

Strasbourg, 22 April 2005



COE056738



DH-MIN(2005)006

**COMMITTEE OF EXPERTS ON ISSUES RELATING TO THE PROTECTION OF  
NATIONAL MINORITIES**

**(DH-MIN)**

**ADVISORY AND CONSULTATIVE BODIES OF NATIONAL MINORITIES**

*Background document prepared by the Secretariat of the Framework Convention for the  
Protection of National Minorities and the DH-MIN*

The aim of the present document is to provide background information for a discussion on the role and functioning of consultative bodies of minorities within the broader context of participation of national minorities in public affairs.

The expression “consultative bodies” in this paper refers to those special institutions (councils, roundtables, commissions, advisory boards) set up either at national or at local level to organise the consultation of persons belonging to national minorities on matters affecting them.

### **Relevant standards**

Several international standards make reference to the participation of persons belonging to national minorities in decision-making processes. These include the 1990 Document of the Copenhagen Meeting on the Human Dimension (paragraph 35) and the 1992 UN Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities (Article 2 paragraphs 2 and 3). At the level of the Council of Europe, a specific provision (Article 15) dealing exclusively with the participation of persons belonging to national minorities, covering *inter alia* participation in public affairs, is included in the **Framework Convention for the Protection of National Minorities (FCNM)**. Article 15 reads as follows:

*“The Parties shall create the conditions necessary for the effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs, in particular those affecting them”.*

Article 15 of the FCNM requires an active engagement of the State in facilitating the participation of persons belonging to national minorities. While the modalities for ensuring such participation are not specified in this Article, the Explanatory Report of the FCNM suggests a number of measures that could be taken to further the implementation of Article 15, including “consultation with [persons belonging to national minorities] by means of appropriate procedures and in particular through their representative institutions, when Parties are contemplating legislation or administrative measures likely to affect them directly, and involving these persons in the preparation, implementation and assessment and regional development plans and programmes likely to affect them directly [...]”.

In its monitoring of the implementation of Article 15 of the FCNM in the Contracting Parties, the Advisory Committee on the FCNM (hereafter Advisory Committee) has regularly encouraged the establishment of a permanent and institutionalised dialogue between governments and minorities. In this connection, it has given particular importance to consultative bodies of national minorities. In its comments under Article 15, the Advisory Committee has called upon States were only *ad hoc* contacts exist between minorities and government to consider the establishment of such consultative bodies. It has also examined in detail the composition and functioning of the advisory bodies existing in Contracting Parties, commenting on their membership and the adequacy of minority representation in them, their competences and their effective consultation in matters affecting persons belonging to national minorities.

In addition, the Advisory Committee has emphasized on a number of occasions the importance of maintaining a direct dialogue with organisations representing individual minorities. (see Appendix 1 – Selected excerpts from the Opinions of the Advisory Committee on the Framework Convention relating to the issue of consultative bodies and participation of persons belonging to national minorities in decision-making processes (Article 15)).

While not legally binding, the **Recommendations on the Effective Participation of National Minorities in Public Life** (so-called “Lund Recommendations”) adopted under the auspices of the OSCE High Commissioner on National Minorities in 1999 are highly relevant for any discussion on consultative bodies as a tool for the effective participation of national minorities in decision-making processes. A specific section of these recommendations is devoted to the issue of advisory and consultative bodies. This section reads as follows:

*D. Advisory and Consultative Bodies*

*12) States should establish advisory or consultative bodies within appropriate institutional frameworks to serve as channels for dialogue between governmental authorities and national minorities. Such bodies might also include special purpose committees for addressing such issues as housing, land, education, language, and culture. The composition of such bodies should reflect their purpose and contribute to more effective communication and advancement of minority interests.*

*13) These bodies should be able to raise issues with decision makers, prepare recommendations, formulate legislative and other proposals, monitor developments and provide views on proposed governmental decisions that may directly or indirectly affect minorities. Governmental authorities should consult these bodies regularly regarding minority-related legislation and administrative measures in order to contribute to the satisfaction of minority concerns and to the building of confidence. The effective functioning of these bodies will require that they have adequate resources.*

**Possible key issues**

The results of the monitoring of the FCNM in the Contracting Parties shows that there is no general formula regarding the consultative bodies of national minorities and that the tasks and role of such bodies vary greatly between States (see appendix 1).

Despite this diversity, there are certain common questions one often encounters when analysing the work of such bodies. These may be divided into four main categories: Status, Mandate, Membership, Functioning/working methods. The below questions listed under these four main categories are not meant to be exhaustive but rather to illustrate the various solutions that exist in the countries where consultative bodies are in place.

<b>STATUS</b>
<p><b>Selection of questions related to the status of consultative bodies:</b></p> <ul style="list-style-type: none"> <li>- What is the legal basis for the setting up of consultative bodies (constitutional, ordinary law, other),</li> <li>- What status: NGO status/public body status/ personal autonomy arrangements with advisory functions, other status?</li> <li>- What is the level at which consultative bodies operate: central level bodies/ local or regional bodies, both levels?</li> </ul>
<b>MANDATE</b>
<p><b>Selection of activities/tasks foreseen in the mandate of various consultative bodies:</b></p> <ul style="list-style-type: none"> <li>- Taking initiatives and making proposals/recommendations,</li> <li>- Possibility to request information,</li> <li>- Monitoring the situation of persons belonging to national minorities, preparation of studies, conducting research,</li> <li>- Increasing public awareness of problems related to the situation of national minorities,</li> <li>- Consultation and participation in the preparation of public policies on national minorities: existence of an obligation to consult in the legislative process and other public policy decisions affecting national minorities, areas where consultation is foreseen (culture, education, language economic, social and economic participation, other areas),</li> <li>- Veto rights on fundamental issues,</li> <li>- Coordination functions among different minorities, other coordination functions,</li> <li>- Other specific tasks assigned, including distribution of resources directed to cultural activities.</li> </ul>
<b>MEMBERSHIP</b>
<p><b>Selection of questions linked to composition:</b></p> <ul style="list-style-type: none"> <li>- Is the consultative body an umbrella body including all minorities or minority-specific body (Advisory Council on Roma fore example)?</li> <li>- Is the advisory body composed of representatives of national minorities only or is it a mixed structures with varying proportions of representation of national minorities?</li> <li>- What is the minority representation and representativity (representation of numerically small minorities, representatives of minority NGOs, minority representatives from Parliament, political parties of minorities, others)?</li> <li>- Appointment procedure: who proposes (national minorities, political parties, churches, others), who decides (Government, Parliament, others)?</li> </ul>

