

The Framework Convention: a key tool to managing diversity through minority rights



Thematic commentary No. 4
The scope of application
of the Framework Convention
for the Protection
of National Minorities

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French edition:

*Convention-cadre: un outil essentiel pour gérer
la diversité au moyen des droits des minorités*

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Executive summary

Diversity has been an integral part and a major asset of European societies for centuries. It remains an essential feature of contemporary societies. The purpose of the Commentary is to consolidate the manner in which the Advisory Committee has interpreted, over the years, the scope of application of the Framework Convention for the Protection of National Minorities (ETS No. 157), bearing in mind specific societal, economic and demographic developments.

The Commentary shows that, since 1995, the Framework Convention has been and continues to be a key tool for states to accommodate increasing pluralism through minority protection in a way that carefully balances broader societal concerns with individual rights. It supports states parties in managing diversity by creating appropriate societal conditions that allow for the expression and acknowledgement of difference, for equal access to rights and resources despite difference and for social interaction and inclusion across difference.

The Framework Convention is based on the principle that the protection of national minorities is essential to stability, democratic security and peace. Its main purpose is to prevent interethnic tensions and to promote dialogue in open and inclusive societies. Accordingly, the Commentary underlines that the Framework Convention addresses society as a whole and not just individuals or specific groups. Rather than asking “who” should be protected, it asks “what” is required to manage diversity most effectively through the protection of minority rights. It is for this reason that the Convention does not contain a definition of the term “person belonging to a national minority”.

The Framework Convention was deliberately conceived as a living instrument. Its interpretation must be adjusted regularly to ensure that minority rights can be enjoyed effectively in societies that are affected by constant transformation, including through mobility and migration. The right to free self-identification is central to minority protection, including multiple and situational affiliations. It must not be disregarded through imposed categorisation based on predetermined characteristics. Individuals self-identify and form communities through a variety of evolving shared practices and through the common exercise of rights. Societal changes also have an impact on identity perceptions of individuals and of communities and thereby on the applicability of minority rights.

Among the broad range of rights contained in the Framework Convention, some explicitly apply to all individuals in the territory of the state, while the application of others may be linked to specific conditions. When examining the implementation of the Framework Convention by states parties, the Advisory Committee has therefore consistently encouraged the authorities to be inclusive and context specific and to consider, on an article-by-article basis, which rights should be made available to whom in order to ensure the most effective implementation of the Framework Convention based on facts rather than status.

The Commentary concludes that access to minority rights can only be ensured in a society where dialogue, understanding and cultural diversity are viewed as sources of enrichment rather than of division.

Part I

Introduction

1. This Commentary is intended to provide guidance to states parties to the Framework Convention, to persons belonging to national minorities, to international organisations and to civil society and academia regarding the ongoing debate on the scope of application of the Framework Convention. It is based on a close comparative and analytical reading of the Opinions adopted by the Advisory Committee throughout four cycles of monitoring in the states parties since 1998,¹ and builds on three previous thematic commentaries that were adopted by the Advisory Committee: on education in 2006;² on effective participation in public life in 2008;³ and on language rights in 2012.⁴ Valuable input has also been collected from national minority and civil society representatives,⁵ academics and other interlocutors, including during broader consultations held in the final stages of the drafting process.

2. Minority rights are granted at the individual level to each person belonging to a national minority. It is further specified in Article 3(2) of the Framework Convention that minority rights are “exercised individually and in community with others”. In fact, a number of rights only make sense if exercised in community with others, and the enjoyment of some rights presupposes the presence of or even formal association with others. Minority rights therefore have an individual, a social and a collective dimension. Despite the fact that a number of international instruments make reference to minority cultures, languages or traditions, and some common understanding exists as to what the term ‘minority’ entails, there has never been a universally shared definition.⁶ In line with this tradition, the Framework Convention does not contain a definition of the term ‘national minority’ or of the phrase ‘person belonging to a national minority’. As a result, the question of who is to be recognised as a right holder under the Framework Convention has, since its adoption, been the subject of extended debate at international and national, academic and political levels.

3. It is the goal of the Framework Convention to ensure that the space for diversity and for being “different” in society is protected and affirmed, thereby promoting the integration and cohesion of societies.⁷ Broader questions relating to the integration of societies have therefore always featured in the monitoring work of the Advisory Committee, sometimes resulting in disapproval by the respective state party.⁸ Indeed, as a result of the increased diversity of European societies in recent years, increased attention has been paid by a number of actors to the imperative of forming inclusive and integrated societies where diversity is respected and preserved.⁹ With that in mind and in order to clarify both the personal and substantive reach of its work, the Advisory Committee considers it appropriate to devote its Fourth Thematic Commentary to the Framework Convention’s scope of application.

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1. The Commentary makes references to first, second, third or fourth cycle, country-specific Opinions where findings of particular relevance to the scope of application were made. These references are illustrative only.
 2. See Advisory Committee on the Framework Convention for the Protection of National Minorities (ACFC) First Commentary on Education under the Framework Convention for the Protection of National Minorities, ACFC/25DOC(2006)002, 2 March 2006, www.coe.int/minorities.
 3. See ACFC Second Commentary on the Effective Participation of Persons belonging to National Minorities in Cultural, Social and Economic Life and in Public Affairs, ACFC/31DOC(2008)001, 27 February 2008, www.coe.int/minorities.
 4. See ACFC Third Commentary on the Language Rights of Persons belonging to National Minorities under the Framework Convention, ACFC/44DOC(2012)001, 24 May 2012, www.coe.int/minorities.
 5. The term “minority representative” throughout the text does not contain a legal notion; it refers to advocates or spokespersons who have come forward to share their views.
 6. See *travaux préparatoires*, various attempts in the Parliamentary Assembly of the Council of Europe (PACE), and, in particular, the Commentary of the Working Group on Minorities to the 1992 UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities.
 7. See the Preamble of the Framework Convention: “[...] Considering that the creation of a climate of tolerance and dialogue is necessary to enable cultural diversity to be a source and a factor, not of division, but of enrichment for each society [...]”.
 8. See, *inter alia*, First Opinion on Denmark and Government Comments on the First Opinion on Denmark, and First Opinion on Germany and Government Comments on the First Opinion on Germany.
 9. The increased preoccupation with integration-related issues is, for instance, reflected in the work of the OSCE High Commissioner on National Minorities (HCNM) (see Ljubljana Guidelines on Integration of Diverse Societies November 2012) as well as in the fact that the European Commission against Racism and Intolerance (ECRI) has included integration policies in the four topics common to all member states in its fifth round country reports.

4. The adoption of the Framework Convention in 1995, in the aftermath of violent conflicts in Europe, as the only legally binding international instrument on the rights of persons belonging to national minorities, firmly anchored the protection of minority rights within the universal set of multilaterally recognised human rights. Minority rights, according to Article 1 of the Framework Convention, form part of the international human rights protection system, which is based on the premise that everyone is born free and equal in dignity and rights.¹⁰ The purpose of embracing minority rights as an integral part of human rights was not to challenge the notion of equality among all individuals, but to advance it further by establishing a set of specific rights for persons belonging to national minorities to ensure that they are enabled to participate fully and equally in society while being protected from assimilation. Importantly, persons belonging to national minorities require guarantees to enable them: (i) to express difference and to have that difference recognised; (ii) to gain equal access to resources and rights despite difference; and (iii) to engage in social interaction on the basis of respect and understanding across difference.

5. The superficial conclusion is sometimes made that the application of the Framework Convention, given the absence of a definition of national minority, is in practice left solely to the discretion of states parties. This interpretation, however, is incorrect. It runs counter to Article 26 of the Vienna Convention on the Law of Treaties and the basic principle of *pacta sunt servanda*. The purpose of this Commentary is to make it clear that the absence of a definition in the Framework Convention is indeed not only intentional but also necessary to ensure that the specific societal, including economic and demographic, circumstances of states parties are duly taken into account when establishing the applicability of minority rights. The Framework Convention was deliberately conceived as a living instrument whose interpretation must evolve and be adjusted regularly to new societal challenges. Multiple identities and increasing mobility, for instance, have become regular features of European societies. However, such features must not limit access to minority rights. This approach is fully in line with the principle of dynamic interpretation developed by the European Court of Human Rights with respect to the European Convention on Human Rights.

6. While the Framework Convention binds states parties from its entry into force within the domestic jurisdiction, its framework character nevertheless requires additional legal instruments at domestic level to make it fully operational. In many states, definitions of rights holders have been established in domestic legislation to give effect to the provisions laid down in the Framework Convention. The Advisory Committee has consistently acknowledged that states parties have a margin of appreciation in this context, but has also noted that this margin must be exercised in accordance with the general rules of international law contained in Articles 31 to 33 of the Vienna Convention on the Law of Treaties. In particular it must be exercised in line with the obligation to interpret a treaty in good faith and in the light of its object and purpose. In the case of the Framework Convention, its fundamental principles set out in the Preamble remind states parties to seek maximum expression of the spirit of friendly relations and co-operation in all of their actions pertaining to minority protection. Moreover, its Article 2 underlines the essential character of the principles of good faith, good neighbourly relations and non-interference in another state's internal affairs to ensure that the many diverse interests that are affected in the implementation of the Framework Convention can be reconciled by states parties.¹¹

7. When examining the approaches taken by states parties with regard to the scope of application of the Framework Convention, the Advisory Committee has therefore consistently encouraged the authorities to be inclusive and context specific and to consider on an article-by-article basis which rights should be made available to whom. Such an approach not only ensures the most effective implementation of the Framework Convention based on fact rather than status, but it also promotes a societal climate of dialogue and understanding, where cultural diversity is viewed as a source of enrichment rather than division.

