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**REPORT SUBMITTED BY SWITZERLAND PURSUANT TO
ARTICLE 25 PARAGRAPH 1 OF THE FRAMEWORK CONVENTION
FOR THE PROTECTION OF NATIONAL MINORITIES**

(received 16 May 2001)

**The Swiss Government's Initial Report on the implementation of
the Council of Europe's Framework Convention for the
Protection of National Minorities**

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PART ONE

General overview of the situation of minorities in Switzerland and the way in which Switzerland has sought to implement the Framework Convention

1. INTRODUCTION

Part One of this report sets out to provide an overview and a framework designed to make it possible to understand the way in which Switzerland secures protection for national minorities¹. It contains information on the country's demographic and economic situation, describes the complex structure of minority groups in Switzerland and briefly sets out how the State is organised. The general legal framework for the protection of human rights in Switzerland is also depicted. Finally, Part One provides some information on how Switzerland has publicised the Framework Convention for the Protection of National Minorities.

2. It should be noted that the preparation of this report has provided an opportunity for a wide-ranging discussion of the implementation in Switzerland of principles contained in the Council of Europe's Framework Convention for the Protection of National Minorities. Several departments of federal administration have been involved in drafting the report, in particular:

- the International Public Law Directorate (co-ordinating drafting work for this report),
- the Policy Directorate (Policy Division I: Europe and North America, Council of Europe, Francophony, Switzerland - Second World War; Policy Division III: international organisations, security and peace; Policy Division IV: human rights policy and humanitarian policy),
- the Federal Office for Culture,
- the Federal Bureau for Equality between Men and Women,
- the Federal Commission against Racism,
- the Federal Statistical Office,
- the Federal Justice Office (especially the International Affairs Division),
- the Secretary of State for the Economy.

Additionally, all the cantons were invited to submit their observations.

3. Moreover, this report coincides with Switzerland's launching of an important international initiative to strengthen the tools for the observation and systematic monitoring of the way in which human rights and human development are implemented, including in particular the rights of minorities².

4. This report, which has been drafted in the Confederation's three main official languages (French, German and Italian), may be consulted by a wide audience³. The results of the

¹ Where necessary having regard to specific provisions of the Framework Convention for the Protection of National Minorities, additional information – in particular relating to the demography and economy of the country, the make-up of minority groups, the State's general political structure, the legal framework for protecting human rights, the status of public international law in the domestic legal order or the publicity given to the Framework Convention – has been set out in Part Two of this report.

² In this connection, see paragraph 82 of this report.

³ See: www.eda.admin.ch/eda/f/home/recent/rep/human.html

Council of Europe authorities' study of this report will also be published, thereby contributing to public consideration of the situation, development and difficulties relating to the protection of national minorities in Switzerland.

5. Switzerland, a small State in the heart of Europe, is very varied. Its geography is characterised by contrasts and the special features of its landscape. A rich and fruitful cultural diversity mirrors the variety of nature. The resulting marked differences constitute an essential component of the Swiss identity. Switzerland's political system and judicial structure take this diversity into account and provide national minorities with measures of protection.

6. Generally speaking, federalism as it is applied in our country provides an efficient means of protecting minorities. It ensures representation within federal institutions for population groups that belong to a minority at the national level, but constitute the majority in a particular geographical region. Federalism also confers organisational autonomy on the cantons and municipalities where these minorities are established. Federalism on its own is not enough however to safeguard respect for minorities. The protection of minorities follows from respect for fundamental human rights and, more generally, from the existence of a climate of understanding and tolerance within the population.

2. DEMOGRAPHIC SITUATION AND BASIC ECONOMIC DATA

7(a). Surface area	41,285 square km
7(b). Total population (as at 31/12/1999)	7,164,444
7(c). Population of Swiss and foreign nationals	5,757,814 Swiss nationals 1,406,630 foreign nationals
7(d). Percentage of foreign nationals as a percentage of the permanently resident population ⁴ (as at 31/12/1999)	19.6% (21.4% of the male population and 17% of the female population is of foreign origin)
8. Distribution by gender	48.9% men 51.1% women
9. Age	< 15 years: 17.4% of the population as a whole (16.6% of the female population and 18.3% of the male population is under 15 years old) > 65 years: 15.3% of the population as a whole (17.8% of women and 12.7% of men are over 65)
10. Urban population	67.1%

⁴ The permanently resident population is made up of all the persons domiciled in Swiss territory for the whole of calendar year. Seasonal workers, frontier workers, tourists and asylum seekers are not included.

11. Marital status:	42.1% single 46.3% married 5.8% widowers and widows 5.8% divorced (in 1999, there were 40,646 marriages and 20,809 divorces; the divorce rate is growing steadily and it is estimated that, if the tendency continues, 50% of marriages will end in divorce in the years to come).
12(a). Post-natal mortality rate (1998):	4.8 per 1,000 births
12(b). Birth rate (1998):	11 births per 1,000 residents
12(c). Fertility rate (1998):	1.46
12(d). Single parent families with unmarried children under 20 (1990):	Total: 83,263 Women: 71,082 Men: 12,181
13. Life expectancy (1997/1998):	Women: 82.5 Men: 76.5
14. Languages (1990):	63.7% German 19.2% French 7.6% Italian 0.6% Romanche 8.9% Other

15. Religion (1990)	46.1% Roman Catholic 40% Protestant 2.2% Muslim 1.0% Christian Orthodox 0.3% Jewish 0.2% Christian Catholic 7.4% No religion 1.3% Other religions 1.5% No details given
16 (a). Gross Domestic Product (1997):	CHF 322,572 Million
16 (b). Average annual wage per inhabitant (fixed prices, 1997):	CHF 45,330 Million
17. Rate of Inflation	1991: 5.9% 1993: 3.3% 1996: 0.8% 1998: 0.0% 1999: 0.8%
18. Unemployment Rate ⁵ :	1997: 4.1% (4.3% men, 3.9% women) 1998: 3.6% (3.2% men, 4.1% women) 1999: 3.1% (2.7% men, 3.5% women)

⁵ The definition is based on International Labour Office recommendations.

3. SWITZERLAND: A PLURALIST COMMUNITY

19. The fundamental constituent of the Swiss identity is not a single national language or a cultural tradition or a coherent ethnicity. The Swiss Confederation brings together communities with different languages, cultures and religions⁶. Beyond that heterogeneity, what constitutes the basis of the Swiss identity, apart from a common history, is the Swiss population's common attachment to the values of federalism, direct democracy and cultural and linguistic diversity⁷.

20. Switzerland is therefore a pluralist community, in which it is hard clearly to identify the minorities in an univocal manner. This is because the structure of minority groups in Switzerland presents different aspects according to the viewpoint taken. Certainly, language is the most readily perceptible identifying criterion and the one which is most strongly perceived by the population; however, it is no easy matter to determine the linguistic majority and minority groups. Accordingly, whilst German speakers are a minority in the Canton of Valais/Wallis, they constitute a majority at federal level. The picture becomes even more complicated if you bring in other criteria, such as religion: the criterion of religion does not necessarily coincide with the criterion of language. It should further be noted that cantonal borders do not correspond either with the linguistic and religious borders or with economic and political borders. The fact that all these borders do not coincide undeniably creates a degree of balance⁸.