#### **FUNCTIONNING/ WORKING METHODS**

- Are there any procedural guidelines in place for consultation of advisory bodies?
- What are the working methods including the forming of sub-bodies dealing with specific areas?
- What are the contacts and co-operation in practice with Parliament (including through the relevant Parliamentary committees), with the Government (including governmental offices for national minorities where relevant)?
- What is the situation with regard to the resources allocated to advisory bodies (finance, staff) and what is the source of funding (central/local authorities, mixed funding)?
- What are the links between the different levels of advisory bodies/councils (local/central) and self-governments?

#### **Possible ways in which the DH-MIN may wish to pursue work on this theme:**

The DH-MIN may wish to pursue exchanges of information on the subject of consultative bodies of national minorities. This process could include, *inter alia*, the following steps:

- Carrying out an in-depth research on the mandate, functioning and impact of the consultative bodies existing at national and local levels with a view to provide an overview of the composition and work of these bodies and possibly highlighting good practices in these areas,
- Convening a meeting with representatives of consultative bodies for an exchange of views.

## **APPENDIX 1**

### **SELECTED EXCERPTS FROM THE OPINIONS OF THE ADVISORY COMMITTEE ON THE FRAMEWORK CONVENTION RELATING TO THE ISSUE OF CONSULTATIVE BODIES AND PARTICIPATION OF PERSONS BELONGING TO NATIONAL MINORITIES IN DECISION-MAKING PROCESSES (ARTICLE 15)<sup>1</sup>.**

#### **ALBANIA (Opinion adopted on 12/09/2002)**

69. The Advisory Committee notes that there exists in Albania only a limited framework for dialogue between the Government and national minorities, despite the creation of the Office for National Minorities. The Advisory Committee notes that in a number of countries in Europe, special representative bodies in the form of Councils of National Minorities have been successfully established to further the dialogue and to ensure the effective participation of persons belonging to national minorities. The Advisory Committee is of the opinion that such a structure within the context of Albania could make a valuable contribution to increasing the level and quality of dialogue between national minorities and the relevant authorities. The Advisory Committee is of the view that the government should give speedy consideration, in consultation with those concerned, to the merits of establishing such a structure.

#### **ARMENIA (Opinion adopted on 16/05/2002)**

78. The Advisory Committee notes that representatives of national minorities would like to be more closely involved in the taking of decisions affecting them. They highlight that the current ways of consultation, in particular the Co-ordinating Council for National Minorities and/or the Union of Nationalities, are not sufficiently effective.

79. As regards the Co-ordinating Council, a consultative body set up with the Presidency in March 2000 in the wake of the first Congress of National Minorities, the national minorities are hoping that this body's legal status and terms of office will be clarified and that it will be provided with appropriate premises. The Advisory Committee notes that this Council, which comprises representatives of 11 different national minorities, is headed by a civil servant, a presidential adviser, and that its responsibilities are fairly limited. Similarly, the Advisory Committee has noted a number of divergences and difficulties as regards communication within this body among the representatives of its component minorities. Moreover, it appears that the tension occasioned by the setting up of this Council alongside the Union of Nationalities, an already existing organisation made up of representatives of 12 national minority cultural organisations, is still present.

80. More generally, the Advisory Committee notes the lack of consensus among persons belonging to national minorities on whether or not these representative bodies are actually helping to improve their situation. It therefore considers that the Government must maintain direct dialogue not only with the Co-ordinating Council and the Union of Nationalities, but also

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<sup>1</sup> See *Collection of Opinions of the Advisory Committee on the Framework Convention for the Protection of National Minorities, Article-by-Article* (ACFC/I/Secr(2003)001 rev.4)

with organisations representing individual national minorities with a view to ascertaining their specific concerns and acting accordingly.

#### **AUSTRIA (Opinion adopted on 16/05/2002)**

68. The Advisory Committee notes that, in the *Länder* of Carinthia and Burgenland, persons belonging to national minorities generally appear to be well represented in the public service and authorities. At Federal level, persons belonging to national minorities participate mainly through the Advisory Councils for national minorities to the Federal Chancellery. It is the Government's role to appoint members of these Advisory Councils on the basis of proposals made by minorities' organisations, political parties and the Churches. These Advisory Councils are consulted in particular when legal provisions are adopted that affect the interests of minorities. They are also responsible for distributing the subsidies awarded by the Government to the various national minorities, and this appears to be a consensus-based procedure (see related comments under Article 5).