8. This Commentary begins with an analysis of the right to free self-identification of persons belonging to national minorities as a cornerstone of minority rights (Part II). It thereafter discusses the various practices developed by states parties to define the beneficiaries of minority rights according to personal and other criteria (Part III). Part IV explains the open and contextual approach that has been applied by the Advisory Committee throughout its monitoring activities in line with the basic principles contained in Articles 3-6 of the Framework Convention. Based on the article-by-article approach developed by the Advisory Committee from its inception, Parts V-VII present an analysis of the scope of application of the various rights contained in the Framework Convention. While some articles explicitly address all persons in the territory of the state party (Part V), there are some minority rights with a broad scope of application that, given their nature, must apply to all national minorities (Part VI), while there are other minority rights where states parties may require specific preconditions for their enjoyment (Part VII).

10. See Article 1 of the Universal Declaration of Human Rights.

11. See also the Framework Convention's Explanatory Report, paragraph 32: "This article provides a set of principles governing the application of the Framework Convention. [...] The principles mentioned in this provision are of a general nature but do have particular relevance to the field covered by the Framework Convention".

Part II

The right to free self-identification

1. General considerations

9. The right to free self-identification contained in Article 3 of the Framework Convention is a cornerstone of minority rights.¹² The Advisory Committee has consistently underlined the centrality of this provision. “Free” implies, in this context, the individually established and informed decision to avail oneself of the protection of the Framework Convention. Article 3 is thus necessarily applicable to everyone, as every person must have the right to identify freely as a member of a specific group, or to choose not to do so. The Framework Convention’s Explanatory Report points out, however, that the choice of the individual is not to be arbitrary but must be linked to some objective criteria.¹³

10. The Advisory Committee has intentionally refrained from interpreting what such objective criteria may be, as it is clear from the wording of the Explanatory Report that they must only be reviewed vis-à-vis the individual’s subjective choice. Thus, objective criteria do not constitute elements of a definition. Self-identification begins with the free decision of the individual which, if no justification exists to the contrary, is to be the basis of any personal identification.¹⁴ In the view of the Advisory Committee, a person’s free self-identification may only be questioned in rare cases, such as when it is not based on good faith. Identification with a national minority that is motivated solely by the wish to gain particular advantages or benefits, for instance, may run counter to the principles and purposes of the Framework Convention, in particular if such action diminishes the intended benefits and rights available to persons belonging to national minorities.

11. While the official recording of a self-identification may, in some cases, require the evidence of objective criteria,¹⁵ a minority identity must not be externally imposed. The Advisory Committee has criticised the mandatory recording of ethnicity in identity documents or in internal records of administrative entities, including the police and health care facilities, as contrary to the right to free self-identification.¹⁶ Moreover, it has considered that free self-identification implies the right to choose on a situational basis when to self-identify as a person belonging to a national minority and when not to do so.¹⁷

12. In practice, this means that each person belonging to a national minority may freely decide to claim specific rights contained in the Framework Convention, while under certain circumstances or with respect to certain spheres of rights, he or she may choose not to exercise these rights.¹⁸ Such individual decisions must, however, not result in disadvantages for other individuals identifying with the same minority by precluding them from claiming their minority rights. In this context, the Advisory Committee has reiterated its view that any numerical thresholds established as a precondition for the applicability of certain minority rights must be interpreted flexibly (see also paragraph 82). Otherwise, an indirect obligation to self-identify would be placed on persons belonging to national minorities in order to ensure that access to a specific right is maintained. At the same time, the individual decision to identify or not to identify with a particular minority must be respected by others who affiliate themselves with the same group and who equally must not exert pressure one way or the other.

12. According to 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.”

13. According to para. 35, Article 3(1) “does not imply a right for an individual to choose arbitrarily to belong to any national minority. The individual’s subjective choice is inseparably linked to objective criteria relevant to the person’s identity.”

14. See also General Recommendation VIII of the Committee on the Elimination of Racial Discrimination (1990).

15. See also *Ciubotaru v. Moldova* (application no. 27138/04), Judgment of 27 April 2010, where the European Court of Human Rights acknowledged the right of a government to require the existence of objective evidence of a claimed identity.

16. See Fourth Opinion on the Czech Republic, First Opinion on Germany, Third Opinion on Ireland, First and Third Opinions on the Russian Federation and First and Second Opinions on Ukraine.

17. Persons belonging to national minorities may for instance choose to have their name officially recognised in a minority language but in parallel not use their minority language in contact with local administrative authorities. See also Third Thematic Commentary (footnote 4), especially paragraphs 16-18.

18. Persons belonging to national minorities may for instance take an informed decision to enrol their children in mainstream schools without suffering any disadvantages in terms of access to other minority rights as a result, and without such a decision having an impact on the general availability of minority language education to other members of the same group.

13. The right to free self-identification also extends to multiple affiliations. In fact, the Framework Convention implicitly acknowledges multiple affiliations by promoting the preservation of minority identities in parallel to successful and effective integration in broader public life. Persons belonging to national minorities should never be obliged to choose between preserving their minority identity or claiming the majority culture, as both options must be fully available to them.¹⁹ This implies that practices by which an individual affiliates with a particular minority should not be seen as exclusive, as he or she may simultaneously identify with other minorities or with the majority.²⁰ In some instances, such a choice may be the consequence of previous assimilation processes into the majority or into another dominant minority. However, this must not be used as an argument against the rights of persons belonging to national minorities to self-identify freely and to claim minority protection.

14. The Advisory Committee has further called on states parties to ensure that all persons and groups who may benefit from the Framework Convention are made aware and enabled to avail themselves of the right to self-identify freely in order to access the rights contained in the Framework Convention. This is the case when the choice of affiliating with a minority is not made difficult in practice and when it is assured that the choice is made free of fear of resulting disadvantages or of loss in social prestige.

2. Free self-identification in the context of census and other general data collection processes

15. In countries where data on national, ethnic or religious affiliation are collected in the context of broader population census exercises, such exercises must be organised and conducted in line with internationally recognised principles, including personal data protection standards.²¹ It follows further from the right to free self-identification that any participation in data collection exercises related to ethnic background must be voluntary. In particular, there must be no automatic inference from a particular indication (for example language use) to another indication (for instance religion, ethnicity) and no assumption of certain linguistic, religious or ethnic affiliations is to be made based on a person's name or other characteristics.²²

16. The right to free self-identification applies in each data collection exercise separately. This means that persons belonging to national minorities must not be required always to self-identify in the same manner. Lists of possible responses to identity-related questions should be open not closed, and the opportunity to express multiple affiliations should be provided explicitly. Given the importance attached in some states parties to the size of a minority population for access to minority rights, multiple affiliations must also not only be recorded but also adequately processed, analysed and displayed. These considerations on the collection, processing and reporting of data must also be applied to other situations (for example school enrolment) that can imply self-identification.

17. In situations where the enjoyment of particular minority rights is linked to numerical thresholds,²³ the right to free self-identification further requires that persons belonging to national minorities are informed of the importance attached by the authorities to census and other data collection exercises. The Advisory Committee has therefore systematically encouraged states parties to make all information on the methodology and aim of data collection available in the languages of national minorities, and to include persons belonging to national minorities in the organisation and operation of such processes, particularly in areas where national minorities are settled in substantial numbers.²⁴

19. See also First and Third Thematic Commentaries (footnotes 2 and 4).

20. This may for instance occur in mixed families where several languages are spoken on an equal basis.

21. In the context of population census exercises, the Advisory Committee has encouraged states parties to adhere to the EUROSTAT/UN recommendations for the organisation of population and housing censuses. See Conference of European Statisticians Recommendations for the 2010 Censuses of Population and Housing, prepared in co-operation with the Statistical Office of the European Communities (EUROSTAT) and the United Nations Economic Commission for Europe, paragraph 426: "respondents should be free to indicate more than one ethnic affiliation or a combination of ethnic affiliations if they wish so", paragraph 431: "Questions will generally refer to one language only. Multiple languages may be required for the mother tongue and main languages of minority groups". See, for example, Fourth Opinion on Cyprus, Third Opinions on Estonia and Romania.

22. See, for example, consecutive Opinions on Italy and the United Kingdom.

23. The opening of minority language schools or the official use of minority languages at local level, for instance, may be linked to the actual number of persons belonging to national minorities (see also Part VII).

24. See, for example, Third Opinion on Hungary and Second Opinion on Slovenia.

18. At the same time, the Advisory Committee has cautioned states parties against exclusively relying on official statistics and figures, as these, for a variety of reasons, may not fully reflect reality.²⁵ Results should be reassessed periodically and analysed flexibly, in close consultation with minority representatives. Authorities should also further avail themselves of other sources of information, including the general labour force and other surveys, as well as independent qualitative and quantitative research available on issues pertaining to the access to rights of persons belonging to national minorities.

25. Due to a history of past disadvantage, discrimination or even persecution based on ethnic origin, some persons belonging to national minorities are still unwilling to indicate their ethnic background to any official entity. Misperceptions about the use or apparent dangers inherent in census exercises are sometimes disseminated among minority communities for political purposes with the very aim of preventing them from being counted in high numbers.

Part III

Approaches taken by states parties to the scope of application of the Framework Convention

1. Declarations and reservations at the time of ratification

19. The Framework Convention is open for signature by member states of the Council of Europe and, in principle, also by other states.²⁶ There are currently 39 states parties to the Framework Convention, all of them member states of the Council of Europe. The last ratification took place in 2006 when Montenegro became a party to the Convention.²⁷ In addition to the 39 states parties, where the implementation of the Framework Convention is monitored by the Advisory Committee, Kosovo* is subject to a specific monitoring arrangement in conformity with the 2004 Agreement between the United Nations Interim Administration in Kosovo (UNMIK) and the Council of Europe.