21. From a linguistic point of view, Switzerland has four national languages: French, German, Italian and Romanche⁹. At federal level, German is the majority language, followed by French, Italian and Romanche. French, German and Italian are also the official languages of the Confederation¹⁰. It is in those three languages that the federal authorities communicate with citizens and the cantons and amongst themselves. Federal legislative texts are also published in those languages. As for Romanche, it is the official language for the Confederation's relations with persons of that tongue¹¹. The picture is different at cantonal level: in Ticino, Italian, which is spoken by the majority of the population, is the official language of the canton. In the Cantons of Geneva, Vaud, Jura and Neuchâtel, French is the majority language. Accordingly, those four cantons are officially French speaking. In contrast, whereas the majority of the population of the Cantons of Valais/Wallis and Fribourg are French-speaking, about one-third of their population speaks German. In those two cantons, both French and German have the status of official languages. The Canton of Berne, which has a majority of German speakers but a significant proportion of French speakers, has also recognised German and French as official languages. Whereas the Canton of Graubünden is chiefly German speaking, a substantial part of its population speaks Romanche or Italian. Consequently, German, Italian and Romanche are official languages of the Canton of

⁶ See the article by W. Haug and P. Wanner, *Les caractéristiques démographiques des groupes linguistiques et religieux en Suisse*, in W. Haug, P. Compton, Y. Courbage, *Les caractéristiques démographiques des minorités nationales dans certains Etats européens*, Vol. II, Council of Europe Publications, January 2000.

⁷ See, in that connection, *Les minorités nationales*, a speech given by René Felber, Federal Councillor, at the opening of the OSCE Experts' Meeting, Geneva 1 July 1991, in: *Documenta 2/1991*, pp. 11 *et seq.*

See also: U. Altermatt, *Die Schweiz: Vielfalt der Kraftfelder, Kleinstaat und Menschenrechte: Festgabe für Gerald Bathiner zum 65. Geburtstag*, Basle, Frankfurt-am-Main, 1993, pp. 481-491.

⁸ See A. Auer, G. Malinverni and M. Hottelier, *Droit constitutionnel Suisse*, vol. I, Berne, Stämpfli, 2000, p.306.

⁹ Federal Constitution, Article 4.

¹⁰ Federal Constitution, Article 70, paragraph 1, first sentence.

¹¹ Federal Constitution, Article 70, paragraph 1, second sentence.

Graubünden. In the other cantons¹², the majority language, German, is also the official language.

22. In actual fact, the linguistic landscape of Switzerland is even much more complicated and much more subtle¹³:

- German-speaking Switzerland is characterised by a phenomenon known as media diglossia¹⁴: when speaking, people use dialect, which differs from one canton to another, whereas standard German alone is used in writing. Certainly, there are overlaps: for example, at school or at university, the teaching is conducted in standard German and that language is also used in formal contexts (before the legislative or judicial authorities or in television or radio news broadcasts). However, the third upsurge in the use of dialect observed in the 1960s has resulted in an increasing use of dialect also in very formal situations. Moreover, dialect is also used in private correspondence, advertising, literature and song. However, no advance in the use of dialect in written language can be expected since the written form of dialect is virtually never taught. The Swiss-German dialects are highly developed and may be categorised as separate languages¹⁵; they are nevertheless close to the standard language and differ from each other above all in point of pronunciation;

- A situation of diglossia no longer obtains today in French-speaking Switzerland. Only 1.4% of the French-speaking population still speaks only patois (according to the 1990 census). Unlike German-speaking Switzerland, where dialect plays a role in creating identity and hence in differentiating speakers from, in particular, their German neighbours, French-speaking Switzerland has followed the centralist linguistic policy and culture of France.

- In Italian-speaking Switzerland, diglossia also obtains, although dialect is markedly less used in formal situations than in German-speaking Switzerland. Neither is dialect in a phase of growth; instead there is a trend towards standardisation with the result that it is possible to speak of a *koiné* which is spreading from Bellinzona, Locarno and Lugano in which strongly local elements are being supplanted by Italianised forms¹⁶.

- As for the Rhaeto-Romance linguistic region, it is divided into five regions with regionally differing idioms¹⁷. Those idioms are certainly related but differ from each other much more – to an extent depending on their relative geographical remoteness – than Swiss-Italian or Swiss-German dialects. Each linguistic group writes its own idiom and teaches it at school. The fact that there is no lingua franca capable of acting as a bridge between the linguistic varieties of Rhaeto-Romanche further accentuates the minority position of the language. In order to remedy the situation and to facilitate formal relations with the

¹² The Cantons of Zürich, Luzern, Uri, Schwyz, Obwalden and Nidwalden, Glarus, Zug, Solothurn, Basle-Stadt and Basle-Land, Schaffhausen, Appenzell Innerrhoden and Appenzell Aargau and Thurgau.

¹³ See also G. Lüdi, B. Py and others, *Fremdsprachig im eigenen Land. Wenn Binnenwanderer in der Schweiz das Sprachgebiet wechseln und wie sie darüber reden*. PNR 21, Basle, Frankfurt-am-Main, 1994.

¹⁴ Diglossia obtains where a community or a group uses two different varieties of language (languages and/or dialects). Here, this means that two related kinds of language coexist in a relationship of functional complementarity, depending on whether the language is spoken or written.

¹⁵ In specialised circles, Swiss-German is described as a language or an evolving dialect (*Ausbausprache; Ausbaudialekt*). See in this connection H. Kloss, *Entwicklung neuer Kultursprachen seit 1800*, Dusseldorf, 1978.

¹⁶ See D. Petrini, *La koiné ticinese*, Berne, 1988.

¹⁷ Vallader (Basse-Engadine) Puter (Haute-Engadine), Sursilvan (Sursilva, Bündner Oberland), Surmiran (Oberhalbstein, Mittelbünden), Sutsilvan (Schamsertal).

authorities, an artificial standard language, Rumantsh Grischun, was created in 1982, incorporating elements of the five idioms. Today, the authorities use Rumantsch Grischun during votes and elections, censuses, etc., but this artificial language is still quite difficult for the population to understand and meets with some resistance. It is impossible to predict at present whether this purely written language will succeed in establishing itself in the long term.

23. From the religious point of view, the great majority of the Swiss population adheres to Christian values, Protestantism and Catholicism each accounting for more than 40% of the resident population. Some cantons, such as Fribourg or Valais/Wallis, are mainly Catholic, whereas others, such as Berne, are traditionally Protestant. Among the religious minorities, mention may be made in particular of the Muslim minority, which accounts for 2.2% of the population, the Christian Orthodox minority, making up 1% of the population, and the Jewish minority, which has a long tradition in Switzerland and amounts for 0.3%. There are other very minority religions. Lastly, 7.4% of persons resident in Switzerland state that they have no religion.

24. As for the minority of travellers of Swiss nationality, it is estimated to amount to between 25,000 and 30,000 persons, of whom 4,000 to 5,000 continue to maintain a nomadic or semi-nomadic existence. The great majority of travellers of Swiss nationality regard themselves as being of Jenish stock, although others belong to the Sinti or Roma peoples. For more particulars concerning the minority of travellers, the reader is referred to paragraphs 96 and 135 et seq. of this report.

25. It follows from the foregoing that the structure of minorities in Switzerland is complex and multi-dimensional; almost every Swiss may regard himself or herself as belonging both to a minority and a majority group.

4. GENERAL POLITICAL STRUCTURE

4.1 Historical overview

26. The institutions and the political organisation of 21st century Switzerland largely reflect a long history, which was fashioned by the common political will of a nevertheless plural population. As a result of the history of Switzerland and its cultural diversity, federalism, in the true sense of the term, has been a true necessity: experience has shown that the unity of the State cannot be secured without safeguarding the diversity of the parties composing it. Direct democracy (popular initiatives and referenda) has also made an essential contribution to the peaceful coexistence of the different cultures by strengthening the role played by linguistic and political minorities in the decision-taking process. Lastly, the fact that Switzerland has practised neutrality since the 16th century has made a large contribution to safeguarding the internal cohesion of multi-cultural Switzerland and protecting the country against aggressions from the outside world.