69. The Advisory Committee considers that the system of Advisory Councils for national minorities is valuable in so far as it enables persons belonging to national minorities to be involved to some extent in affairs affecting them. It notes however that there is some criticism of the procedure for the appointment of members to these Advisory Councils, including criticism from national minorities' organisations, according to which these Advisory Councils are not representative enough of the persons belonging to national minorities. The Advisory Committee considers that the authorities should review the appointment procedure for Advisory Council members with a view to improving it. The authorities might also look into ways of increasing the powers of these Advisory Councils, which seem somewhat limited as things stand. The Advisory Committee regrets moreover that the number of members of the Advisory Council for the Slovene minority has not yet been increased to allow the Slovenes of Styria to be represented, despite the Government's agreement in principle in February 1998.

70. More generally, the Advisory Committee notes that the Advisory Councils for national minorities appear to represent only persons belonging to autochthonous national minorities. Therefore it encourages the authorities to consider the possible extension of the composition of these Advisory Councils or to the setting up of a wider consultative body.

#### **AZERBAIJAN (Opinion adopted on 22/05/2003)**

73. The Advisory Committee notes that a Council for National Minorities, chaired by the State Adviser on National Policy, was set up in 1993 as a consultation structure for national minorities and authorities. However, this body has not been convened in recent years, and it does not at present constitute a forum for regular and frequent consultation and dialogue for issues pertaining to national minorities.

74. The Advisory Committee is therefore of the opinion that the working methods of the said body should be revised or a new body established in order to promote such consultation and dialogue. Similar initiatives could be considered also at the local and regional level, where there appears to be a need to increase open, constructive dialogue on the questions concerning the protection of national minorities. The Advisory Committee is of the opinion that these issues merit particular attention in the context of the drafting of a new law on the protection of national minorities.

#### **CROATIA (Opinion adopted on 06/04/2001)**

63. The Advisory Committee welcomes the fact that Croatia has established bodies dealing specifically with issues concerning national minorities, in particular the Government Office for National Minorities and the Council of National Minorities. While recognising the contribution that these bodies have made to the protection of national minorities, the Advisory Committee finds that there is a certain lack of co-ordination and complementarity between them and that this has a negative impact on their effectiveness. Thus, the Advisory Committee supports the initiatives to review the appointment procedures, structures and working methods of these bodies with a view to improving their effectiveness and ensuring that persons belonging to national minorities have a central standing in the resulting organisational structure.

64. The Advisory Committee finds it important that, in addition to the bodies mentioned in the preceding paragraph, the Government maintains a dialogue with organisations representing individual minorities. Bearing in mind the importance of this matter to the implementation of Article 15 of the Framework Convention, the Advisory Committee regrets that the degree of commitment to such dialogue appears to vary greatly between different Ministries concerned.

#### **CYPRUS (Opinion adopted on 06/04/2001)**

42. The Advisory Committee further notes with approval the creation of the post of Presidential Commissioner for religious groups, overseas Cypriots and repatriates, which has contributed to increased attention of the Government to minority issues. The Advisory Committee would hope that this development continues and that, for example, a consultative committee for minorities be created, to institutionalise the consultation between the Government and minority representatives. In this context thought could also be given to extending the scope of the mandate of the Presidential Commissioner, which is currently limited to relations with the Maronite, Armenian and Latin communities.

#### **CZECH REPUBLIC (Opinion adopted on 06/04/2001)**

68. The Advisory Committee welcomes the institutional changes that have led to the setting up of consultative bodies such as the Inter-ministerial Commission for Roma Affairs and the consultative committees on questions concerning national minorities attached to the various ministries. In particular, it welcomes the appointment, within the executive, of the Government's Council for National Minorities, a consultative body that brings together representatives of the six largest national minorities and representatives of various state organs. It notes that this Council is also in contact with the organisations for national minorities that are not represented on it. The Advisory Committee regrets that a number of factors (especially a lack of staff and other resources) appear to restrict the effectiveness of the above-mentioned bodies.

69. Given the role of these bodies in preparing and implementing specialised legislation and government policies with regard to protection of national minorities, the Advisory Committee encourages the Czech authorities to provide further resources.



### **ESTONIA (Opinion adopted on 14/09/2001)**

57. The Advisory Committee considers that the Presidential Round-table on Minorities has made an important contribution to the implementation of Article 15 of the Framework Convention. The effectiveness of the Round-table could however be improved if the relevant authorities would consult the said body more consistently when addressing issues falling within its competence.

58. The Advisory Committee notes that the Presidential Round-table is in its current form an expert body and that legislation does not provide for consultative bodies with an official status representing national minorities in Estonia. Bearing in mind the importance of involving national minorities in decision-making processes, the Advisory Committee is of the opinion that Estonia should consider the establishment of such structures of consultation, which would also include numerically small minorities such as Roma.

### **FINLAND (Opinion adopted on 22/09/2000)**

49. With reference to the important role played by the Advisory Board on Roma Affairs and the Advisory Board for Sami Affairs in the matters related to these minorities, the Advisory Committee encourages Finland to consider the establishment of a specific consultative body also for the issues concerning the Russian-speaking population in Finland.

50. As concerns the Sami, the Advisory Committee finds that a central element in their protection is the obligation placed by the Act on the Sami Parliament upon the authorities to negotiate with the Sami Parliament in all far-reaching and important measures which may directly and in a specific way affect the status of the Sami as an indigenous people and which concern matters enumerated in Section 9 of the Act on the Sami Parliament. The Advisory Committee notes that there have been a number of disputes concerning the implementation of this obligation, some of which appear to stem from the existence of an amount of uncertainty as to the exact reach and nature of the obligation at issue. The Advisory Committee is of the opinion that Finland should consider, with a view to improving the situation, whether procedural guidelines on the implementation of the obligation to negotiate could be drafted for the parties concerned, along the lines proposed by the Deputy Parliamentary Ombudsman in April 1999.