20. Eight Council of Europe member states are not parties to the Framework Convention. Belgium, Greece, Iceland and Luxembourg have signed the Framework Convention and have therefore committed themselves to act in line with the objectives and purpose of the Framework Convention,²⁸ while Andorra, France, Monaco and Turkey have neither signed nor ratified the treaty.

21. The Advisory Committee considers that the implementation of the rights contained in the Framework Convention, given its objectives of managing diversity through the effective protection of minority rights,²⁹ and promoting balanced approaches to the sometimes conflicting goals of individual rights protection and the safeguarding of broader state interests, is beneficial to all societies. It notes that any reasoning provided in the 1990s for not ratifying the Framework Convention must be regularly reassessed as societies have substantially changed since then. Similarly, the argument that no national minorities exist in the country may well no longer reflect contemporary realities. For the same reason, the Advisory Committee also regularly invites states parties that have not yet done so to ratify the European Charter for Regional or Minority Languages (ECRML, ETS No. 148). While placing the emphasis on the obligation of the state to protect and promote regional or minority languages as part of cultural heritage, rather than granting individual rights to the speakers of these languages, the Charter represents a unique international instrument in this field and plays a complementary role to the Framework Convention.³⁰

22. According to Article 27 of the Framework Convention, non-member states of the Council of Europe may ratify the Framework Convention upon invitation by the Committee of Ministers. The Explanatory Report makes it clear that Article 27 refers to participating states of the Organization for Security and Co-operation in Europe (OSCE). The Advisory Committee agrees that the Framework Convention could indeed be particularly relevant in some OSCE participating states, such as Central Asian states, due to the broad diversity of their societies. It further notes that some interest in this regard has already been expressed. In line with its general principle of dynamic interpretation, it considers however that the Explanatory Report should not be understood as preventing other states that co-operate with the Council of Europe in a variety of ways, including as observer states, from becoming a party to the Framework Convention.

26. See the wording of Article 27 of the Framework Convention.

27. Following the declaration of independence on 3 June 2006, the Framework Convention was ratified on 6 June 2006.

* 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.

28. See Article 18 of the Vienna Convention on the Law of Treaties.

29. See Explanatory Report, paragraph 28.

30. See also Third Thematic Commentary (footnote 4), paragraph 11.

23. States parties to the Framework Convention have developed various approaches to establish the beneficiaries of the rights contained in the Framework Convention. In 18 cases, declarations and reservations were deposited at the time of ratification or signature, clarifying to whom the rights contained in the Framework Convention are to be applied or how certain provisions are to be interpreted.³¹ The declarations typically either establish a general definition with specific criteria that must be met,³² list explicitly which groups are to be covered,³³ or state that there are no national minorities present in the territory.³⁴ Reservations at the time of signature or ratification were declared in two cases.³⁵

24. The Advisory Committee has systematically reviewed the effects of these declarations and reservations on persons belonging to national minorities and on their access to rights. Given that, in many cases, the declarations date back to the late 1990s, and taking into account the substantially changed conditions in states parties since then, their pertinence should be reviewed at regular intervals by the states parties concerned to ensure that the approach to the scope of application accurately reflects the present-day societal context.

25. Other states parties have incorporated statements into the first state report or have adopted national legislation containing references to the groups of persons who are to be considered as belonging to national minorities. These definitions, again, are usually formulated as delimitations to the scope of application, either by explicitly naming specific groups of beneficiaries, or by enlisting the preconditions that must be met in order for individuals to become eligible to benefit from the Framework Convention.³⁶

26. According to Article 26 of the Framework Convention, the Committee of Ministers is to be assisted by the Advisory Committee in evaluating the adequacy of the measures taken to give effect to the principles set out in the Framework Convention. In doing so, the Advisory Committee has reviewed the measures taken by states parties with respect to the scope of application in the same way as any other measure aimed at implementing the Framework Convention. In particular, the Advisory Committee has considered it to be its duty to assess whether the approach taken to the scope of application is in good faith and does not constitute a source of arbitrary or unjustified distinction among communities with regard to access to rights.³⁷ In its work, it has thus assessed the various approaches and delimitations established by states parties in order for the Framework Convention to become applicable, which are often based on the elements below.

2. Criteria applied by states parties

a. Formal recognition

27. The formal recognition of a national minority as such is required in a number of states parties in order for persons belonging to these groups to access minority rights. The Advisory Committee has consistently criticised such an approach as per se exclusionary and not in line with the principles contained in the Framework Convention. While some states parties have explicitly acknowledged the impracticality of relying on a formal recognition for the application of minority rights,³⁸ a number of other states have, on a *de facto* basis, disregarded a requirement for formal recognition, thereby broadening the scope of application of the Framework Convention in practice.³⁹ Such developments have always been welcomed by the Advisory Committee and understood as efforts to correct the shortcomings that arise from applying formal criteria that are either too rigid or no longer reflect the actual situation. This further reaffirms that the Framework Convention is not suited for static definitions or criteria.

31. See Full List of Reservations and Declarations for Framework Convention for the Protection of National Minorities (ETS No. 157) www.coe.int/en/web/dlapil/treaty-office.

32. See the declarations by Austria, Estonia, Latvia, Luxembourg, Poland and Switzerland.

33. See the declarations by Albania, Denmark, Germany, the Netherlands, Norway, Sweden, the Slovak Republic, Slovenia and “the former Yugoslav Republic of Macedonia”.

34. See the declarations by Liechtenstein, Luxembourg and San Marino. Some states declared that they viewed the ratification of the Framework Convention as an act of solidarity with the objectives of the Convention. See First State Reports submitted by Liechtenstein and by Malta.

35. Belgium declared that the Framework Convention should apply without prejudice to the constitutional provisions and principles and the legislative rules governing the use of languages, and that the notion of national minority would be defined at national level. Malta reserved the right not to be bound in some respects by the provisions of Article 15.

36. See First State Reports submitted by Armenia, Bulgaria and Hungary.

37. References to this duty can be found in all First Opinions of the Advisory Committee.

38. See First State Report submitted by Finland, stating that “the existence of minorities does not depend on a declaration by the Government but on the factual situation in the country”.

39. Roma have, for instance, been included under the protection offered by the Framework Convention in Cyprus, despite not officially being recognised as national minorities. See Second State Report submitted by Cyprus. Finland has applied guarantees provided to “Old Russians” as well as to newer Russian-speaking arrivals. See Third Opinion on Finland.

28. The Advisory Committee has further observed that the *de facto* inclusion of beneficiaries under the protection of the Framework Convention or of certain of its articles often forms part of an evolutionary process that eventually may lead to formal recognition. Beginning with the free self-identification of individuals who are acknowledged by society as forming a distinct – albeit equally valued – minority, access to rights is then granted to promote and preserve the practices by which the group defines itself, leading in some cases to the inclusion of the minority in formal mechanisms of national minority protection.⁴⁰ Thus, official recognition as a national minority or the granting of a specific status, do not constitute the beginning of the process of minority rights protection, nor are they essential for the application of the Framework Convention or of specific articles of it. Recognition as a national minority has a declaratory rather than a constitutive character. Access to minority rights should therefore not depend on formal recognition.

b. Citizenship

29. A recurrent precondition used by states parties is the requirement that a person belonging to a national minority must be a citizen in order to benefit from the protection of the Framework Convention. The Advisory Committee has pointed out in this regard that the inclusion of the citizenship requirement may have a restrictive and discriminatory effect, given that it is often the members of particularly disadvantaged groups and minorities, including those who have suffered or been displaced as a result of conflict, who face difficulties in obtaining citizenship and are therefore affected by this restriction.

30. In a number of regions in Europe, persons belonging to national minorities have lost their citizenship or even become stateless due to the creation of new states, despite having long-lasting ties to their places of residence. The Advisory Committee has consistently underlined the specific challenges faced by persons belonging to national minorities who are *de jure* or *de facto* stateless and has drawn attention in this context to the right of each person to a nationality in line with the European Convention on Nationality (ETS No. 166).⁴¹ Indeed, it should be considered for each right separately whether there are legitimate grounds to differentiate its application based on citizenship.⁴² The Advisory Committee has always welcomed instances in which states parties have extended minority rights to non-citizens, thereby in practice disregarding an officially still existing precondition of citizenship.⁴³ In some instances, it has explicitly recommended the more consistent application of minority rights to “non-citizens”.⁴⁴

c. Length of residency

31. In their definitions of national minorities, a number of states parties refer to the length of residency of a particular group in the territory of the state.⁴⁵ Attempts at creating time limits in definitions such as “prior to the 20th century”,⁴⁶ or “approximately 100 years”,⁴⁷ have been used in this context. Less absolute concepts that are subject to interpretation have also been developed, including the notion of “traditional residence”, “traditional minorities” or the term “autochthonous national minorities”.⁴⁸ In some cases the notion of “long-lasting ties to a particular region” is applied, including with regard to non-residents who express a willingness to return to this region and to benefit from the protection of the Framework Convention.⁴⁹ The Advisory Committee considers that it follows by implication from the fact that only Articles 10(2), 11(3) and 14(2) of the Framework Convention establish specific guarantees in areas traditionally inhabited by persons belonging to national minorities, that the length of residency in the country is not to be considered a determining factor for the

40. In the Czech Republic and Finland, for instance, immigrant groups such as Somalis and Vietnamese are also represented in cultural consultation mechanisms and receive state support for their activities.

41. See in particular Article 4 of the European Convention on Nationality (ETS No. 166).

42. See also the Venice Commission Report on Non-citizens and Minority Rights (CDL-AD(2007)001) adopted at its 69th plenary session (Venice, 15-16 December 2006), comprehensively analysing international and European standards and practice as regards the relevance of citizenship and other criteria for defining beneficiaries of minority rights, and calling for a nuanced approach to the citizenship criterion for the applicability of minority rights, depending on the specific right in question.