27. Until the French Revolution in 1789, Switzerland was a confederation of States, which served originally to provide a common defence of their independence against the territorial claims of the Hapsburgs and, later, to conquer and subjugate a number of territories (subject countries). At that time, relations between the cantons were not governed by a constitution but by a large number of treaties of alliance. A common policy of the Confederated States

developed only gradually, since political and religious divergences were initially to prove insurmountable.

28. Following the occupation of Switzerland by the troops of the Directoire in 1798, a unitary Helvetic Republic was created on the French model. The privileges of the suzerain countries vis-à-vis the subject countries were abolished and freedom of religion and the press guaranteed. But the very idea of a unitary State was too alien to the ideas and traditions of the country. Accordingly, after a brief period of continual crises, the Act of Mediation of February 1803, which was drawn up by Bonaparte, marked the return to federalism. The competences of the central State are confined to foreign policy and the maintenance of public order, the Cantons remaining sovereign States in all other spheres.

29. At the Congress of Vienna of 1815, the independence and neutrality of Switzerland were recognised as being important factors for European equilibrium (already in 1648 Switzerland's independence vis-à-vis the Holy Roman Empire had been ensured by the Peace of Westphalia). At this time, Switzerland reverted to the form of a confederation of 22 largely independent Cantons united by a treaty of alliance. It was also at this time that its present external frontiers were fixed.

30. The French Revolution of July 1830 triggered a liberal movement also in Switzerland. In 12 Cantons, popular movements imposed liberal constitutions based on the principles of popular sovereignty and representative democracy. Those new constitutions conflicted with the Federal Pact of 1815. As a result, revision of that pact became inevitable and likewise consolidation of the central authority. The decisive step from a Confederation of States to a Federal State was made by virtue of the 1848 Federal Constitution, following which the liberal cantons got the upper hand over the conservative Catholic cantons after a brief civil war (the "Sonderbund" War). The Constitution conferred new competences on the Confederation in particular in the areas of foreign policy, customs, the postal service, the currency and, to a certain extent, the army. As a result, the present organisation of the State is based on the principle of separation of powers. Its bicameral parliamentary system, based on the United States model, seeks to strike a balance between centralist and federalist tendencies.

31. The total revision of the 1874 Constitution reinforced the central authority and citizens' rights: the military field and social legislation were among the powers transferred to the Confederation, whilst the referendum emerged in the legislative field. Numerous partial revisions of the Constitution were undertaken subsequently.

32. In 1978, the creation of a new canton – Canton Jura – approved by the people and the cantons bore witness to the democratic character of Switzerland¹⁸.

33. In the mid-1960s, preparatory work was undertaken with a view to a complete revision of the Constitution. After two attempts failed, a new draft Constitution was drawn up in the early 1990s. Based on a broad political consensus, the reform aimed essentially to revamp the structure of the Federal Constitution and to bring it up to date in substantive terms so as to paint a complete picture of written and unwritten constitutional law and highlight the characteristic features of the State. On 18 April 1999, the people and the cantons adopted the new Constitution, which entered into force on 1 January 2000.

¹⁸ See paragraphs 247 et seq. of this report.

4.2. Federalism

34. Switzerland is a federal State based, both historically and politically, on the will of its 26 federated States: the cantons. The cantons existed before the creation of the Federal State¹⁹ and make up its constitutive components to this day. Thus, Article 1 of the Federal Constitution of 18 April 1999 provides:

“ The Swiss People and the Cantons of Zürich, Bern, Luzern, Uri, Schwyz, Obwalden and Nidwalden, Glarus, Zug, Fribourg, Solothurn, Basle-Stadt (“Basle-City”) and Basle-Land, Schaffhausen, Appenzell Innerrhoden and Appenzell Aargau, Thurgau, Tessin, Vaud, Valais/Wallis, Neuchâtel, Geneva and Jura form the Swiss Confederation”²⁰;

and Article 3 provides:

“The cantons are sovereign in so far as their sovereignty is not limited by the Federal Constitution; they shall exercise all rights which are not delegated to the Confederation”.

35. The division of powers between the central State and the cantons therefore also fulfils the principle of subsidiarity: the Confederation’s only competences are those that the Constitution attributes to it.

36. In practice, a growing number of powers have been conferred on the Federal State since its inception in 1848. Thus, today, certain areas come under the overall, and sometimes even the exclusive, jurisdiction of the Confederation²¹. Some sectors remain the exclusive competence of the cantons²². But, in most cases, the distribution of competences is less clear-cut. Often, the power to pass detailed legislation, or legislation limited to principles, is vested in the Confederation and its implementation is reserved to the cantons²³. Sometimes, the Confederation and the cantons have parallel legislative competences²⁴. Indeed, a growing overlapping of federal and cantonal powers characterises today’s federal State, on top of which there is an increasing internationalisation of domestic law.

37. In the areas particularly affecting the protection of national minorities, the cantons have still have extended powers. Thus, the areas of culture²⁵ and education²⁶ come principally within the competence of the cantons. The cantons also are competent to determine their official languages and, in doing so, have to have regard to the traditional geographical distribution of the languages and to take into account indigenous linguistic minorities²⁷.

¹⁹ Except Canton Jura which postdated it.

²⁰ Recueil systématique du droit fédéral (Swiss Law Reports – “RS”) 101

²¹ This is the case, for instance, for customs, currency, national defence and metrology.

²² This is the case as far as religion, policing and public assistance are concerned.

²³ This is known as federalism by implementation. See Article 46 of the Federal Constitution. The cantons also have the power to implement federal law in civil, criminal, social insurance and road traffic matters.

²⁴ This is the case as far as taxation and education, for example, are concerned.

²⁵ Article 69 of the Federal Constitution provides that culture is a matter of cantonal competence (paragraph 1). For its part, the Confederation may promote cultural activities of national interest, and encourage artistic and musical expression, in particular through the promotion of education (paragraph 2).

²⁶ Article 62 of the Federal Constitution provides that the cantons have sole competence with regard to education. Conversely, the Confederation legislates on vocational training and runs certain institutions of higher education (Article 63, Federal Constitution).

²⁷ Federal Constitution, Article 70(2). It should be noted that, in like manner to the cantons, the Confederation is under a duty to foster understanding and exchanges between linguistic communities (Federal Constitution,

Accordingly, the Cantons of Valais/Wallis, Fribourg and Berne are officially bilingual and the canton of Graubünden trilingual. Lastly, the regulation of relations between Church and State falls within the exclusive competence of the cantons²⁸.

38. Together with democracy, federalism is one of the fundamental principles of the Swiss State. By taking account of the cultural heterogeneity of the country and by respecting the federated States' need for autonomy, federalism has enabled unity to be secured in diversity. In itself, the federal structure constitutes an important guarantee for safeguarding and promoting national minorities.

4.3. The Confederation

4.3.1. The Executive: the Federal Council

39. The Federal Council is a collective governmental body or cabinet consisting of seven members²⁹ with equal powers. Each of its members is elected independently by the Federal Parliament for a four-year term³⁰. He or she may be re-elected indefinitely. In practice, re-election is the rule, which ensures continuity and stability in Swiss policy. During the currency of a legislature, the Parliament may not dismiss either the Federal Council or any of its members. This principle is reflected in the maxim: "the Federal Council submits but does not resign" ("le Conseil fédéral se soumet, mais ne se démet pas").

40. Every year, the Federal Parliament (both Chambers sitting together) elects one of the Members of the Federal Council as President of the Confederation³¹. The President, as merely *primus* or *prima inter pares*, has no special prerogative, but his or her role is primarily to direct the sessions of the government and to carry out representative functions.

41. Each member of the Federal Council directs a department (ministry) whose interests he or she represents vis-à-vis the cabinet³². As a collegiate body³³, the Federal Council takes its decisions only by consensus or a simple majority vote, each member taking responsibility for their collective decisions.