### **GERMANY (Opinion adopted on 01/03/2002)**

63. .... Although the Danish minority no longer has a member in the *Bundestag*, the Advisory Committee is pleased to note that a consultative committee for Danes has been set up to offset this lack of direct parliamentary representation. This committee enables the Danish minority to maintain direct links with the Federal authorities.

64. Steps such as the setting up of councils for Sorbian affairs elected from the parliaments of the *Land* of Brandenburg and the Free State of Saxony for the full term of the parliament also contribute to increased participation by national minorities. The same applies for the appointment of a Commissioner for the border region of the *Land* of Schleswig-Holstein, who gives advice to the Minister-President of the *Land* on all matters relating to the Danish minority, the Frisians and the Roma/Sinti. Commissioners for Sorbian affairs have also been appointed by several municipalities in the areas traditionally inhabited by Sorbians and some of these even work on a

voluntary basis. The role of these Commissioners is crucial and it is important that the authorities provide them with all the support they need to carry out their duties properly.

65. The Advisory Committee notes that the Sorbian minority has a specific body which helps it to enhance its participation in cultural, social and economic life. Funding for this institution, called the Foundation for Sorbian people, is provided jointly by the Federal state, the *Land* of Brandenburg and the Free State of Saxony. The Advisory Committee considers that this institution makes a highly positive contribution in that it provides a fine example of good co-operation between the Federal authorities and the *Länder* for the benefit of national minorities (see also the comments under Article 5). Seen in this light, it could provide a worthwhile model for other minorities who do not as yet have such a body. The Advisory Committee notes nonetheless that only 6 of the 15 members of the Foundation's governing board are representatives of the Sorbian minority – the others belong to the majority. The Sorbian members therefore represent less than half of the board and have no right of veto, even on fundamental issues. The Advisory Committee considers that the authorities could examine ways of strengthening the representation of the Sorbian minority in the functioning of the Foundation and in other fora.

#### **HUNGARY (Opinion adopted on 22/09/2000)**

46. The Advisory Committee has studied with interest the system of minority self-government introduced by the Law LXXVII of 1993 on the Rights of National and Ethnic Minorities. This comprehensive piece of legislation allows for the setting up of both local and national self-governments for national minorities. The Advisory Committee, on the basis of the contacts it has had with the national self-governments, concludes that these allow and indeed enhance the participation of national and ethnic minorities in public life. Although their functioning can no doubt be further improved, the Advisory Committee considers that the system of national self-governments, broadly speaking, functions satisfactorily.

47. However, the Advisory Committee is concerned about complaints from national self-governments, duly reported in the State Report on page 48 (English version) and addressed directly to the Advisory Committee, according to which they are not, or at too late a stage, informed of or involved in the legislative process (Article 38 of the Act on the Rights of National and Ethnic Minorities). These complaints are to be taken seriously and should therefore be investigated and where appropriate, remedied. Insofar as these complaints pertain to the Parliament, the Parliamentary Commissioner for National and Ethnic Minority Rights may be best placed to review these complaints and provide guidance in remedying shortcomings.

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50. Concerning the minority local self-governments, the Advisory Committee notes with approval that the Hungarian authorities have themselves evaluated the experience of their functioning so far. The Advisory Committee further shares the conclusion drawn in the State Report that "the sphere of duties and jurisdictions of minority self-governments and the regulations pertaining to financial contributions by the state and by local governments need to be refined, as well as the regulations on the co-operation between local governments of settlements and local self-government bodies of minority groups." In this context the Advisory Committee considers that the funding available for local self-governments of national minorities should also be reviewed.

51. The Advisory Committee also agrees that “the form in which to establish minority self-governments on regional and county level, which is a missing link, should be given some serious consideration”.

#### **IRELAND (Opinion adopted on 22/05/2003)**

96. Increased participation by Travellers and Traveller organisations in the decision making process is one of the overarching themes of the recommendations of the Task Force on the Travelling Community.

97. The Advisory Committee welcomes that there has been an increased tendency to ensure representation of Travellers on different bodies and in different institutions, as witnessed for example with a Traveller sitting as one of the members of the newly established Human Rights Commission. The Advisory Committee encourages the Government to continue their efforts in this sphere.

98. The Advisory Committee notes however certain criticisms of how participation has been implemented in practice with a recurrent criticism that participation and consultation can be selective. An example in point concerns the process leading to the adoption of the Housing (Miscellaneous Provisions) Act (2002), in which the Government has been criticised for having sidelined consultative structures (see also under Article 5 above). The Advisory Committee encourages the Government to systematically make full use of the different consultation structures in place so as to maximise the benefits of such consultations for all concerned.

#### **ITALY (Opinion adopted on 14/09/2001)**

62. The Advisory Committee appreciates the various institutional arrangements in aid of effective participation in all areas, public affairs especially, for persons belonging to the German-speaking and Ladin minorities resident in the Trentino-Alto Adige autonomous region. It especially welcomes the recent changes made by Constitutional Law No. 2 of 31 January 2001 which improves representation of Ladins in the legislative and executive bodies of both the region and the province. The self-governing status held by the Aosta Valley region is also likely to fulfil the needs of minority members resident there where effective participation is concerned.

63. With regard to the Slovene minority, the Advisory Committee welcomes the recent creation, under Law No. 38/01 governing protection of the Slovene minority in the Friuli-Venezia Giulia region, of a joint institutional committee to deal with the problems of the Slovene minority, from which half the members of the committee will be drawn. The Advisory Committee expresses the hope that this new body will be promptly set up and consulted by the authorities on all issues of importance to the Slovene minority.