43. See Third Opinion on the Czech Republic, for instance.

44. See Second Opinion on Latvia.

45. See, *inter alia*, Austria, Denmark, Germany and Hungary. The request for access to minority rights by the Polish minority in Austria, for instance, has been rejected based on the argument that there has not been uninterrupted and “traditional” residence. See Fourth State Report of Austria.

46. See, for instance, First State Report of Sweden.

47. See, for instance, First State Report of Austria.

48. At the time of depositing the instrument of ratification, Slovenia declared, for instance, that it would consider as national minorities “the autochthonous Italian and Hungarian National Minorities”, and that “the Framework Convention shall apply also to the members of the Roma community, who live in the Republic of Slovenia.”

49. See, for instance, Second Opinion on Georgia, welcoming the government’s open approach towards Meshketians and Ossetians who were deported or displaced by conflict.

applicability of the Framework Convention as a whole (see also Part VII).⁵⁰ It has further consistently held that any temporal restrictions should be regarded flexibly and that distinctions in the treatment of otherwise similar groups based solely on the length of their residency in the territory can be unjust.⁵¹

d. Territoriality

32. A number of states parties have also applied territorial criteria for the identification of rights holders under the Framework Convention, establishing that minority rights may only be enjoyed within specific areas. The Advisory Committee has argued that flexibility should be applied and that persons belonging to a national minority who live outside such areas should not be disproportionately disadvantaged.⁵² In particular the fact that only some rights (that is Articles 10(2), 11(3) and 14(2)) allow for territorial limitations implies again that the applicability of other rights should not in principle be restricted to certain regions. The Advisory Committee has indicated on a number of occasions that this approach is in line with Article 29 of the Vienna Convention on the Law of Treaties which determines that a treaty is binding in respect of the state party's entire territory unless a different intention is ascertained. In addition, territorial limitations may constitute an a priori exclusion of persons belonging to national minorities from the scope of application which is incompatible with the principles contained in the Framework Convention.⁵³

33. The Advisory Committee has further criticised situations in which imposed differentiations between members of a group based on territorial features lead to the weakening of a group and, as a result, to the reduced access to rights for persons belonging to that national minority.⁵⁴ It has in particular argued that demographic changes over time must be taken into account.⁵⁵ Increased mobility in many countries has resulted in a high number of persons belonging to national minorities moving from areas of their traditional settlement to other regions that offer more favourable economic conditions or educational opportunities, such as industrialised areas or urban centres.⁵⁶ While residence in a specific area might thus be conducive to the more effective enjoyment of some minority rights, it must not result in the arbitrary denial of the enjoyment of all minority rights.⁵⁷

e. Substantial numbers

34. Also linked to the territorial criteria is the notion of "in substantial numbers", as found in Articles 10(2) and 14(3) and in Article 11(3) (see also Part VII). As with other criteria contained in these articles, various interpretations by states parties have been made. In some cases, the term 'compact settlement' has been used to define the specific rights holders.⁵⁸ While acknowledging that it may be more problematic to ensure access to some minority rights for persons belonging to national minorities who live dispersed throughout the country, the Advisory Committee has pointed out repeatedly that their recognition as national minorities and their access to minority rights in general must not be impeded through the use of numerical criteria. It has expressed its deep concern, for instance, when Roma⁵⁹ have been excluded altogether from the scope of application of the Framework Convention and thereby entirely denied protection as a national minority, because of the fact that they live territorially dispersed and not settled in substantial numbers anywhere in the country.⁶⁰

f. Support by "kin-states"

35. A number of states parties define the term 'national minorities' as those groups who have a link with a "kin-state", classifying those without such link as 'ethnic minorities' or 'ethno-linguistic groups'. The Advisory Committee considers that the question whether support is or is not available from another state cannot be

50. The length of residency within the state is irrelevant in terms of the applicability of minority rights arising under Article 27 of the International Covenant on Civil and Political Rights (ICCPR). See General Comment of the UN Human Rights Committee No. 23(50), CCPR/C/21/Rev.1/Add5/26 April 1994.

51. See Third Opinion on Austria. See also Fourth Opinion on Denmark, where Roma are not recognised as national minorities with the argument that they "have no historical or long-term and unbroken association with Denmark".

52. For instance, Third Opinion on the Slovak Republic.

53. See, for instance, First Opinion on Denmark and First Opinion on Italy.

54. See Second Opinion on Austria with regard to the differentiation between Burgenland Croats and Croats.

55. See, for instance, Fourth Opinion on the Slovak Republic.

56. See Third Opinions on Finland and Germany.

57. See, for instance, consecutive Opinions on Denmark, Italy and Portugal.

58. See, *inter alia*, First State Reports submitted by Austria, Azerbaijan and Germany.

59. The term "Roma and Travellers" is used at the Council of Europe to encompass the wide diversity of the groups covered by the work of the Council of Europe in this field: on the one hand a) Roma, Sinti/Manush, Calé, Kaale, Romanichals, Boyash/Rudari; b) Balkan Egyptians (Egyptians and Ashkali); c) Eastern groups (Dom, Lom and Abdal); and, on the other hand, groups such as Travellers, Yenish, and the populations designated under the administrative term "*Gens du voyage*", as well as persons who identify themselves as Gypsies.

60. See First Opinion on the Netherlands.

used as a relevant point of differentiation with respect to recognition or access to rights. While not favouring any particular terminology, it has criticised cases when different categories lead to the formation of hierarchies and different “categories” of minorities, as this may result in unjustified distinctions with respect to applicable rights.⁶¹

36. The Advisory Committee has welcomed bilateral agreements to facilitate cross-border relations and co-operation, for instance regarding the supply of textbooks and exchanges of teachers for the benefit of high-quality education in minority language schools. However, it has disapproved of agreements that out-source such fundamental aspects of minority protection to another state.⁶² It follows from the international law principle of state sovereignty that states hold the single jurisdiction over their territory and population, a jurisdiction that can be restricted only within the limits of international law. Overall, the responsibility to protect minority rights, as part of general human rights, lies primarily with the state where the minority resides.⁶³ While the Advisory Committee interprets Article 17 to imply that states parties must not interfere with the enjoyment of benefits from other countries, they must not rely on them instead of striving themselves for the realisation of minority rights.

g. Specific identity markers and ascribed categories

37. In a variety of states parties, the understanding of the term ‘national minority’ is linked to specific characteristics that are often considered as emblematic for identity and for differentiating the minority from the majority, including language, religion, culture, ethnic background, specific traditions or visible features. These markers are often based on common perceptions that are shared within society, by members of the majority and minorities alike. Nevertheless, employing such externally defined markers entails the danger of including or excluding individuals against their will.⁶⁴ The Advisory Committee reiterates its position that a person’s identification must be based on free self-identification, unless there is a valid justification for not doing so (see paragraph 10).

38. Moreover, caution must be applied in the use of externally defined markers, as they are often based on presumptions. The categorisation of the minority as a static and homogeneous group may reinforce stereotypes and does not pay adequate attention to the broad diversity and intersectionality that exists within minorities, as within all groups (see also paragraph 40). In some states parties, legislation makes reference to other externally imposed criteria, such as “ethnic minority threatened by social exclusion” or “citizens in a vulnerable socio-economic situation”;⁶⁵ while in others, an affiliation with a particular national minority may be presumed based on names.⁶⁶ The Advisory Committee considers such practices of association of persons with a specific group based, without consent, on presumptions such as names, language, or visible features, as incompatible with Article 3(1) and the right to free self-identification (see also paragraph 15).⁶⁷

61. See, for instance, Second and Third Opinions on Albania and First Opinion on Poland.

62. See Second Opinion on Albania and First Opinion on Germany.

63. See also OSCE HCNM Bolzano/Bozen Recommendations on National Minorities in Inter-State Relations, June 2008.

64. The Advisory Committee considered, for instance, that the over-reliance on the “racial group” criterion applied in the United Kingdom might, despite its wide application, result in a priori exclusions of groups that have legitimate claims. See Third Opinion on the United Kingdom.

65. See, *inter alia*, Third Opinion on Bulgaria.

66. See, *inter alia*, First Opinion on Italy.

67. See Third Thematic Commentary (footnote 4).

Part IV

Context-specific article-by-article approach developed by the Advisory Committee

1. Fundamental principles

39. The Framework Convention contains a catalogue of rights in different spheres of public life, ranging from individual freedoms, to media, language and education rights and the right to effective participation. Given their different nature, the scope of application of the various rights must be adjusted accordingly: the right to manifest one's religion, for instance, as also stipulated in Article 9 of the European Convention on Human Rights, must be extended to all persons belonging to national minorities, while the right to display a minority language on topographical signs may, for legitimate reasons, be made available only under certain preconditions. Depending on the nature of the minority rights contained therein, the scope of application of the Framework Convention must therefore be established separately for each article, which is why, from its first monitoring cycle, the Advisory Committee has referred to its article-by-article approach.⁶⁸ Overall, the implementation of the Framework Convention must always be based on the fundamental principles contained in its Articles 3-6, which are interlinked and which must inform the interpretation of the instrument as a whole.

40. National minorities within one country typically vary in number and size, and they may live compactly or be more or less dispersed throughout the territory. It is also important to consider the diversity that exists within minorities as in any population group, including on the basis of gender, sexual orientation, age, disability, religion, political beliefs or access to economic resources. Accordingly, the priorities of minority communities and the individual priorities of persons belonging to these communities often diverge. For some persons belonging to minorities, the main priorities are equality and integration; for others, it may be the quest for a protected space to maintain and promote their minority identity. These priorities may further change over time, depending on the context, the political climate and socio-economic conditions. It is the Advisory Committee's view that the diversity within and among national minorities must be acknowledged and respected in the implementation of all minority rights, regardless of their specific nature.