42. In terms of its composition, the Federal Council represents a subtle linguistic, regional and political balance³⁴. By tradition, the Latin minority (French and Italian) has at least two representatives and the large cantons (Zürich, Berne and Vaud) are in principle represented. Since 1959, a political compromise known as "the magic formula" ensures a permanent presence of the four most important political groupings in the country, that is to say, the Radical, Christian Democrat and Socialist Parties (2 representatives each) and the Democratic Union of the Centre (1 representative). Women entered the Federal Council in 1984 and there are at present two women representatives.

Article 70(3)). In addition, the Confederation has to support the multilingual cantons in the performance of their specific duties (Federal Constitution, Article 70(4)), just as it has to support the measures taken by the Cantons of Graubünden and Ticino in order to safeguard and promote Romanche and Italian (Federal Constitution, Article 70(5)).

²⁸ Federal Constitution, Article 72.

²⁹ Federal Constitution, Article 175(1).

³⁰ Federal Constitution, Article 175(2) and (3).

³¹ Federal Constitution, Article 176(2).

³² Federal Constitution, Article 178(2).

³³ Federal Constitution, Article 177(1).

³⁴ Federal Constitution, Article 175(4).

43. The Federal Council performs the traditional functions of the executive. Being responsible for the political administration and development of the country, it makes sure that public order is maintained and is responsible for internal and external security³⁵. It ensures the implementation of legislation, decrees of the Federal Parliament and judgments given by the federal judicial authorities³⁶. It is also responsible for compliance with federal law and with the cantonal constitutions and conventions³⁷. In the case of some matters which, by law, are outwith the competence of the Federal Court, the Federal Government is the supreme appellate authority. Lastly, as a result of its role as head of State, which is assumed by the Cabinet as a whole, it is the representative of Switzerland abroad and the guardian of the Confederation's interests³⁸. The Federal Government also ratifies international treaties³⁹.

4.3.2. The legislature: the Federal Parliament

44. The Federal Parliament is made up of two chambers: the Council of States and the National Council. This bicameral system is the direct result of federalism. The Council of States is made up of 46 Members, *i.e.* two per canton (the half-cantons having one seat each) irrespective of their surface area or population⁴⁰. For its part, the National Council is made up of 200 representatives of the people, their seats being allocated among the cantons in proportion to the number of their inhabitants⁴¹. Whilst the choice of the mode of election of Members of the Council of States falls within the competence of each individual canton⁴² (in general, they have opted for first-past-the-post), the Members of the National Council are uniformly elected by proportional representation⁴³. The composition of the Federal Parliament therefore ensures that national minorities partake in the exercise of legislative power.

45. The two Chambers have identical powers and are on an equal footing; neither of them can impose its will on the other⁴⁴. In order to be adopted, any bill or draft decree must be voted in identical terms by each of them. Where necessary, a conciliation procedure enables an agreement to be reached between the two Chambers⁴⁵.

46. Sitting together, the two Chambers of the Federal Parliament elect the Federal Counsellors, the President of the Chancellery and the Chancellor of the Federation, the federal judges and, in the event of war, a general commander-in-chief of the army⁴⁶.

³⁵ Federal Constitution, Article 185.

³⁶ Federal Constitution, Article 182(2).

³⁷ Federal Constitution, Article 186(4).

³⁸ Federal Constitution, Article 184(1).

³⁹ Federal Constitution, Article 184(2). As a general rule, international treaties have to be approved by the Federal Chambers before the Federal Council can ratify them. Some treaties, however, may be concluded without parliamentary approval, for instance treaties which the Federal Government may approve pursuant to a delegated power laid down in a law or an international treaty, or treaties of minor importance. See Article 166(2) of the Federal Constitution. Under Article 141 of the Federal Constitution, some international treaties may be the subject of an optional referendum. Under Article 140 of the Federal Constitution, other treaties are subject to an obligatory referendum.

⁴⁰ Federal Constitution, Article 150(1) and (2).

⁴¹ Federal Constitution, Article 149(1) and (4).

⁴² Federal Constitution, Article 150(3).

⁴³ Federal Constitution, Article 149(2).

⁴⁴ Federal Constitution, Article 148(2).

⁴⁵ In the event of a difference, the Chambers postpone the bill until they reach agreement. If differences continue to exist after three passages, the competent committees of the two Chambers set up a conciliation conference. If a consensus cannot be reached, the bill falls.

⁴⁶ Federal Constitution, Articles 168(1) and 176(2).

47. The Federal Parliament adopts laws in all fields falling within the competence of the Confederation⁴⁷. However, the last say remains with the electorate, which, in the event of a request for a referendum, has to approve them in a plebiscite⁴⁸.

4.3.3. The judiciary: the Federal Court

48. The Federal Court, which has its seat in Lausanne, is the highest court in the land⁴⁹. It is made up of 30 judges and 15 alternate judges⁵⁰. The judges are elected by the Federal Parliament⁵¹, which ensures that the official languages of the Confederation are represented⁵². In practice, the Federal Parliament also endeavours to ensure that there is a fair representation of the two majority Christian religions and of the political parties. The Federal Court is made up of two courts of public law, two civil courts, one chamber for actions brought by creditors and bankruptcy petitions, one indictments chamber, one federal criminal court and a court of criminal cassation⁵³. It should be noted that the Federal Insurance Court is based in Lucerne, a social insurance court organised independently and comprising 9 ordinary judges and 9 alternate judges⁵⁴.

49. The Federal Court is responsible for ensuring that federal law is respected, not only in criminal, civil and administrative matters, but also in constitutional matters, in so far as public law proceedings may be brought against cantonal acts for violation of constitutional rights⁵⁵. In ruling at last instance on decisions of cantonal courts brought before it, the Federal Court helps to secure conformity of the various cantonal laws with federal law and ensure the uniform application of federal law. In exercising all its powers, the Federal Court is bound to apply federal laws and international law⁵⁶.

50. As the guarantor of respect for fundamental rights, the Federal Court plays an important role in protecting minorities. It is through the Court's case-law that fundamental rights effectively penetrate the judicial order, that their substance is made specific and their contours specified.

4.4. The cantons

51. Switzerland has 26 cantons. The cantons are the basic component of Switzerland's federal structure. The constitutional autonomy of the cantons, an essential aspect of sovereignty, is expressly recognised by the Federal Constitution⁵⁷. As a result, the cantons are

⁴⁷ See Articles 163-165 of the Federal Constitution.

⁴⁸ See below: Instruments of direct democracy.

⁴⁹ Federal Constitution, Article 188(1).

⁵⁰ Article 1(1) of the Federal Law on Judicial Organisation of 16 December 1943, RS 173.110. A federal decree of 23 March 1984, RS 173.110.1, has temporarily increased the number of alternate judges to 30.

⁵¹ Federal Constitution, Article 168(1).

⁵² Federal Constitution, Article 188(4).

⁵³ Article 12(1) of the Federal Law on Judicial Organisation and the Rules of Procedure of the Federal Court of 14 December 1978, RS 173.111.1.

⁵⁴ Articles 122 and 123(1) of the Federal Law on Judicial Organisation.

⁵⁵ Article 84(1) of the Federal Law on Judicial Organisation.

⁵⁶ Federal Constitution, Article 191. This rule, which was long interpreted as precluding any review of the constitutionality of federal laws, has been reconstrued as no longer excluding review of federal laws and as considerably attenuating the – formerly very strict – obligation to apply them. In this connection, see A. Auer, G. Malinverni and M. Hottelier, *op. cit.*, Vol. I, pp. 647-659, in particular Nos 1831-1835.

⁵⁷ Federal Constitution, Article 47.

free – within the limits of federal law – to organise themselves as they think fit and to distribute cantonal power among the institutions which they create.