64. While members of the German-speaking, Ladin, French-speaking and, to a lesser extent, the Slovene minorities have hitherto benefited from various forms of participation which could be described as effective within the meaning of Article 15 of the Framework Convention, the same does not apply to the other minorities. The Advisory Committee notes that by decree of 17 March 2000 the Presidency of the Council decided to set up a technical Committee assigned an essential role in framing the implementing provisions for Law No. 482 of 15 December 1999. Having regard to the composition of this technical Committee, the Advisory Committee welcomes the government's intention to give the minorities a part in implementing the legislation relating to

them. It hopes that the Italian authorities will keep moving in this direction by envisaging, for example, the formation of a consultative committee for minorities in order to institutionalise dialogue between the Government and the representatives of minorities.

#### **LITHUANIA (Opinion adopted on 21/02/2003)**

79. The Advisory Committee welcomes the setting up, as an advisory body of the Department, of a Council for National Minorities composed of representatives of their main organisations. However, the Advisory Committee notes with regret that certain procedures for consulting this body are not always satisfactory. The Advisory Committee refers in particular to the criticisms formulated by certain of its members with regard to the procedure for the designation (by the Bureau of the Parliament, and not by the Council itself) of the persons who are to represent the Council in the working groups set up within the parliamentary committees when draft laws are being examined. The Advisory Committee also notes, in certain cases, the lack of any consultation prior to the adoption of decisions affecting the interests of the minorities, as in the case of the new law on citizenship. It is essential that the legal status of the National Minorities Council be clarified and that its role be defined more precisely. The Advisory Committee regrets, that the new draft law on national minorities, apart from one section referring to the role of the Department for National Minorities in implementing Government policy on the protection of national minorities, contains no provisions relating to organisations of national minorities or to their participation in the taking of decisions directly affecting them.

80. The Advisory Committee also notes that persons belonging to national minorities who live in the regions do not always (as it found in Visaginas) succeed in making their views heard by the central authorities. The Advisory Committee considers it essential, in order to ensure the effectiveness of the policy of protection of national minorities and to increase the latter's confidence in the State's policies, to develop further consultation beyond the National Minorities Council. Greater attention should be paid to transparency, to coordination and to systematic communication between the State structures involved in this sphere.

#### **MOLDOVA (Opinion adopted on 01/03/2002)**

86. The Advisory Committee also takes note of the establishment of a special department in the Moldovan Government - the Department for Interethnic Relations, whose status is formalised in the new Act - to promote government policy towards national minorities. On the national minority side, the main partner of this government department is the Co-ordinating Council, an umbrella body representing the most important national minority organisations. The Advisory Committee also notes that there is an official responsible for national minority affairs in each second tier local authority.

87. The Advisory Committee welcomes the establishment of an institutional framework to enable persons belonging to national minorities to become involved in decisions affecting them. It hopes that this will offer a basis for practical forms of participation that really reflect the interests of those concerned and are adapted to the specific conditions of Moldovan society. In this context, it notes that a Presidential Committee had been created in 1998 with the aim of allowing these persons to make known their interests with the highest institution of the State. The Advisory Committee regrets that this committee ceased to function in 2001.

88. The Advisory Committee considers the areas in which national minorities are consulted, as defined in Article 22 of the 2001 National Minorities Act, to be too restrictive, since they are

confined to the cultural and educational spheres. It encourages the authorities to extend the scope of its dialogue with persons belonging to national minorities when examining subsequent legislation and policies for implementing the National Minorities Act.

89. The Advisory Committee also considers that, in addition to the Co-ordinating Council for National Minorities, it is important for the Government to enter into contacts with organisations representing each of the national minorities. This will enable the Government to identify and respond to specific concerns and avoid a situation where the interests promoted by the Co-ordinating Council only reflect the needs of the more active minority groups.

#### **NORWAY (Opinion adopted on 12/09/2002)**

60. The Advisory Committee considers that the Sami Parliament is an important body contributing significantly to the effective participation of the individuals concerned in cultural, social and economic life and in public affairs.

61. As regards other minorities, the Advisory Committee considers that the establishment of a Coordination Council on National Minority Issues in 1999 was a positive step. However, the membership of the Council is restricted to the public authorities only and there is no permanent consultation structure for representatives of national minorities. While recognising that the Ministry of Local Government and Regional Development and a number of other relevant authorities maintain *ad hoc* contacts with the relevant organisations of national minorities, the Advisory Committee is of the opinion that the Government should consider creating a more consolidated structure for such consultations, involving all national minorities, including the numerically smallest ones such as Skogfinns. In this context, the authorities could draw on the experiences gained in the functioning of the existing consultative forums, such as the Council of Religious Communities.

#### **POLAND (Opinion adopted on 27/11/2003)**

88. Development and co-ordination of government policies and measures for national minorities are the responsibility of the Team for National Minority Issues, whose secretariat is provided by the Ministry for Internal Affairs and Administration. Sub-groups have been set up on particular topics, in particular Roma matters and minority education. Only the ministries and departments concerned are represented in the Team, though representatives of national minorities are invited to some of the Team's meetings, depending on the agenda.

89. While recognising the value of the Team's work in general and as regards co-ordination in particular, the Advisory Committee is nevertheless concerned at national minority representatives' limited role in this governmental structure. Merely inviting them from time to time to participate in the Team's work, depending on the Team's agenda, would not seem to guarantee a sufficient involvement. The authorities should therefore consider increasing minority representatives' participation in the Team, for example by providing for the regular participation of all national minorities in the Team, introducing a procedure so that they can formally put items on the Team's agenda or even making them members of the Team. In this connection the Advisory Committee notes with interest that the Draft Law on National and Ethnic Minorities provides, for a new, joint commission with representatives of the Government as well as national minorities on which national minorities would have seats as of right. It expresses the hope that the authorities will draw inspiration from this to improve national minority participation in co-ordinating bodies at national level.