41. With respect to the obligation of states parties to promote the conditions for the preservation and development of national minority cultures, this also implies that the term 'minority culture' must not be interpreted in a static, unitary or limiting sense. It is each person belonging to a national minority who, in line with the right to free self-identification, decides how he or she will practise the minority culture or identity. Accordingly, not only is the right to preserve traditions protected but also the right to develop a minority culture in line with broader societal evolution, and to form contemporary expressions of minority identity.

42. Equality considerations are essential for the promotion of all minority rights, not only with respect to relations between national minorities and the majority but also, importantly, regarding relations between the various minorities. In the view of the Advisory Committee, the general equality principle is called into question when altogether different principles or disproportionately different protection mechanisms are applied to the various minorities, or when separate government bodies are responsible for the protection and promotion of their respective rights.⁶⁹ While efforts to promote equal opportunities for all persons belonging to national minorities must be tailored to the specific needs and situations of the various groups in order to be effective, the basic approaches and rights standards that are applied must be equal.

68. See all First Opinions of the Advisory Committee.

69. In a variety of states, the protection of the rights of Roma is considered to be a socio-economic and sometimes even a security issue. As a result, protection and promotion measures are frequently co-ordinated separately from those related to other minority groups which may result in the application of different standards. While the Advisory Committee values the specific attention that is paid to the particular socio-economic disadvantages that many Roma face, it considers that these measures must be additional to other minority rights' protection measures, such as those related to the preservation of Roma cultures, languages and traditions.

43. Full equality cannot be effectively achieved when diversity as such is perceived negatively or when only certain forms of diversity are accepted and tolerated. The Advisory Committee has repeatedly criticised situations where hierarchies are created among the various minorities and existing inequalities are reinforced through uneven attention and support.⁷⁰ In addition, an environment in which diversity is viewed as “alien” or “imported” and rather disconnected from mainstream society does not offer the appropriate conditions for the expression, preservation and development of minority cultures. Article 6 therefore calls for deliberate efforts to foster a climate of mutual respect, understanding and co-operation where persons belonging to national minorities are recognised as integral elements of society, who effectively enjoy equal access to rights and resources, while being provided with opportunities for social interaction and inclusion across difference. Given its purpose, as established by the Preamble, of promoting broader societal peace and stability through the enhancement of minority rights, the Framework Convention has an immediate relevance for the whole society.

44. The Advisory Committee’s established position is that integration is a process of give-and-take and affects society as a whole. Efforts cannot therefore be expected only from persons belonging to minority communities, but they must also be made by members of the majority population.⁷¹ This is particularly relevant in distinguishing successful integration from forced assimilation, which is explicitly prohibited in Article 5(2) of the Framework Convention. While assimilation forces persons belonging to a minority to relinquish their specific characteristics to blend into a society that is dominated by the majority, integration requires both the majority and the minorities to mutually adapt and change through an ongoing negotiation and accommodation process.

45. In the view of the Advisory Committee, the above fundamental principles of the Framework Convention contained in Articles 3-6 must be considered in the interpretation of all further articles in order to ensure that the rights of persons belonging to national minorities are effectively enjoyed.

2. Practice

46. In line with its article-by-article approach, the Advisory Committee has repeatedly considered the application of the Framework Convention to persons who do not belong to national minorities but live in a similar situation. Persons belonging to the majority population who live in areas that are mainly inhabited by minority communities, for instance, have been considered in the context of the education rights under the Framework Convention.

47. The Advisory Committee has emphasised in this context that the same protective measures that are applied in minority-language schools, such as the requirement of fewer pupils per class, should also apply to state schools that teach in the official language in otherwise minority-language dominated areas.⁷² Furthermore, the Advisory Committee has considered that other groups which enjoy special protection but are not recognised as national minorities may, in addition, benefit from the protection of the Framework Convention.⁷³ In some contexts, it has also noted that extending the protection of the Framework Convention on a case-by-case basis to persons belonging to the constituent peoples who live in a minority situation could provide an additional tool for promoting their access to rights and addressing the issues they are faced with, without implying a weakening of their status. Indeed, the applicability of minority rights to them is considered by the Advisory Committee as fully in line with the objective and aim of the Framework Convention.⁷⁴

48. In addition, the Advisory Committee has emphasised that the protection offered by the Framework Convention also extends to persons belonging to indigenous peoples without this having an effect on their status as members of indigenous peoples. Specific rights may be applicable to them, whether or not they are formally recognised as a national minority, and without implying recognition as a national minority.⁷⁵ This means that individuals are free to avail themselves, beyond the rights they hold as members of indigenous groups,

70. See, for instance, Third Opinion on Romania and Second Opinion on Georgia.

71. See, for instance, Third Opinion on Estonia. See also Third Thematic Commentary (footnote 4).

72. See Third Opinions on Estonia and Lithuania.

73. See, for instance, Fourth Opinion on Spain with respect to speakers of Catalan, Basque and Galician, namely languages with co-official or protected status. The Advisory Committee found here that language rights can particularly benefit speakers of languages who live outside the designated areas.

74. See Third Opinion on Bosnia and Herzegovina.

75. The Norwegian Sami Parliament stated, for instance, that the Sami did not wish to be considered a national minority as they wished to maintain their status as an indigenous people. The Advisory Committee, however, considered that both protection schemes are not exclusive and may provide parallel benefits to individuals of the group. See First and consecutive Opinions on Norway. See also consecutive Opinions on Denmark, Finland, the Russian Federation and Sweden.

of the protection under the Framework Convention, or to refuse to do so. This has been particularly relevant with respect to the rights contained in Article 5 of the Framework Convention where the Advisory Committee has held that the protection from assimilation also implies that affected individuals must be supported in their efforts to adjust their traditional practices to contemporary challenges, or to engage in economic activities in order to be able to preserve their culture.⁷⁶

49. As regards disputed territories or regions of states parties to the Framework Convention that are *de facto* outside the control of the authorities, the Advisory Committee observes that the applicability of the rights contained in the Framework Convention is not altered as a result of the change in *de facto* authority. On the contrary, the rights of persons belonging to national minorities remain in force and often gain a particular urgency in times of conflict.⁷⁷ International access and the continuation of regular monitoring activities, however, are deeply affected if not entirely stalled by such territorial disputes. The Advisory Committee has repeatedly called on all parties to take a constructive approach in line with the general principles of international law and of the Framework Convention, with a view to safeguarding the rights of persons belonging to national minorities as an integral part of universally applicable human rights throughout the territories of all states parties to the Framework Convention.⁷⁸

76. See, for instance, Third Opinion on the Russian Federation.

77. See also the Advisory Committee ad hoc report on the situation of national minorities in Ukraine, April 2014.

78. See the Advisory Committee Open Statement on the situation of national minorities in Crimea, May 2014, at <http://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168069faed>.

Part V

Framework Convention rights applying to all persons

50. A number of articles of the Framework Convention apply to all persons on the territory of states parties, including those not belonging to national minorities, either explicitly or by implication through their specific link with provisions that are applicable to all.

1. Protection against discrimination – Article 6

51. Article 6 of the Framework Convention explicitly applies to “all persons” living in the territory of states parties. Its protection extends into two areas: firstly, effective measures must be taken to promote mutual respect, understanding and co-operation among all persons irrespective of their ethnic, cultural, linguistic or religious identities. Secondly, all persons must be protected against discrimination based on those aspects of their identities.

52. The Advisory Committee has consistently underlined this broad application of Article 6 as the lack of respect for or ill-treatment of migrants, asylum seekers, refugees and/or other individuals who are, for whatever reason, considered to be different from the majority population, may prompt a general environment of fear. This may entice persons belonging to minorities to strive for conformity rather than for the active enjoyment of their rights. Based on Article 6, the Advisory Committee has also evaluated the implementation of the Framework Convention in states parties where, according to the authorities, no persons belonging to national minorities reside.⁷⁹ This has allowed the Advisory Committee to engage in comprehensive discussions with state authorities on “measures taken in pursuance of their general integration policies”.⁸⁰

a. Promotion of mutual respect and intercultural dialogue

53. Some states parties have argued against the relevance of societal cohesion and broader concepts of tolerance and respect for diversity in the protection of national minorities. The Advisory Committee has consistently held, however, that an exclusive view that separates the issue of traditional minority protection from broader questions surrounding the integration of society does not do justice to the aim and purpose of the Framework Convention but rather hinders the enjoyment of the rights of persons belonging to national minorities.⁸¹ In fact, the promotion of tolerance and openness towards diversity in society is essential not only for the development and implementation of successful integration strategies, but it is also a central precondition for persons belonging to national minorities to self-identify as such without hesitation and proactively claim the rights contained in the Framework Convention.

54. Openness and tolerance in society can only be genuine if they are not limited to certain predefined groups but embrace everyone. The Advisory Committee therefore considers questions surrounding the formulation and implementation of effective integration strategies as one of its important concerns. Integration strategies are being developed in many European states today, chiefly in order to address the situation of often large communities of immigrants, some second and third generation, who share linguistic and cultural practices and backgrounds, and who often live in the country as citizens, whether naturalised or by birth.⁸² It is essential that all segments of society, majorities and minorities alike, are addressed in order for integration strategies to effectively facilitate the formation of societal structures where diversity and respect for difference are acknowledged and encouraged as normal, through recognition, mutual accommodation and active engagement on all sides.⁸³

79. See, for instance, Fourth Opinion on Liechtenstein or Third Opinion on Malta.

80. See Article 5(2) of the Framework Convention.

81. Broader concerns related to the integration of society and effective mechanisms regarding protection from discrimination have also consistently been raised in Council of Europe Committee of Ministers’ resolutions on the implementation of the Framework Convention, such as, *inter alia*, in the Fourth Resolution on Denmark, the Third Resolution on Estonia, the Fourth Resolution on Germany, and the Third Resolution on Malta.