52. Each canton has its own constitution and its own legislation. The legislative power is exercised by a monocameral parliament, generally elected by proportional representation. Executive and administrative power is vested in a “Council of State” or an “Executive Council”, elected by the people for a fixed period and organised in accordance with the same principles as the Federal Council: in principle, the President changes each year and collective responsibility is the rule. It should be noted that in the Canton of Appenzell Innerrhoden, members of government and cantonal judges, and in Glarus also lower-ranking judicial officers, are elected by a show of hands. In those cantons, all votes on cantonal matters are held in this way at assemblies of citizens, known as “Landesgemeinde”.

53. In the matter of judicial organisation, the cantons enjoy substantial autonomy⁵⁸, hence the great diversity from one canton to another. Generally speaking, the cantonal judicial system is headed by a supreme court (“Cantonal Court”), which hears appeals in civil and criminal proceedings and, where necessary, acts as a court of cassation. Federal legislation requires all the cantons to set up an independent administrative court at least for those decisions in respect of which an administrative-law appeal may lie to the Federal Court⁵⁹. Lastly, Articles 29 and 30 of the Federal Constitution enshrine a number of procedural guarantees: the right to a fair trial, the right to be tried within a reasonable time, the right to be heard, the right to free legal assistance, the right to be judged by a competent, independent and impartial court established by law and the principle that hearings are held and judgment given in public.

4.5. The municipalities

54. Apart from the Confederation and the cantons, the structure of the Swiss State has a third tier: the municipalities. At present, Switzerland has just under 2900 municipalities, of very different sizes. The municipalities are communities governed by public law with a territorial basis. Within the limits laid down by cantonal law, they enjoy a degree of autonomy for the purposes of performing public tasks of a local nature⁶⁰. They are therefore a substantive and territorial factor of decentralisation, which enables specifically local needs to be taken into account.

55. The organisation of the municipalities is not uniform. Whilst in some municipalities, legislative authority is still exercised by a municipal assembly in which all habitants with the right to vote take part, the larger municipalities have a parliament. Executive authority is vested in a collegiate body elected in most cases by direct suffrage.

⁵⁸ Article 122(2) of the Federal Constitution expressly vests in the cantons responsibility for organising the civil courts. Under Article 123(3) of the Federal Constitution, the organisation of the criminal courts also falls within the remit of the cantons. Most cantons separate investigating courts from the courts giving judgment proper. Lastly, the administrative courts also fall within the organisational autonomy of the cantons, even though this is not expressly stated in the Constitution.

⁵⁹ Article 98a(1) of the Law on Judicial Organisation.

⁶⁰ Federal Constitution, Article 50.

4.6. Instruments of direct democracy

56. Switzerland is a direct democracy. It is familiar with and practises the institutions of the referendum and the popular initiative, instruments which enable the people to trigger the mechanisms for the legitimisation of authority⁶¹.

57. At the federal level, some acts adopted by the Parliament are subject to an obligatory referendum, as a result of which the vote of the people and a positive outcome of such vote are conditions in order for a legal rule to be valid. This applies to revisions of the Constitution, acceding to organisations of collective security or supranational communities and federal laws which are purportedly urgent and lack a basis in the Constitution whose validity exceeds one year⁶². In order for such acts to be validly adopted, they must be approved by a majority of the people and a majority of the cantons⁶³. The cantons also have the institution of the obligatory referendum.

58. Other acts are subject to an optional referendum, whereby a proportion of the electorate may require the adoption of the act in question to be subject to the people's approval. This is true of federal laws, federal laws purporting to be emergency measures whose validity exceeds one year, federal decrees in so far as the Constitution or the law so provides and international treaties which are of indeterminate duration and cannot be denounced or which provide for accession to an international organisation or entail unilateral unification of the law⁶⁴. The optional referendum also exists at the cantonal level.

59. As for the popular initiative, this confers on part of the electorate the right to trigger the procedure which leads to the adoption, revision or repeal of a State act. At federal level, such an initiative may seek only a revision of the Constitution⁶⁵. Several cantons also have the institution of the legislative initiative, which enables a specific number of citizens to propose to the people that a new law be introduced or a law in force amended.

5. GENERAL LEGAL FRAMEWORK FOR THE PROTECTION OF HUMAN RIGHTS

5.1. Constitutional protection of fundamental rights

60. The Federal Constitution contains a catalogue of fundamental rights⁶⁶, which have to be realised throughout the legal order⁶⁷. The common characteristic of those rights is their

⁶¹ See A. Auer, G. Malinverni and M. Hottelier, *op. cit.*, Vol. I, pp. 190-191, on the notion of direct democracy.

⁶² Federal Constitution, Article 140(1).

⁶³ Federal Constitution, Article 142(2).

⁶⁴ Federal Constitution, Article 141(1).

⁶⁵ Federal Constitution, Articles 138 and 139.

⁶⁶ The Constitution expressly provides for: human dignity (Article 7); equality (Article 8); protection against arbitrary conduct and protection of good faith (Article 9); the right to life and personal liberty (Article 10); protection of children and young people (Article 11); the right to obtain assistance in situations of distress (Article 12); protection of privacy (Article 13); the right to marry and have a family (Article 14); freedom of conscience and belief (Article 15); freedom of opinion and information (Article 16); freedom of the media (Article 17); freedom of language (Article 18); the right to basic education (Article 19); freedom of science (Article 20); freedom of art (Article 21); freedom of assembly (Article 22); freedom of association (Article 23); freedom of establishment (Article 24); protection against expulsion, extradition and refoulement (Article 25); the guarantee of property (Article 26); economic freedom (Article 27); trade union freedom and the right to strike (Article 28); general procedural guarantees (Article 29); guarantees relating to judicial procedure (Article 30);

justiciability. As Swiss citizens, persons belonging to national minorities enjoy all the rights and freedoms guaranteed by the Constitution. The prohibition of all discrimination, enshrined in Article 8 of the Federal Constitution, also applies to members of national minorities.

61. Given that each canton has its own constitution, catalogues of fundamental right exist also at the cantonal level. The Federal Court does not confer autonomous scope on them except in those – very rare – cases in which the protection afforded goes beyond that of federal constitutional law.

62. It is further appropriate to point out that the substantive provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms⁶⁸ supplements the aforementioned constitutional rights in so far as they secure better protection for the individual. Those contractual provisions are directly applicable; they are binding not only on the legislature, the courts and the administrations of the Confederation, but also on those of the cantons, and citizens may invoke them in judicial proceedings.

63. Switzerland is also a party, in particular in the context of the United Nations, to other conventions concerning human rights. In so far as they are directly applicable, the provisions contained in such international instruments may be relied upon before the national courts⁶⁹.

64. The possibility for the State to restrict liberties is subject to a number of cumulative conditions. According to the case-law of the Federal Court and the European Court of Human Rights, as taken over by Article 36 of the Federal Constitution, the conditions for restricting freedoms can be reduced to *three major principles*. First, the restriction must be prescribed by law; this is the requirement for a *legal basis*; cases of serious, direct and imminent danger are nevertheless reserved⁷⁰. In addition, the restriction must be justified: the requirement for a *public interest*. Lastly, it must be reasonable having regard to the objective pursued: the requirement of *proportionality*. Furthermore, the restriction must not make the freedom devoid of all substance: the essence of fundamental rights is inviolable.

protection against deprivation of liberty (Article 31); criminal procedural guarantees (Article 32); the right of petition (Article 33); political rights (Article 34).

⁶⁷ Federal Constitution, Article 35(1).

⁶⁸ The European Convention for the Protection of Human Rights and Fundamental Freedoms, adopted at Rome on 4 November 1950, entered into force as regards Switzerland on 28 November 1974, RS 0.101.

