible relevance of other criteria, may result in exclusions of groups that have legitimate claims to be covered. In this context, the formal non-inclusion of Scottish Gypsies / Travellers was deemed particularly problematic.

Present situation

The Advisory Committee observes with satisfaction that the authorities have reiterated that they will continue to apply a broad interpretation of the scope of application of the Framework Convention. It is also pleased to note that the adoption of the Equality Act (2010), which applies throughout the United Kingdom with the exception of Northern Ireland, extends interpretation of the protected characteristic of race and allows for possible future amendments so that caste may be considered as an aspect of race.

The Advisory Committee welcomes the ruling in the case of *K. MacLennan v./ Gypsy Traveller Education and Information Project* recognising that Scottish Gypsies/Travellers have ‘ethnic origins’ within the meaning of the Race Relations Act (1976), and therefore enjoy protection of this Act and of the Framework Convention for the Protection of National Minorities.

The Advisory Committee is informed that Cornish organisations and individuals have continued to put forward the case for inclusion of the Cornish under the scope of application of the Framework Convention. They claim that they need additional support and legal guarantees for the development of their distinct cultural and linguistic identity.

It is also informed of the continued claims of representatives of Muslim communities to benefit from the protection of the Framework Convention. They underline that many of them identify primarily as members of the Muslim community rather than affiliating with a particular ethnic group or background, such as Pakistani, Bangladeshi or Somali and, as such, would like to have their distinct identity and culture as Muslims protected under the Framework Convention, in line with the principle of self-identification. The interlocutors of the Advisory Committee regretted that they were not able to engage in a dialogue with the authorities on this issue. They feel that the recognition of Jews and Sikhs as minorities protected under the Framework Convention paves the way for other groups identified by a common religious and cultural background also to benefit from the protection of the Framework Convention.

The Advisory Committee reiterates its view that, although the scope of application defined by the authorities of the United Kingdom is wide, the continued over-reliance on the “racial group” criterion may result in *a priori* exclusions from the scope of application of the Framework Convention of groups that have legitimate claims. Therefore, it finds that the authorities should seek to engage in dialogue with persons identifying with groups currently not covered by the Framework Convention to evaluate their claims, bearing in mind the right to free self-identification guaranteed by Article 3.1 of the Framework Convention.

Recommendations

The authorities are invited to reflect on adopting a more flexible approach to the criteria used to determine the scope of application of the Framework Convention.

The Advisory Committee also invites the Government to give due consideration to the claims for recognition under the Framework Convention raised by representatives of the Muslim community, and possibly other groups, and to engage in a dialogue with them.

Census categories

Recommendations from the two previous cycles of monitoring

In the previous monitoring cycles, the Advisory Committee welcomed the fact that the authorities of the United Kingdom had embarked on an extensive review, including wide-ranging consultations with representatives of minority ethnic communities, of questions relating to the ethnic identity of census respondents. It noted, however, that concerns had been expressed about potential inadequate population estimates for some minorities, including new migrants, and also encouraged the authorities of the United Kingdom to consider proposals from other groups, including the Cornish.

Present situation

The census was carried out on 27 March 2011 on the basis of distinct questionnaires specifically prepared for each respective jurisdiction. The Advisory Committee is pleased to note that many significant developments were included in the form as a result of the extensive preparatory consultations carried out in recent years by the authorities. The Advisory Committee also recognises the efforts made by the authorities in the preparation of this census, such as the development of the Census Community Liaison Programme and the establishment of a Census Advisory Group, to develop effective strategies to allow for accurate reporting of statistics relating to various minority ethnic groups.

The Advisory Committee warmly welcomes the inclusion of a national identity tick box allowing for respondents to self-identify as British, English, Scottish, Welsh, Northern Irish and Irish (in Northern Ireland) and /or by indicating another national identity, thereby allowing for declaring multiple national identities. Furthermore, the ethnicity question in the 2011 Census has also been expanded to include, among others, Gypsy / (Irish) Traveller (in Scotland); Arab (in England, Scotland and Wales); and Polish (in Scotland). The Advisory Committee also commends the introduction, in Scotland, of a question on ethnicity which relates to the geographical origin of persons belonging to some minority groups.