82. See consecutive Opinions on Liechtenstein, for example.

83. The OSCE HCNM has taken a similar approach. The Ljubljana Guidelines on Integration of Diverse Societies, adopted in 2012, define integration as a process that requires all members of society to accept and create a shared sense of belonging to a given state and common public institutions. See the Ljubljana Guidelines on Integration of Diverse Societies, OSCE HCNM, November 2012.

b. Protection from hostility and hate crime

55. Article 6(2) contains the obligation of states parties to protect all persons against violence and discrimination on ethnic grounds, in other words not only persons belonging to national minorities. Minorities cannot thrive in a society in which diversity is not tolerated or even serves as a pretext for hate crimes and discrimination. This is why it is vital that all states parties strive to apply and achieve the aims of Article 6 of the Framework Convention fully, even those states parties that have explicitly declared that they have only ratified the Framework Convention out of solidarity.

56. The Advisory Committee considers that ethnically based violence must be recognised as an especially nefarious form of violence that concerns and threatens society as a whole, and must thus be resolutely opposed and prevented. In order to address hate crime in a comprehensive manner, criminal codes must contain appropriate provisions that criminalise hate speech, threats and violence based on ethnic grounds as well as public incitement to violence and hatred. In addition, racial motivation must be considered an aggravating circumstance of any offence and law enforcement agents should be appropriately trained to ensure that racially or ethnically motivated attacks and discrimination are identified and recorded, as well as duly investigated and punished through targeted, specialised and prompt action.

57. Fear of discrimination or even violent attack may discourage persons belonging to national minorities from enjoying their right to free self-identification. The downplaying of ethnically based violence as “hooliganism” or the usual wrongdoings of youth can lead to perceptions of tacit approval of such actions by law enforcement agents and thereby dramatically weaken efforts to promote respect and dialogue among different groups. In order to protect individuals from such attacks, it is therefore of equal importance that any such incidents are promptly and unequivocally condemned by senior public figures and community leaders at all levels, and that appropriate messages are communicated to the public through the media and government information channels.

58. The Advisory Committee refers in this context to other bodies with the specific mandate and expertise to address issues related to racial discrimination and protection from hate crime.⁸⁴ It notes in particular the role of the European Commission against Racism and Intolerance (ECRI) in assessing the applicability and effectiveness of anti-discrimination tools and mechanisms, whose monitoring work and reports are central for a systematic interpretation of the Framework Convention in an evolving society.⁸⁵ It is the goal of the Framework Convention to affirm differences in cohesive and integrated societies. Striving for *de facto* equality in the context of the Framework Convention requires adequate and effective strategies to support different identities, including the effective protection from discrimination that is based on any of these differences. In addition, the right to be effectively protected from discriminatory threats or violence contained in Article 6(2) plays an important role in complementing the enjoyment of a number of rights contained in the Framework Convention, in particular those related to political freedoms, such as the freedom of expression, by obliging states parties effectively to sanction any undue interferences or attempts at its limitation.

2. Education and the media as tools for integration – Articles 6(1) and 12

59. Article 6(1) explicitly refers to education, culture and the media as particular fields of importance to the objective of promoting tolerance and intercultural dialogue. In addition, the special significance of education for the integration of society and for the promotion of respect for diversity is reflected in Article 12 of the Framework Convention. Article 12(1) provides that education and research should foster knowledge of the history, cultures, languages and religions of the minorities and of the majority, thereby clearly addressing society as a whole.⁸⁶ In addition, Article 12(2) calls for the development of intercultural exchanges and competencies through the facilitation of “contacts among students and teachers of different communities”. Adequate information on the composition of society, including national and other minorities, must form part of the public curriculum and of textbooks and education materials used in all schools throughout the territories of states parties, not only to promote intercultural understanding and respect among all students, but also to raise the prestige and self-awareness of persons belonging to numerically smaller or disadvantaged groups.

84. See in particular the UN Committee on the Elimination of Racial Discrimination and the OSCE/ODIHR hate crime reporting initiative.

85. See in particular in this context ECRI General Policy Recommendation (GPR) No. 15 on Combating Hate Speech, adopted on 8 December 2015. This GPR builds on the findings and recommendations published by ECRI during its fifth monitoring cycle, providing additional guidance to member states.

86. A similar provision is also contained in Article 7(3) of the ECRML, calling on states to promote, by appropriate measures, mutual understanding between all the linguistic groups of the country.

60. Education materials featuring content on minorities must further be prepared in close consultation with representatives of the respective groups and must not be limited to stereotyped images. Moreover, adequate professional development opportunities and training must therefore be available to all teachers to prepare them for the handling of linguistically and culturally diverse environments.⁸⁷ With respect to the teaching of history throughout states parties, critical thinking and the accommodation of multiple perspectives must be promoted in all efforts.

61. The work of the Advisory Committee is based on the recognition and appreciation of the benefits of intercultural dialogue and multilingualism to promote tolerance and respect for diversity in societies. Language and cultural policies must therefore ensure that all languages and cultures that exist in society are visibly and audibly present in the public domain, so that everybody is aware of the diverse character of society and recognises himself or herself as an integral part of it.

62. The Advisory Committee has therefore consistently encouraged language policies that promote the use of different languages in public places and in the media in order to create respect for lesser-used languages and enhance their visibility and prestige. Overall, inclusive language policies should cater for the needs of everybody based on their different characteristics and needs, including persons belonging to national minorities living outside their traditional areas of settlement, immigrants and “non-citizens”.⁸⁸ In view of the overarching aim of establishing integrated societies that are respectful of their diversities, the Advisory Committee has also encouraged measures that promote the knowledge and the use of minority languages by persons belonging to majority communities.

63. Article 6(1) of the Framework Convention also underlines the role of the media as a tool for the promotion of intercultural understanding and a sense of solidarity in society. Given the immediate amplification of messages and values, the Advisory Committee has consistently called on states parties to ensure that public broadcasters take their responsibilities seriously and promote respect for diversity and ethical journalism in all their programmes. Efforts in states parties to promote ethical standards among journalists and media professionals, and to promote media literacy in society more generally, must include minority representatives. Furthermore, it is important for the formation of an open and pluralist media environment that issues of concern and interest to minority communities generally are given weight in the broader public media debate and that persons belonging to such minorities are portrayed as integral members of society, be it in the role of journalists, presenters and/or interviewees.

87. See, *inter alia*, Third Opinion on Estonia, Second Opinion on Georgia, Third Opinion on Kosovo and Fourth Opinion on the Slovak Republic.

88. See Third Thematic Commentary (footnote 4), paragraph 53.

Part VI

Minority rights with a broad scope of application

64. The Framework Convention's Explanatory Report refers to minority rights being exercised "in community with others", pointing to the fact that communities are formed around a variety of shared practices and the common exercise of rights. The practices by which persons seek to identify themselves are dynamic and evolving, built on what people have in common rather than on differences. They include transmitted knowledge or shared memories that may not always be actively demonstrated. As such, they may vary in intensity and scope, depending on the circumstances. They may evolve over time and they may also be performed from a distance. Given its task to monitor the effective implementation of rights contained in the Framework Convention, the Advisory Committee has primarily been concerned with access to rights and only secondarily with questions surrounding status. Indeed, it considers formal recognition of national minorities an act of a declaratory rather than a constitutive nature (see paragraph 28). In order to ensure that minority rights are not arbitrarily withheld from persons belonging to national minorities who should be protected under the Framework Convention, the Advisory Committee has consistently employed a broad scope of application with respect to the rights contained in the Framework Convention and has commended states parties which do the same. In particular it considers that the following articles of the Framework Convention, given their nature, have a broad scope of application, also including under their protection therefore persons belonging to national minorities who are not recognised as such by the respective state party.

1. Equality – Article 4

65. All persons belonging to national minorities, irrespective of their status or recognition, must be guaranteed the right to equality before the law and equal protection of the law. This general principle of human rights contained in Article 4(1) has not been contested by states parties. The Advisory Committee has repeatedly emphasised the gender dimension in this context, drawing the attention of states parties to the phenomenon of multiple discrimination, as frequently experienced by women belonging to national minorities.⁸⁹ Article 4(2) further calls for special measures to overcome structural disadvantages between the minority and the majority in all spheres. These must be developed and implemented in close consultation with those affected and due account must be taken of the specific conditions of the persons concerned in their design.

66. The Advisory Committee has consistently encouraged states parties to base their equality promotion policy instruments or special measures on comprehensive data related to the situation and access to rights of persons belonging to national minorities, also taking into account the various manifestations of multiple discrimination that may be experienced, including those arising from factors that are unrelated to the national minority background such as age, gender, sexual orientation and lifestyle markers. Moreover, particular attention must be paid to members of the most disadvantaged segments of society, that is those who have been disempowered economically, socially or geographically, due to their size or because of past experiences of conflict. In this context of special and targeted measures for the promotion of effective equality, the Advisory Committee has consistently emphasised the importance of regularly collecting reliable and disaggregated equality data related to the number and situation of persons belonging to national minorities. It has, however, cautioned states parties against the over-reliance on statistics and encouraged the authorities also to avail themselves of independent research, in particular when carried out by persons belonging to national minorities themselves, in order to assess and comprehensively address the particular shortcomings faced by persons belonging to national minorities (see also paragraph 18).

⁸⁹. See, *inter alia*, Third Opinions on Azerbaijan and Finland.