⁶⁹ See Status of Public International Law in the Domestic Legal Order, *infra*.

⁷⁰ By virtue of Article 185(3) of the Federal Constitution, the Federal Council is entitled to adopt ordinances or take decisions with a view to coping with existing or imminent disturbances constituting a serious threat to public order or to the external or internal security of the country. This principle, known as the *general police power*, is the main exception to the rule that any restriction of an individual freedom must have an explicit legal basis. This is because the legislature cannot foresee every danger posing a threat to public security and public order. On this ground, the Federal Court accepts that, pursuant to the general police power, the executive is entitled, even in the absence of an explicit legal basis, to adopt essential measures to restore public order where it has been disturbed or to safeguard public order from a serious direct and imminent threat. In order to limit abuses and any breach of the principle of legality, the Federal Court scrutinises the conditions under which this power is used fairly severely. The possibility to restrict fundamental rights in case of necessity is expressly referred to in Article 36(1) *in fine* of the Federal Constitution and also appears, in somewhat different terms, in Article 15(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms and in Article 4(1) of the International Covenant on Civil and Political Rights of 16 December 1966, which entered into force in Switzerland on 18 September 1992, RS 0.103.2. See the judgment of the Federal Court (hereinafter “ATF”) 113 LA 310, 312. See also A. Auer, G. Malinverni and M. Hottelier, *op. cit.*, Vol. II p.416.

5.2. Competent authorities with regard to human rights and possibilities of recourse of persons claiming that their rights have been violated

65. Generally speaking, violations of human rights may be pleaded before the ordinary civil, criminal, administrative and constitutional courts in Switzerland.

66. As a result of the federal structure, competences overlap in a complex way as between the Confederation and the cantons. Whereas criminal law and civil law (including commercial law) are unified⁷¹, their application falls largely to the cantons, which have full powers as regards the organisation of the courts and, to a large extent, procedure⁷². However, the reform of the judicial system which was accepted in a plebiscite held on 12 March 2000 will enable the Confederation also to unify civil and criminal procedure. As for administrative law, it may be cantonal or federal.

67. Before the Federal Court, the main redress available to a person claiming that his fundamental rights have been violated, apart from an administrative-law appeal which is available at last instance against decisions of cantonal or federal authorities based on federal law, is a public law action. Such actions are subsidiary in relation to other forms of redress existing at federal level⁷³. A public law action primarily makes it possible to attack last-instance decisions taken by cantonal authorities or cantonal decrees on the grounds of violation of constitutional rights or of directly applicable provisions contained in international conventions relating to human rights⁷⁴.

68. In the event that the European Court of Human Rights finds that Switzerland has violated the European Convention for the Protection of Human Rights and Fundamental Freedoms or Protocols thereto, the complainant may apply for a judgment of the Federal Court to be reviewed⁷⁵.

6. STATUS OF PUBLIC INTERNATIONAL LAW IN THE DOMESTIC LEGAL ORDER

69. Switzerland is among those States of the monist tradition; accordingly, an international treaty ratified by the Federal Council becomes part of the Swiss legal order from the date on which it enters into force in Switzerland (direct validity) without there being any need to transpose it into the domestic legal order by adopting a special law. This principle may be inferred, on the one hand, from Article 191 of the Federal Constitution, which provides that in all cases the Federal Court shall apply international law, and, on the other, from Article 189(1)(c) of the Federal Constitution, which provides that the Federal Court shall entertain applications in the event of infringement of international treaties.

70. Whereas international instruments are binding on the authorities as soon as they enter into force for Switzerland, the provisions contained therein cannot be pleaded before a court by citizens unless they are directly applicable (self-executing), or in other words unless they are

⁷¹ Federal Constitution, Article 122(1) and 123(1).

⁷² Federal Constitution, Article 122(2) and 123(3).

⁷³ Thus, a public law action is not admissible where there are other forms of redress, in particular an appeal for annulment before the Court of Criminal Cassation, civil actions for review or annulment or an administrative-law appeal.

⁷⁴ See Articles 84-86 of the Federal Law on Judicial Organisation.

⁷⁵ Article 139a of the Federal Law on Judicial Organisation.

sufficiently clear and precise to constitute the basis for a decision. Failing this, provisions of international agreements (programme provisions,) have to be made precise and specified by the Swiss legislature. In any given case it is for the courts to determine whether an international rule is or is not capable of being directly applied.

71. Article 5(4) of the Federal Constitution requires the Confederation and the cantons to respect international law. This is the principle of the primacy of international law over domestic law. As a result, where a conflict between domestic law and international law cannot be resolved by applying the principle of consistent interpretation with international law or the rule *lex specialis derogat generali*, most academic writers and recent case-law hold that treaties take precedence over federal laws, irrespective of whether they date from before or after the treaties⁷⁶.

7. INFORMATION AND PUBLICITY

72. As in the case of any international convention, ratification of the Framework Convention of the Council of Europe for the Protection of National Minorities was preceded by a procedure involving consultation of the main interested parties (cantons, political parties, non-governmental organisations, etc.). In the light of this, the Federal Council decided that it was appropriate to propose that the Parliament should approve the Framework Convention. On this occasion, it published a message for the attention of the Federal Parliament on the scope and consequences of this commitment. This message was published in the *Feuille Fédérale (Official Gazette)*⁷⁷ and is therefore accessible to interested members of the public. Parliamentary debates in connection with the adoption of the Framework Convention were public and further publicised through the media.

73. The Framework Convention will also be published in the course of the year in the Official Compendium of Federal Laws and in the Systematic Compendium of Federal Law in the official languages, to wit French, German and Italian. As a result, the Framework Convention will be readily accessible to the public and to the competent authorities.

74. In addition, it should be reiterated⁷⁸ that the formulation of this report, with which a number of departments of the federal administration and all the cantons have been associated, has given rise to a major debate on the situation of the national minorities in Switzerland. The publication of this report in the three official languages of the Confederation will also help to make known the principles set out in the Framework Convention.

75. Lastly, it is worth mentioning the crucial role played by non-governmental organisations, several of which receive financial assistance from the Confederation, by undertaking to disseminate human rights conventions, in Switzerland and abroad, through publications, seminars and awareness campaigns.

⁷⁶ ATF 122 II 485; ATF 119 V 171, 177; ATF 118 lb 277, 281; ATF 117 IV 124.

⁷⁷ Message of the Federal Council, dated 19 November 1997, on the Framework Convention of the Council of Europe on National Minorities (hereinafter “Message on the Framework Convention”), FF 1998, 1033 *et seq.*

⁷⁸ See paragraphs 2 *et seq.*, above.

PART TWO

Consideration of the various provisions of the Framework Convention for the Protection of National Minorities

ARTICLE 1

The protection of national minorities and of the rights and freedoms of persons belonging to those minorities forms an integral part of the international protection of human rights, and as such falls within the scope of international co-operation.

1. SWISS PARTICIPATION IN AND CO-OPERATION WITH THE ACTIVITIES OF INTERNATIONAL ORGANISATIONS

76. The promotion of the rights of persons and of the principles of the rule of law constitutes one of the five objectives of Swiss foreign policy⁷⁹. In accordance with a long-standing Swiss commitment, the protection of national minorities is an integral part of the protection of the rights of persons and, as such, constitutes an area of international co-operation.

77. By acceding to the Council of Europe's Framework Convention for the Protection of National Minorities⁸⁰, Switzerland therefore reaffirmed its conviction that respect for minorities constitutes an integral part of the protection of the rights of persons and consequently is not a matter solely of States' domestic affairs.