The inclusion in the 2011 census of a general question concerning language proficiency is to be welcomed as an opportunity to garner useful information to help meet the linguistic needs of persons belonging to minority communities. In England, Wales and Northern Ireland, respondents were able to nominate their main language, if this is not English (or Welsh in Wales), as well as indicate their proficiency in English. In Scotland, respondents were invited to indicate any language other than English that is used in the home. Furthermore, in Northern Ireland and Scotland, respondents were asked to indicate their proficiency in Irish

and Ulster Scots or Scottish Gaelic and Scots respectively. This is another commendable development. Against this background, the Advisory Committee believes that the authorities in Northern Ireland should make every effort to ensure that the census results are not used to further politicise the language issue (see also remarks under Article 5 and 10 below).

However, the Advisory Committee notes concerns expressed by various minority representatives that the census would not accurately reflect the numbers of people belonging to certain communities, in particular new migrants from Central and Eastern Europe, Gypsies and Travellers and Irish.

Cornish representatives have criticised the decision not to include in the census a separate tick box for the Cornish national identity in spite of the increasing trend among the community, according to these representatives, to self-identify as Cornish.

Recommendation

The Advisory Committee invites the authorities to continue research and consultation that will allow for effective strategies and expanded and adapted enumeration procedures to be developed for future censuses, so as to ensure accurate data collection, in line with the principles of Article 3 of the Framework Convention and internationally recognised data protection standards.

Respect for the right to free self-identification in Northern Ireland

Recommendations from the previous cycles of monitoring

In previous monitoring cycles, the Advisory Committee reminded the authorities that the possibility for employers in Northern Ireland to determine the community background of employees in cases where no information was provided in the context of work force monitoring was understandable in the specific context of Northern Ireland, but was nonetheless a restriction on the right to free self-identification. It should therefore be subject to regular review.

Present situation

The Advisory Committee underlines the importance that workforce monitoring has had in supporting fair participation of under-represented groups in employment. While research conducted by the Equality Commission for Northern Ireland would appear to demonstrate a “steady and consistent convergence of the workforce”, it is nonetheless, according to different interlocutors of the Advisory Committee, too early to conclude that workforce monitoring, including through the subjective determination of community background by employers, should be reduced or brought to an end. The Advisory Committee reiterates, however, that this practice impinges on the right to free self-identification of the persons concerned as guaranteed by Article 3.1 of the Framework Convention. It should therefore be carefully monitored and reviewed against progress made in the field of equal opportunities in the labour market. As progress continues, workforce monitoring could be mainstreamed and expanded to include persons belonging to minority ethnic communities as a means of assessing equality of opportunity in the labour market for these persons as well.

The Advisory Committee also understands that the affiliation with either of the two main communities (Catholic and Protestant) continues to be referred to frequently in many aspects of daily life, even though this affiliation often goes beyond religious belief and the terminology used is therefore not adequate. Moreover, it was informed that the lack of affiliation with one of the two communities, in particular for persons belonging to minority ethnic communities, results in disadvantages in various areas, such as participation in public affairs and the support for language and culture. Against this background, the Advisory Committee draws the attention of the authorities to the self-identification categories (such as citizenship or national identity) that were recently introduced in the 2011 census. Data collected under these new categories could also help better analyse the situation of under-represented groups (including minority ethnic communities) in employment and other fields in the future, while fully respecting the right to free self-identification protected under Article 3.1 of the Framework Convention.

Recommendations

The authorities should continue to review regularly the duty for employers to determine the community background of their employees in the context of work force monitoring against its relevance to the objective of securing equality in the field of employment. They should also consider including persons belonging to minority ethnic communities in workforce monitoring, while fully respecting the right to free self-identification.

The Advisory Committee also encourages the authorities to build on the criteria introduced in the 2011 census and start using identification criteria other than community/religious background so as to obtain more accurate data on the population as a whole.