## **ROMANIA (Opinion adopted on 06/04/2001)**

65. The Advisory Committee strongly welcomes the fact that organisations of citizens belonging to a national minority are given participation rights through a constitutionally guaranteed representation in Parliament. Furthermore, it considers that the bodies established by the Government to deal with minority issues - particularly the Interministerial Commission for National Minorities and, above all, the Council of National Minorities, which is administratively linked to the Department for Inter-ethnic Relations - are important from the perspective of the implementation of Article 15 of the Framework Convention. The Advisory Committee notes that the participation of minorities - including in the Parliament - has led to significant achievements for the protection of national minorities and has contributed to the promotion of a climate of tolerance in Romania.

66. While these arrangements are worth mentioning, the Advisory Committee notes that effective participation of persons belonging to national minorities requires that the Council of National Minorities be consulted on all issues specifically affecting minorities. Yet the Council reports that this is not always done, and that its views - even when unanimous - are sometimes disregarded without explanation by State agencies. The Advisory Committee is therefore of the opinion that the Romanian Government should ensure that the Council of National Minorities is consulted more regularly, and given reasons whenever the authorities do not accept its views.

67. The Advisory Committee notes that the above institutional arrangements give considerable weight to one organisation for each minority, for instance the organisation represented in Parliament and/or the Council of National Minorities. This preferential treatment is reinforced by the fact that this organisation receives most of the financial aid allocated by the state to the minority concerned. This creates a risk that other organisations representing that minority may to some extent be sidelined and may not receive adequate state support. This risk is probably greater for the Roma community, which is represented by several dozen organisations and is thus more fragmented. It is therefore important that in the allocation of state support, the Government proceeds not exclusively through the organisations represented in Parliament and/or the Council of National Minorities, but also through the channel of other organisations representing minorities.

68. In this context, the Advisory Committee observes that the legislation on associations has been amended very recently by Order No. 26, considerably easing the conditions to establish associations in Romania. It notes that several minorities represented on the Council of National Minorities, and particularly the smaller, have expressed fears that the new regulations may fragment their communities and jeopardise their representation. It notes that some minority leaders regard the effects of implementing Order No. 26 as crucial, and is of the opinion that the Government should consult them on practical details of its application.

## **RUSSIAN FEDERATION (Opinion adopted on 13/09/2002)**

103. The Advisory Committee notes that there are also considerable regional differences in methods chosen to address the issue of participation of national minorities in public affairs. It notes that in some regions, the subjects concerned have established quotas for the persons belonging to indigenous peoples in their legislatures, notably in the Khanty-Mansiysk autonomous *okrug* and in the Yamalo-Nenets autonomous *okrug*. Such quotas are explicitly sanctioned in Article 13 of the 1999 Law on Guaranteeing the Rights of Numerically Small

Indigenous Peoples of the Russian Federation. The Advisory Committee notes however that such measures affect only a limited number of the indigenous peoples and that regrettably in many of the subjects concerned the aim of ensuring effective participation of persons belonging to these peoples has not been reflected in the relevant regional or local norms and practice. The Advisory Committee considers that both federal and regional authorities need to increase their attention to these shortcomings and to consider the advisability of introducing new innovative mechanisms, such as a specific representative body of indigenous peoples, proposed by a number of their representatives.

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107. The Advisory Committee notes that a number of consultative structures have been set up on issues that touch upon the protection of national minorities, but it appears that their potential has not been fully utilised by the authorities. For example, the Advisory Committee notes that the consultation mechanisms envisaged in the Law on National-Cultural Autonomy have not all received sufficient support and they have not been adequately consulted in the decision-making processes. It urges the authorities to address these shortcomings (see also the related general comments and comments under Article 5).

#### **SERBIA AND MONTENEGRO (Opinion adopted on 17/11/2004)**

106. The Advisory Committee considers that amongst the recent initiatives pertaining to the participation of national minorities in decision-making, the introduction of the National Councils of national minorities is of particular importance. Pursuant to Article 19 of the federal Law on the Protection of Rights and Freedoms of National Minorities, the National Councils are to represent national minorities in respect of official use of language, education, information in the language of the national minority and culture. They are also to participate in the decision-making as well as take decisions on issues in these fields. Furthermore, the said article stipulates that, in deciding on these issues, the bodies of the government, territorial autonomy or local self-government shall request the opinion of the councils.

107. The Advisory Committee notes with satisfaction that there is considerable interest in such National Councils amongst national minorities; ten national minorities have already elected their councils and the setting-up of additional councils is currently under preparation. The Advisory Committee is of the opinion that the Councils may become a central tool in the implementation of Article 15 of the Framework Convention. This will however depend largely on how consistently and widely the authorities involve the representatives of the councils in the decision-making. Some positive measures to involve the national councils have already been taken, for example, as regards reform of textbooks for national minorities. However, in general, the exact role and scope of activities of the councils is yet to be determined. The Advisory Committee considers that one forum to develop the role of the councils in general would be the "Federal" Council for National Minorities, envisaged in Article 18 of the federal Law on the Protection of Rights and Freedoms of National Minorities, and it urges the authorities to address the delays in the setting up of this body (see also related comments under Article 6 above).

108. The issue of funding of the National Councils has not yet been adequately addressed. While understanding the economic constraints involved, the Advisory Committee calls on the authorities to address this issue as a matter of priority with a view to ensuring adequate funding is allocated in a manner that contributes to the independence of these councils. At the same time, the Advisory Committee finds it essential for the effectiveness and credibility of the National

Councils that they pursue their work in an inclusive and balanced manner without undue politisation. These aims should also be taken into account in the on-going work to draw up legislation on the election of the National Councils.