1.1. International Agreements

78. Apart from the Framework Convention, Switzerland is a party, inter alia, to the following international instruments which deal with the protection of national minorities, have a direct or indirect effect thereon or relate directly or indirectly thereto:

- European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950, which entered into force for Switzerland on 28 November 1974, as amended by Protocol No 11⁸¹;

- European Charter for Regional or Minority Languages of 2 October 1992, which entered into force for Switzerland on 1 April 1998⁸²;

⁷⁹ See the Report on Foreign Policy in 2000; Presence and Co-operation: safeguarding interests in an integrating world, FF 2001 237. The Federal Council approved this report, which replaced the Report on Swiss Foreign Policy in the 1990s, dated 29 November 1993, at its session of 15 November 2000.

⁸⁰ Hereinafter: the Framework Convention: The Council of Europe Framework Convention for the Protection of National Minorities was adopted by the Committee of Ministers of the Council of Europe on 10 November 1994 and opened for signature on 1 February 1995. It entered into force on 1 February 1998. The text of the Framework Convention, which entered into force as far as Switzerland is concerned on 1 February 1999, is published as an annex to the Message relating to it, FF 1998 1063 et seq.

⁸¹ RS 0.101.

⁸² FF 1997 I 1122.

- European Code of Social Security of 16 April 1964, which entered into force for Switzerland on 17 September 1978⁸³;

- European Convention on the Compensation of Victims of Violent Crimes of 24 November 1983, which entered into force for Switzerland on 1 January 1993⁸⁴;

- European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities of 21 May 1980, which entered into force for Switzerland on 4 June 1982⁸⁵;

- International Covenant on Economic, Social and Cultural Rights of 16 December 1966, which entered into force for Switzerland on 18 September 1992⁸⁶;

- International Covenant on Civil and Political Rights of 16 December 1966, which entered into force for Switzerland on 18 September 1992⁸⁷;

- International Convention on the Elimination of all Forms of Racial Discrimination of 21 December 1965, which entered into force for Switzerland on 29 December 1994⁸⁸;

- International Convention for the Suppression of Traffic in Women and Children of 30 September 1921, which entered into force for Switzerland on 1 February 1926⁸⁹;

- International Convention on the Rights of the Child of 20 November 1989, which entered into force for Switzerland on 26 March 1997⁹⁰;

- ILO Convention (No 87) concerning Freedom of Association and Protection of the Right to Organise of 8 July 1948, which entered into force for Switzerland on 25 March 1976⁹¹;

- ILO Convention (No 100) concerning Equal Remuneration for Men and Women Workers for Work of Equal Value of 29 June 1951, which entered into force for Switzerland on 25 October 1973⁹²;

- ILO Convention (No 102) concerning Minimum Standards of Social Security of 28 June 1952, which entered into force for Switzerland on 18 October 1978⁹³;

- ILO Convention (No 111) concerning Discrimination in Respect of Employment and Occupation of 25 June 1958, which entered into force for Switzerland on 13 July 1962⁹⁴;

⁸³ RS 0.831.104.

⁸⁴ RS 0.312.5.

⁸⁵ RS 0.131.1.

⁸⁶ RS 0.103.1.

⁸⁷ RS 0.103.2.

⁸⁸ RS 0.104.

⁸⁹ RS 0.311.33.

⁹⁰ RS 0.107.

⁹¹ RS 0.822.719.7.

⁹² RS 0.822.720.0.

⁹³ RS 0.831.102.

⁹⁴ RS 0.822.721.1.

- ILO Convention (No 151) concerning Protection of the Right to Organise and Procedures for Determining Conditions of Employment in the Public Service of 28 June 1978, which entered into force for Switzerland on 3 March 1982⁹⁵.

It should further be noted that, on 24 March 2000, the Federal Parliament approved Switzerland's accession to the Convention on the Prevention and Punishment of the Crime of Genocide of 9 December 1948, and the corresponding changes to criminal law⁹⁶. The instrument of accession was deposited on 4 September 2000. Likewise, on 15 November 2000, the Federal Council adopted the Message on the Rome Statute of the International Criminal Court, the Federal Law on Co-operation with the International Criminal Court and a revision of criminal law⁹⁷.

1.2. Encouragement of multilateral efforts designed to protect national minorities

79. In addition, Switzerland associates itself with the efforts undertaken by various international organisations with the aim of increasing protection for national minorities:

- participation in the European Commission and Council of Europe Joint Programme on National Minorities (e.g. participation in the meeting of Government Offices for the Protection of National Minorities);
- participation in the Committee of Experts on Issues relating to the Protection of National Minorities (DH-MIN) of the Council of Europe;
- participation in the Congress of Local and Regional Authorities of the Council of Europe;
- participation in the European Commission against Racism and Intolerance (ECRI) of the Council of Europe;
- participation in the Council of Europe specialist group on Roma and Sinti;
- participation in the UNO working group on protection of minorities;
- participation in the UNO working group on indigenous peoples;
- support for the CSCE's efforts, in particular, the Helsinki Final Act (1975), the Final Document of the Vienna Conference (1989) and the Document of the Copenhagen Conference on the Human Dimension and fundamental principles of the protection of minorities (1990), likewise the Charter on European Security (1999), the CSCE High Commissioner for National Minorities and the Stability Pact for Europe (1995), together with the Stability Pact for South-East Europe (1999);
- other activities in the sphere of human rights protection in the Council of Europe, UNO, the ILO, UNESCO and the Agence pour la Francophonie (ACCT).

⁹⁵ RS 0.822.725.1

⁹⁶ See the Message of the Federal Council of 31 March 1999 on the Convention on the Prevention and Punishment of the Crime of Genocide and the corresponding revision of criminal law, FF 1999 4911 *et seq.*

⁹⁷ FF 2001 359 *et seq.*

80. It should further be noted that Switzerland participated actively within the Council of Europe in drawing up the Framework Convention. In particular, it chaired the Ad Hoc Committee of Experts on Minorities (CAHMIN), the body from which that instrument originated.

1.3. Other activities for the protection of national minorities deployed by Switzerland at international level

81. List of examples of the type of activities undertaken by Switzerland at international level with regard to the protection of national minorities (to give an exhaustive list would exceed the limits of this report):

- Meeting of experts of the CSCE on national minorities, Geneva, 1 to 19 July 1991;
- Round Table of Locarno, 11 to 14 May 1995: preventive diplomatic contribution relating to the future of the Crimea as an autonomous part of Ukraine;
- Report of the Institution for Federalism of Fribourg University: “Kosovo, Kosova, Kosmet, Kosovo and Methoija, October 1995;
- Round Table held in Locarno on 8 and 9 December 1996: “Kazakhstan: Building a coherent multicultural and multiethnic society on the eve of the XXI century”;
- Organisation in 2002 of the second International Conference on Federalism, one of whose chief themes is “Decentralised State structures and conflict prevention: multi-ethnicity, multiculturalism, respect for minorities, participation of citizens”;
- High Commissioner for National Minorities: Switzerland is providing practical assistance for the High Commissioner: project financing, appointment of Michael Murezzi as project coordinator (since spring 1999);
- Sending of experts: for example from 22 to 25 March 1999: at the initiative of Switzerland and at the request of President Lucinschi, dispatch of Professor Daniel Thürer to Moldavia in order to discuss problems affecting relations between the Republic of Moldavia and Transnistria together with the sharing of competences between the central State and the regions from the point of view of public international law;
- European Security Charter: OSCE Summit, Istanbul, 18 and 19 November 1999⁹⁸;
- Dialogues on human rights with a view to stepping up ad hoc co-operation in various areas of human rights (minority rights, women’s rights, children’s rights) with various countries, for example with China, Cuba, Morocco, Pakistan and Vietnam;
- Financial support for national and international NGOs working to protect national minorities;

⁹⁸ Switzerland tackled the question of national minorities yet again in the context of the discussions on the European Security Charter. The perseverance which it has shown in seeking to improve the protection of minorities has been rewarded in that different formulae for autonomy will henceforward be recognised by the European Security Charter as means of supporting national minorities within an existing State.