2. Culture – Article 5

67. Article 5 of the Framework Convention and the obligation of states parties to promote the conditions for the preservation and development of national minority cultures and identities are best served if the scope of application is interpreted widely. The article's aim is to ensure that persons belonging to national minorities do not assimilate but are enabled to maintain and develop their distinct identities and to actively enjoy minority rights. The Advisory Committee has welcomed the availability of assistance schemes not only to recognised national minorities but also to other groups who would otherwise not be able to maintain their distinct features.⁹⁰ All support measures must be tailored to the specific needs and situations of the various groups, to ensure that the cultural differences that are regarded as specific to each group are affirmed and protected. This may often require targeted efforts by the authorities to revitalise essential elements of the minority culture, without which the expression of some aspects of that identity may not be possible.⁹¹ Numerically larger minorities whose cultures are well represented will usually not experience the same reliance on government support as numerically smaller groups or dispersed national minorities which may be struggling to preserve their distinct characteristics and resist assimilation.⁹² While it is often the cultural associations that are the recipients of funds, the Advisory Committee considers that all national minority representatives, including those not formally linked with such associations or those representing different views, must be consulted and provided with effective opportunities to obtain funding for the preservation of their identities and cultures.

3. Association and religion – Articles 7 and 8

68. The rights to freedom of assembly, freedom of association, freedom of expression, thought and conscience, as well as the right to hold and manifest a religion or belief, as stipulated in Articles 7 and 8 of the Framework Convention, are based on corresponding articles of the European Convention on Human Rights. The Explanatory Report underlines explicitly that they apply to every person, whether belonging to a national minority or not, but that they are considered of such specific importance to persons belonging to national minorities that they were deemed to merit special attention.⁹³ The Advisory Committee has therefore interpreted their scope of application in the broadest sense, in line with the case law of the European Court of Human Rights. It has in particular expressed its deep concern when the overall working conditions for non-governmental organisations engaged in the protection of minority rights have been made difficult, as their role in promoting the awareness and understanding of human and minority rights standards in society is crucial and must be supported rather than hindered.⁹⁴ The Advisory Committee has further held that any measures taken by the authorities to restrict the freedom of assembly or the freedom of expression, which necessarily includes the freedom to express criticism of the government or diverging opinions, can have a direct, negative impact on the enjoyment of rights contained in the Framework Convention as they are likely to deter persons belonging to national minorities, like other members of society, from exercising their rights and to create an intimidating environment that is not conducive to the implementation of minority rights and human rights generally. In this context, the Advisory Committee has also underlined that persons belonging to national minorities should not be banned from forming political parties in order to formulate and better pursue their interests and rights,⁹⁵ or from registering religious organisations in order to manifest their beliefs in community with others.⁹⁶

4. Media – Article 9

69. Article 9 and the media-related rights contained in the Framework Convention have a particular significance for the protection and promotion of minority rights. The availability of print, broadcast and electronic media in minority languages has very specific emblematic value for national minorities, in particular for the numerically smaller ones. Through them, persons belonging to national minorities not only gain access to information, but minority-language media also raise the visibility and prestige of the minority language as an active tool of communication. In particular, these media can play a significant role for persons belonging to national

90. See Third Opinions on the Czech Republic and Finland.

91. See Third Opinion on Finland, welcoming the specific efforts of the authorities to revitalise the Sami culture through "language nests" and other similar activities.

92. See, however, Committee on the Elimination of Racial Discrimination (CERD) General Recommendation No. 32 underlining the distinction between permanent rights (such as those contained in Article 5 of the Framework Convention) and the additional and temporary benefits of special measures as provided for in Article 4(2).

93. See paragraphs 51 and 54 of the Explanatory Report.

94. See Third Opinions on Azerbaijan and the Russian Federation.

95. See Third Opinion on Bulgaria, Second Opinion on Georgia and Third Opinion on the Russian Federation.

96. See Third Opinions on Azerbaijan and the Russian Federation.

minorities who are dispersed for, among other reasons, increased mobility, as they allow for communication and contact over distances. This, in turn, can encourage persons belonging to national minorities to enjoy their rights more actively. The active participation of members of national minority communities in a pluralist media environment may further require targeted training and awareness-raising activities, including in the use of electronic and social media.⁹⁷ In this respect, the Advisory Committee has stressed that the possibility to participate actively in the media and to receive and impart information of interest to persons belonging to national minorities, presupposes access to relevant infrastructure such as high-speed Internet throughout the country, including in remote areas which are often inhabited by national minority communities.

70. The marginalisation of minority identities in the local media, including through the exclusive use of minority languages only for certain programmes, often about folklore, traditional costumes, food and habits, may contribute to the stereotyping of minorities as separate entities and does not promote their respect and prestige in society.⁹⁸ In addition, the division of media audiences according to linguistic backgrounds may enhance the formation of separated and mutually exclusive public spheres. Support for media in national minority languages must therefore be accompanied by targeted steps towards the training of journalists and other media professionals to promote their awareness of and sensitivity towards the specific needs and concerns of diverse groups in society. Moreover, it is important to ensure that minority representatives effectively participate in relevant decision-making processes as well as in media supervisory bodies. The more minority representatives take part in shaping their image in the public media, the more the negative effects of “misrecognition” and stereotyping can be reduced.⁹⁹

5. Language – Articles 10(1), 10(3), 11(1) and 11(2)

71. The right to use one’s language in public and in private, contained in Article 10(1) of the Framework Convention, the right to use one’s personal name in the minority language and to have it officially recognised (Article 11(1)), and the right to put up signs of a private nature in minority languages (Article 11(2)) carry a particular weight for the personal identity, dignity and self-awareness of persons belonging to national minorities.¹⁰⁰ The Advisory Committee considers that, as such, they must be applicable to everyone and any restrictions must be carefully reviewed to ensure that they do not infringe upon the personal dignity and privacy of the individual.¹⁰¹ States may adopt laws aimed at strengthening and protecting the state language. This legitimate aim, however, must be pursued in a manner that is in line with the rights contained in Articles 10 and 11 and other relevant provisions of the Framework Convention and its general spirit of encouraging tolerance and mutual understanding within society. Laws and other measures that are aimed at promoting the state or official languages must not, in particular, infringe on the private sphere of a person but must be implemented in a way that respects the identities and the linguistic needs present in society.

72. Article 10(3), similarly to Articles 7 and 8, reflects the individual human right of being promptly informed in a known language, if necessary through an interpreter, of the reasons for an arrest and of the nature and cause of any accusation. According to the Explanatory Report, the provision, which is based on guarantees contained in Articles 5 and 6 of the European Convention on Human Rights, does not go beyond those safeguards. Thus, it does not imply a right to legal process and trial in one’s minority language and applies to all persons belonging to national minorities.

6. Education – Articles 12(3), 14(1) and 14(3)

73. According to Article 12(3), equal opportunities for access to education at all levels for persons belonging to national minorities must be promoted.¹⁰² Given the particular link to Article 4 and the general principle of equality, the Advisory Committee has consistently encouraged a broad and inclusive approach, referring also to the United Nations Convention on the Rights of the Child. Accordingly, the Advisory Committee has strongly condemned all instances of segregated education and has urged states parties to take all necessary

97. See Fourth Opinion on Cyprus.

98. See also Second Opinion on Georgia.

99. See also Third Opinion on Croatia.

100. For a comprehensive analysis and discussion of the Advisory Committee’s findings on access to language rights of persons belonging to national minorities, reference is made to its Third Thematic Commentary (footnote 4).

101. See also Communication No. 1621/2007 *Leonid Raihman v. Latvia*, made public by decision of the Human Rights Committee UN Doc. CCPR/C/100/D/1621/2007 (2010), finding a violation of Article 17 of the ICCPR with respect to the unilateral change of the author’s name by the state party.

102. For a comprehensive analysis and discussion of the Advisory Committee’s findings on access to education rights of persons belonging to national minorities, reference is made to its First Thematic Commentary (footnote 2).

measures to ensure equal access to integrated education for all children.¹⁰³ In addition, Article 14(1) makes provision for the right to learn one's minority language, while Article 14(3) stresses the right to learn or be taught in the official language or languages.

74. The Advisory Committee has repeatedly expressed its view that both opportunities to learn a minority language and adequate opportunities to learn the official languages are applicable to all persons belonging to national minorities and must be available in parallel.¹⁰⁴ It has generally pointed to the substantial research that suggests noticeable benefits of first language learning for the learning of other languages, including official languages, and has expressed its general preference for bilingual and multilingual approaches in education that are equipped to accommodate more than one language in integrated classrooms. While consistently acknowledging the importance of language for the integration of a diverse society, the Advisory Committee has reiterated its standpoint that pressure and conditionality are generally inappropriate tools for the promotion of integration, and that the relevant strategies meant to promote skills in the official language must not rely disproportionately on efforts to be made by persons belonging to national minorities.¹⁰⁵

7. Participation – Article 15

75. Undue exclusions from the right to effective participation in public life can result in significant obstacles to the enjoyment of a variety of minority rights.¹⁰⁶ Public life in this context does not only extend to public affairs and decision making but is equally important with respect to economic and social life.¹⁰⁷ The Advisory Committee has therefore consistently underlined the importance of an inclusive approach to the application of Article 15, as effective participation is often a precondition to gaining access to the rights contained in the Framework Convention. Consultation mechanisms and advisory bodies on issues pertaining to minority rights protection that are intended to enhance, for instance, discussion and dialogue among different groups in society, should be open to all, including groups that are not recognised as national minorities but might have expressed an interest in the protection of the Framework Convention.

76. The availability of effective platforms for the discussion of relevant concerns with such groups may not only promote trust among minority communities, but it may also serve to facilitate open and flexible solutions to issues that prevent access to rights, and may thereby promote societal cohesion and stability. In its discussions of Article 15 of the Framework Convention, the Advisory Committee has also further applied a broad scope of application with respect to the comprehensiveness of the matters on which representatives of national minorities should be consulted. These should not be limited to questions related to the preservation of national minority cultures or the allocation of funding, but should include all issues of broader concern to society, including national minority communities.¹⁰⁸

77. Due to the centrality of effective participation of national minorities in public life, particular attention must be paid to ensure that the views and concerns within the various minority communities are adequately taken into account. National minority communities, as is the case in any community, are diverse and their members often hold divergent views. This means that the diversity within the minorities, including women and young people, as well as their various needs and concerns, must be effectively represented in all relevant decision making.