109. While understanding the privileged position envisaged for the National Councils as partners of the authorities, the Advisory Committee finds it important that they are not perceived as the sole and exclusive interlocutor of the authorities in minority questions and that also other relevant actors – including NGOs and associations of national minorities – are, as appropriate, brought into the relevant decision-making processes.

110. The Advisory Committee notes that, in Montenegro, the main body established for the protection of national minorities is the Republic Council for the Protection of Rights of Members of National and Ethnic Groups, which was set up in accordance with Article 76 of the Constitution and whose composition is, under Article 9 of the decision on its competences and composition, to reflect the “representation of all religious, national and ethnic groups”. The Advisory Committee welcomes the fact that the need to have a body devoted to the protection of national minorities is recognised at the constitutional level. However, the Advisory Committee is aware that the actual impact of the said body on the protection of national minorities has been largely questioned amongst national minorities. Its working methods have been criticised as ineffective and its role in decision-making has been seen as marginal by a number of commentators. Against this background, the Advisory Committee urges the authorities, including in the context of the on-going drafting of a law on national minorities, to review the working methods of the Council and introduce improved mechanisms for involving persons belonging to national minorities in decision-making affecting them.

#### **SLOVAK REPUBLIC (Opinion adopted on 22/09/2000)**

46. The Advisory Committee welcomes the fact that, whereas previously a majority of the members of the Council of National Minorities and Ethnic Groups were representatives of the Government, at present a majority represents minorities, and that this body is being consulted increasingly often in the context of decision-making regarding minority issues.

#### **SLOVENIA (Opinion adopted on 12/09/2002)**

69. The Advisory Committee notes with satisfaction that highly commendable facilities for participation have been introduced in favour of the Hungarian and Italian minorities. The system of self-governing national communities set up by the Constitution and by special legislation is noteworthy in this context in that it gives wide powers to these communities in the spheres of culture, education, research, publishing, or economic life. The Hungarian and Italian minorities are mainly organised in municipal self-governing communities set up within municipalities in “ethnically mixed areas”.

73. It is true that the Government has set up a Roma Affairs Commission which is supposed to promote dialogue with representatives of this minority on all Roma-related questions, but the Commission seems to have a relatively limited role. Consideration could therefore be given to extending the scope of the mandate of this Commission. Furthermore, the Advisory Committee notes the widespread feeling that substantial progress needs to be made primarily in the field of political representation of the Roma at local level to ensure that persons belonging to the Roma minority enjoy better participation in public affairs, in particular those affecting them.



#### **SPAIN (Opinion adopted on 27/11/2003)**

76. Where Roma are concerned, the Advisory Committee notes the existence at central level of an Advisory Commission for the Governmental Roma Development Programme, as well as multi-sectoral working parties to promote coordination of the work of the various competent ministries and departments. The Advisory Committee also notes that in some Autonomous Communities there are specific structures attached to the territorial executive or legislative authorities, some of which include Roma representatives, intended to intervene in the definition and application of policies set in place by the Autonomous Communities with respect to Roma, in their own areas of competence. The State Report also mentions the existence, at central, as well as at regional and local level, of specific participation bodies for the Roma population.

77. The Advisory Committee also welcomes the establishment, in 1999, of a parliamentary sub-committee to examine Roma problems with the task of reviewing the governmental programme designed to improve their situation. Like that sub-committee, the Spanish Ombudsman and the ombudsmen of several Autonomous Communities (in a jointly signed manifesto in March 2000) have recognized the need for the authorities at every level to take concerted action to reduce the social exclusion and marginalization of Roma.

78. The Advisory Committee acknowledges that some positive developments have taken place in this field, and notes in this connection the technical and financial support given by the State to non-governmental organizations carrying out programmes to help Roma participate better in public life. Among programmes which have had some impact, it singles out those devoted to the schooling of Roma children, the participation of Roma women in social life and the formation of Roma associations. The Advisory Committee is of the opinion that the authorities should give more support to Roma associative efforts, focusing especially on the initiatives developed by women and young people in this community.

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80. The Advisory Committee observes at the same time that, in order to participate more fully, Roma are endeavouring to promote an active, determined communication strategy. However, their efforts to achieve representation in elective structures through the inclusion of Roma candidates on party political lists have produced only very modest results. The Advisory Committee notes in this respect that the Roma have on several occasions (including in the Toledo Manifesto in February 2000, mentioned in paragraph 18 above of this opinion) expressed themselves in favour of the institution of a democratic representative body with consultative powers *vis-à-vis* the various administrative authorities and able to promote their interests more effectively. In view of Article 9.2 of the Spanish Constitution, which gives the public authorities responsibility for promoting conditions conducive to equality and effective participation, the Advisory Committee urges the authorities to take the necessary measures to render existing consultation structures and mechanisms more efficient and at the same time to develop additional participation arrangements, in conjunction with the persons concerned.

#### **SWEDEN (Opinion adopted on 20/02/2003)**

63. The Advisory Committee considers that the Sami Parliament is an important body contributing to the effective participation of the individuals concerned. It is however of the opinion that the status and the role of the said body needs to be further developed, and in this

respect the proposals put forth in the report on the role of the Sami Parliament submitted to the Government in October 2002 (SOU 2002:77) merit careful attention. The Advisory Committee finds it particularly important that the proposals to expand the legal obligation to consult the Sami Parliament in the relevant decision-making processes are followed up. The Advisory Committee notes that one area where Sami participation is of essential importance is the use of land (see related comments under Article 5). In this regard, it welcomes the proposal contained in the report issued by the Reindeer Breeding Policy Commission of December 2001 (SOU 2001:101) that the participation of the Sami villages and the Sami Parliament should be increased in the decision-making processes concerning new use of land.