78. Controversies may arise between factions among or within minorities and it is the responsibility of the state authorities to seek flexible solutions that can accommodate them, ensuring that they are all enabled to participate effectively. It is therefore essential for governments to have standards and procedures available to put in place suitable arrangements for the promotion of the effective participation of persons belonging to minorities, in consultation with those concerned. In addition, these arrangements must be sufficiently flexible to allow for renegotiations when conditions or priorities change. In a number of states parties, the granting of different forms of self-governance or autonomy (territorial and non-territorial) is used at regional

103. See, *inter alia*, Third Opinion on Bulgaria, Third and Fourth Opinions on the Czech Republic and Third and Fourth Opinions on the Slovak Republic.

104. Different modules may be applied depending on the size of the group wishing to learn the minority language.

105. See, for instance, Second Opinion on Latvia and Fourth Opinion on Liechtenstein.

106. For a comprehensive analysis and discussion of the Advisory Committee's findings on the effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs, as contained in Article 15, reference is made to its Second Thematic Commentary (footnote 3).

107. The term 'economic and social life' covers a wide range of issues, from access to adequate housing, health care and social protection (social insurance and social benefits), to social welfare services and access to the public and private labour market, as well as access to business and other self-employment opportunities, which are closely linked to property rights and privatisation processes. See Second Thematic Commentary (footnote 3), paragraphs 23ff.

108. See Third Opinion on Estonia and on "the former Yugoslav Republic of Macedonia".

level, to varying degrees, in order to protect further and more thoroughly and to promote the rights of persons belonging to national minorities. These instruments are fully in line with the international law principle of territorial integrity and can be a useful tool to promote the enjoyment of minority rights, particularly with respect to the preservation and development of minority identities and cultures.¹⁰⁹

109. See also OSCE HCNM Lund Recommendations on the Effective Participation of National Minorities in Public Life & Explanatory Note, September 1999.

Part VII

Minority rights with a specific scope of application

79. Given the particular financial and administrative commitment required in order to give effect to some language rights contained in the Framework Convention, states parties may establish special conditions for their enjoyment.¹¹⁰ The right to use a minority language in relations with local administrative authorities (Article 10(2)), the right to have topographical indications and signposts also displayed in the minority language (Article 11(3)), and the right to learn minority languages or receive instruction in minority languages (Article 14(2)) therefore have a specific scope of application, in that their availability may be limited to certain areas where persons belonging to national minorities reside traditionally (see also paragraph 31) and/or in substantial numbers (see also paragraph 34). In accordance with the express wording of the Framework Convention, the right to use a minority language with local authorities must be guaranteed either in areas where national minorities are settled in substantial numbers or in areas that are traditionally inhabited by national minorities; one of the two alternatives suffices. However, an accumulation of these two criteria, namely traditional settlement and substantial numbers, may be required for the implementation of the right to display topographical signposts in minority languages. Overall, the Advisory Committee has repeatedly encouraged states parties also to promote the enjoyment of the rights contained in Articles 10(2), 11(3) and 14(2) in situations where the conditions are not formally met but where implementation would serve to promote an open society, where multilingualism is encouraged as a reflection of diversity.¹¹¹

80. Given the particular significance of language for the expression and preservation of minority identity, as well as for promoting access to rights and social interaction,¹¹² the Advisory Committee has consistently recommended a flexible and context-specific approach with respect to these conditions and in particular with respect to numerical thresholds. It has purposefully refrained from proposing an acceptable threshold for the applicability of minority rights because it considers that the specific context, history and conditions in the state party must be considered on a case-by-case basis and in consultation with the concerned minority representatives.

81. It is important to underline that any threshold must be applied in a flexible manner so that situations are avoided where a negligible decrease in the minority population or the decision of some persons belonging to national minorities no longer to avail themselves of a specific right, alter the accessibility of the right because a predetermined threshold is no longer met. States parties are explicitly obliged to refrain from any measures, including territorial reforms, which alter the proportions of the population in areas inhabited by persons belonging to national minorities and aim to restrict access to minority rights.¹¹³ It is therefore essential that the specific impact on national minorities and the use of minority languages is taken into account in close consultation with national minority representatives when reviewing administrative borders, as the creation of larger self-government units may indeed result in certain thresholds no longer being met.

82. In the view of the Advisory Committee, increased population mobility in all states requires a careful and flexible approach with respect to numerical or territorial delimitations to the enjoyment of minority rights. This is particularly the case with respect to persons belonging to numerically smaller minorities for whom the use of their minority language in official communications may have a distinct emblematic value. Overall, the Advisory Committee has consistently held that numerical thresholds should be considered indicative and should be flexibly used,¹¹⁴ as regular consultations with the national minority representatives concerned are more apt to promote the enjoyment of minority rights than fixed thresholds. Attention must further be paid to ensure that multiple affiliations are not used as a pretext to lower the numerical size of national minorities. Any self-identification as a person belonging to a national minority must be recorded and processed as such, also when part of a multiple affiliation (see also paragraph 16).

110. See also Explanatory Report, paragraph 64.

111. See, *inter alia*, Third Opinion on Finland, Second Opinion on Latvia and Third Opinion on Lithuania.

112. See also Third Thematic Commentary (footnote 4).

113. See Article 16 of the Framework Convention.

114. Flexibility in this context may mean, for instance, that it is decided on a case-by-case basis whether the number of learners is sufficient to open a class in the specific context and what the modalities of teaching may entail. See Third Opinion on Finland.

83. The right to learn the minority language or receive instruction in it (Article 14(2)) may also be made available only in certain areas where persons belonging to national minorities reside traditionally or in substantial numbers. In addition, this right also presupposes demand for such education. It is essential therefore to ensure that parents are adequately made aware of the possibility contained in Article 14(2) to have instruction in the minority language, as well as of the benefits attached to first language education for the learning of other languages. State obligations to ensure opportunities for minority-language education contained in Article 14(2) are further limited to “as far as possible”, which again indicates that the resources of the state party must be taken into account.¹¹⁵ Yet, the Advisory Committee has encouraged states parties also to extend the ability to access education in and of minority languages to persons belonging to national minorities who live in capitals or other urban centres, including through making contemporary and online learning tools available as such provision does not always have to be cost-intensive.¹¹⁶

115. See Explanatory Report, paragraph 75.

116. See Second and Third Opinions on Austria and Second and Third Opinions on Finland.

Part VIII

Conclusions

84. The common understanding of the protection of national minorities and what it entails has changed over the two decades since the adoption of the Framework Convention in 1995. At that time the concept of minority rights was mainly associated with the preservation of minority identities and with their protection from assimilation during partially violent state-formation and nation-building processes. Since then, the increased global and regional mobility of populations has transformed the demographic profile of European societies, and attention has shifted to the challenge of forming integrated and inclusive societies where diversity is acknowledged and welcomed as their integral feature. The present-day European context is further marked by migratory movements of an unprecedented scale which, coupled with the effects of recurrent economic crises and with growing security concerns, are destabilising societies and altering the manner in which minority rights are perceived in society and by policy makers.¹¹⁷

85. The Framework Convention was deliberately designed as a living instrument that is neither constrained by static definitions, nor by the question of who should be considered as a national minority or who should not. Rather, its interpretation must evolve and be adjusted to the prevailing societal context to ensure effective implementation. Adopted as a result of the courage and commitment shown by state leaders in the 1990s to prevent further interethnic violence through the promotion of individual rights and in the spirit of dialogue and solidarity, it is based on the understanding that minority identities are not exclusive. Persons belonging to national minorities must be allowed both to preserve their identities and to participate effectively in public life as an integral part of society. The Framework Convention therefore lays out a catalogue of rights that are of particular importance in order to maintain and encourage diversity while also promoting integration and social interaction.

86. While in some cases increasing diversity is embraced and conceived as a resource for societal development, in other cases there are references to the dangers of diversity and the threat to an asserted cultural homogeneity of the nation state. The latter perspectives disregard the fact that linguistic, ethnic and cultural diversity has been an integral part and an asset of European society over centuries. Moreover, they lay the foundations for two increasing trends that are of deep concern to the Advisory Committee. Firstly, hate speech and racist, xenophobic and extremist discourse, which is on the rise throughout Europe, often directed at anybody who is perceived as “different”, including persons belonging to national minorities. Secondly, a deepening polarisation along ethnic and linguistic, and at times religious lines, which has in some countries been cemented in parallel education systems that deepen divisions over generations.

87. The Framework Convention was designed as a tool for states to manage diversity in a way that carefully balances broader societal concerns, such as cohesion and democratic stability, with the protection of individual rights. As such, it is of particular relevance today when courage and commitment are again needed to meet the contemporary societal challenges, such as intensifying polarisation, the continued exclusion of some minorities, and the resultant threat of radicalisation in many European countries. Europe today must again meet urgent societal challenges that undermine stability, democratic security and peace. Courage and commitment are again needed to overcome the existing divisions through the enhancement of the principles on which the Council of Europe was founded, including the effective protection of minority rights. The Framework Convention is a powerful tool to assist states to address these challenges and create stable and sustainable societies where difference is expressed and affirmed, where equal access to rights and resources is facilitated despite difference, and where social interaction and constant dialogue is promoted and encouraged across difference.

¹¹⁷. See also the Tenth Activity Report of the Advisory Committee, covering the period from 1 June 2014 to 31 May 2016.

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