64. As regards other minorities, the Advisory Committee notes that no general consultation structures have been created by the central authorities, but occasional meetings and *ad hoc* consultations between national minorities and relevant authorities are organised. Bearing in mind the reports suggesting that this method of consultation is not fully effective in all the relevant sectors, the Advisory Committee is of the opinion that the Government should consider creating a more consolidated structure for such consultations. In this connection, it welcomes the recent decision of the Government to set up a council on Roma in order to improve the participation of persons belonging to this national minority in decision-making. The Advisory Committee considers that consultation of persons belonging to national minorities in relevant decision-making is of utmost importance also at the local level and that, while some commendable initiatives have been launched in selected municipalities, there is a need to ensure that such consultations take place in all municipalities concerned.

#### **SWITZERLAND (Opinion adopted on 20/02/2003)**

76. The Advisory Committee is concerned that participation mechanisms for Travellers are still inadequate. It appears that dialogue and co-operation with the Federal authorities were developed only fairly recently and that this consultation process is due to be stepped up in the future. The Advisory Committee considers that the Confederation's creation in 1997 of the Foundation "Assurer l'avenir des gens du voyage suisses" with the task of helping to improve Travellers' living conditions and safeguard their culture has been a positive step. Through its action, this Foundation has in particular enabled Travellers' needs to be accurately identified in a number of fields, in particular in terms of stopping places and transit sites.

77. Travellers experience particular difficulties as regards participation in matters concerning them, owing to the fact that they have no historical attachment to a particular territory and, as a result, are confronted with a high number of cantonal and municipal authorities when they travel and carry out their economic activities. The Advisory Committee is aware that the aforementioned Foundation also plays a role as a forum within which representatives of the Travellers, the municipalities, the cantons and the Confederation have to work together to resolve the problems arising. It appears, however, that the Foundation is not able to play that coordinating role sufficiently effectively as between the authorities, in particular *vis-à-vis* the municipal authorities. The Advisory Committee therefore urges the federal authorities to consider the possibility of reinforcing the competences of the Foundation with regard to coordination, as well as the composition of its constituent organs. It also urges the cantons to re-examine their mechanisms for consulting the Travellers, and, where necessary, to reinforce them, since communication proves to be difficult in certain cantons (see the comments on Article 4).

**“THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA” (Opinion adopted on 27/05/2004)**

96. The Advisory Committee recognizes the value of the various forms of direct dialogue that can be established between the Government and organisations representing each of the minorities, including the numerically smaller ones. The Advisory Committee finds in this respect that generally speaking, such dialogue remains limited. The Advisory Committee acknowledges the authorities’ willingness to discuss the problems facing minorities but it also notes that lack of information and proper consultation has been identified as a recurring problem by the various minorities. The Advisory Committee therefore believes that the authorities should try to improve the legal and institutional framework, by setting up a Council for Minorities, for example, in order to establish a dialogue with organisations representing the various minorities on the issues affecting them.

**UKRAINE (Opinion adopted on 01/03/2002)**

72. The Advisory Committee considers that the establishment of the Council of Representatives of Public Organisations of National Minorities by the President of Ukraine demonstrated commitment to the consultation of national minorities. However, this body is convened only rarely, and it does not constitute a forum for regular and frequent consultation and dialogue on issues pertaining to national minorities. The Advisory Committee is therefore of the opinion that the working methods of the said body should be revised or a new body established in order to promote such consultation and dialogue. In this connection, the authorities should draw on the positive experience gained in the work of the Council of Representatives of the Crimean Tatars. This body, set up by a presidential decree in May 1999, appears to be a well-functioning forum for discussion on issues pertaining to Crimean Tatars, albeit many of the proposals developed therein are yet to be fully implemented.

**UNITED KINGDOM (Opinion adopted on 30/11/2001)**

100. The Advisory Committee notes with interest the work being done by the Race Relations Forum established by the Home Secretary to advise him on issues affecting ethnic minority communities. The Forum’s membership is drawn from a broad spectrum of ethnic minority communities. The Advisory Committee has received representations from a number of groups, including from Roma / Gypsy and Irish Traveller groups, ethnic minority groups in Northern Ireland and certain religious groups, who feel strongly that a member of their community should be represented on this Forum. The Advisory Committee sees merit in there being wider representation, albeit perhaps through a rotation system of persons from different communities on this Forum and encourages the Government to consider how this may be assured in the future.

## **APPENDIX 2**

### **COUNCIL OF EUROPE AND OTHER RESOURCES**

The Participation of Minorities in Decision-Making Processes, Expert study submitted on request of the Committee of Experts on Issues relating to the Protection of National Minorities (DH-MIN) of the Council of Europe by the Max-Planck-Institute for Comparative Public Law and International Law, Heidelberg

DH-MIN (99)2 of April 2000 entitled "Synthesis of replies to the questionnaire on participation of minorities in decision-making processes"

MG-S-ROM (98)15 of 27 October 1998, Meetings of National Consultative Bodies between Roma/Gypsies and Governments

Synthesis of replies from Governmental officials on policies towards Roma collected at a Stability Pact Multilateral Meeting held in Budapest on 22-23 March 2001.

Paper on the "Representation and Participation of National Minorities in Decision-Making Processes" presented by Joseph Marko, University of Graz at the joint meeting of the DH-MIN and of Government Offices for National Minorities, Strasbourg, 1999

Marc Weller "A critical evaluation of the first results of the monitoring of the Framework Convention on the issue of the effective participation of persons belonging to national minorities" in *Filling the Frame, Five years of monitoring the Framework Convention for the Protection of National Minorities*, Council of Europe Publishing 2004, pp. 83-86.

Other relevant sources:

ECMI database on the FCNM: [www.ecmi.de](http://www.ecmi.de)