- Encouragement for human rights through development co-operation;
- Co-operation with the States of Eastern Europe;
- Stability Pact;
- Commitment in favour of indigenous peoples⁹⁹.

82. At the International Conference on Statistics, Development and Human Rights organised jointly by the Development and Co-operation Directorate (DDC) and the Federal Statistical Office (OFS) in September 2000 at Montreux, Switzerland gave a powerful political impetus to the debate on the quality of the tools for measuring and observing human rights and human development. The Conference gave prominence to methods and instruments for monitoring minority rights. Following the conclusions of the Conference and the expectations to which they gave rise in the international community and in order to give effect to this initiative, the DFAE, the DDC and the OFS undertook to work together in order to design measures so as to enable the work to be monitored consistently and effectively. The various competent bodies ensure that the proceedings and conclusions of the Montreux Conference are effectively reflected in the chief international meetings and activities to be held in future and in this report.

2. LEGAL PROTECTION OF NATIONAL MINORITIES IN SWITZERLAND

83. The Framework Convention contains for the most part programme provisions setting the objectives which the States Party undertake to pursue. It appears from the choice of a framework instrument that the Convention is not intended to be directly applicable. This absence of direct applicability is expressly confirmed by the Preamble and also underlined by the Explanatory Report.

84. In Switzerland, the rights contained in the provisions of the Framework Convention are already largely covered by the relevant constitutional and legislative provisions and by the international instruments to which Switzerland is a party, in particular the European Human Convention on Human Rights and the United Nations Covenant on Civil and Political Rights.

85. As already mentioned in the Part One of this report¹⁰⁰, access to justice is guaranteed for questions affecting the rights of persons. Generally speaking, persons belonging to a national minority may invoke fundamental rights recognised as belonging to all citizens. Under Article 8 of the Federal Constitution, those rights must be applied without any discrimination. Some constitutional rights are especially important for the protection of national minorities. For instance, linguistic freedom protects linguistic minorities¹⁰¹. Likewise, freedom of conscience and belief is guaranteed to religious minorities¹⁰². Lastly, minorities, irrespective of who they are, may participate in the formation of political will¹⁰³.

⁹⁹ See the Internet site of the Development and Co-operation Directorate (DDC) of the DFAE: <http://194.230.65.134/dezawb2/home.asp>

¹⁰⁰ See paragraphs 60 *et seq.* of this report.

¹⁰¹ Federal Constitution, Article 18.

¹⁰² Federal Constitution, Article 15.

¹⁰³ See paragraphs 237 *et seq.* of this report.

In addition, under the Federal Constitution fundamental rights must be realised throughout the legal order¹⁰⁴ and any person assuming a State function is bound to respect fundamental rights and contribute towards their realisation¹⁰⁵.

87. It therefore follows from these considerations that in Switzerland access to justice for matters concerning the protection of persons belonging to national minorities is effectively guaranteed.

ARTICLE 2

The provisions of this framework Convention shall be applied in good faith, in a spirit of understanding and tolerance and in conformity with the principles of good neighbourliness, friendly relations and co-operation between States.

88. Having communities of different languages, cultures and religions in its territory, Switzerland, which moreover often seems a model for the co-existence of different populations, affords national minorities autonomy, through its federalist system, for developing and preserving their languages, religions and cultures, while at the same time securing their participation and representation within the federal institutions. Switzerland is convinced that protection of persons belonging to national minorities helps to secure their peaceful co-existence and the optimum functioning of democracy.

89. By ratifying the Framework Convention, Switzerland has confirmed its conviction that the protection of national minorities plays an important role in securing democratic stability and peace not only in Europe but also in the world. Switzerland regards the Framework Convention as being an instrument in the service of international peace and stability¹⁰⁶.

90. As a State Party, it is, of course, anxious to respect the provisions of the Convention. It affirms its determination to apply it in good faith in a spirit of understanding and tolerance and in compliance with the principles of good neighbourliness, friendly relations and co-operation between States.

91. Moreover, no question connected with the protection of minorities affects Switzerland's relations with its neighbours.

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.

¹⁰⁴ Federal Constitution, Article 35(1).

¹⁰⁵ Federal Constitution, Article 35(2).

It should also be noted that, under Article 261bis of the Criminal Code, public discrimination against persons on grounds of their race, ethnic origin or religion constitutes a criminal offence punishable by a fine or a term of imprisonment. See, in this respect, paragraphs 173 *et seq.* of this report.

¹⁰⁶ Message on the Framework Convention, FF 1998 1033, 1043-1044, Ch. 151.

2. Persons belonging to national minorities may exercise the rights and enjoy the freedoms flowing from the principles enshrined in the present framework Convention individually as well as in community with others.

INFORMATION ON NATIONAL MINORITIES IN SWITZERLAND

1.1. Linguistic minorities

92. Switzerland has four national languages¹⁰⁷: German (spoken by approximately 63.7% of the population), French (19.2%), Italian (7.6%) and Romanche (0.6%). About 8.9% of the population have some other language as their mother tongue.

93. Of the 26 cantons, 17 are German-speaking, four French-speaking and one Italian-speaking (with a small German-speaking minority). Additionally, there are three bilingual cantons and one trilingual one¹⁰⁸. The geography of the linguistic regions is relatively stable: whilst the number of German-speakers declined by 5.7% and the number of Italian-speakers by 1.9% between 1960 and 1990, the number of French-speakers increased by 0.2% over the same period. As for Romanche, it continues to lose ground: whereas 0.9% of the population was Romanche-speaking in 1960, the corresponding figure for 1990 was only 0.6%. The multilingual cantons have adopted different solutions to guarantee peaceful co-existence and equality of rights as between the linguistic communities¹⁰⁹.

1.2. Religious minorities

94. From the point of view of religion, the resident population consists of 46.1% Roman Catholics, 40.0% Protestants, 2.2% Muslims, 1% Christian Orthodox, 0.3% Jews, 0.2% Christian Catholics and 7.4% with no religious affiliation. There are also other minority religions, which together account for some 1.3% of the population.

1.3. Other minorities

95. In Switzerland, the Framework Convention may also be applied to other minority groups of the Swiss population, such as travellers¹¹⁰.

96. In Switzerland, the community of travellers amounts to between 25,000 and 30,000 people. The Jenish make up the main group of travellers of Swiss nationality, although there are other travellers in Switzerland, generally belonging to the Sinti (Manouche) group. The great majority of travellers have become settled, in particular as a result of the action "Enfants de la grande route"¹¹¹. All the same, nomadism remains one of the elements that constitute the cultural identity of the travellers; it is directly linked to the exercise of their various

¹⁰⁷ Federal Constitution, Article 4.

¹⁰⁸ See paragraph 21 of this report.

¹⁰⁹ Second and third periodical reports presented by Switzerland to the UN Committee for the elimination of racial discrimination, Berne, May 2000, pp. 15-16, paragraphs 16-18. See also paragraphs 121 *et seq.* of this report.

¹¹⁰ Message on the Framework Convention, FF 1998 1033, 1046-1048, Ch. 22.

¹¹¹ For more information in this regard, see paragraphs 135 *et seq.* of this report.

gainful occupations. It is estimated that at present some 4,000 to 5,000 travellers have a nomadic or semi-nomadic lifestyle¹¹².

2. THE CONCEPT OF NATIONAL MINORITY IN THE SWISS LEGAL ORDER

97. There is no specific provision protecting minorities as such in the Federal Constitution. Minorities are nevertheless protected indirectly by the political system¹¹³ and by the guarantee without discrimination of their constitutional rights. Moreover, certain constitutional liberties are of particular importance for the protection of national minorities. Examples are linguistic freedom¹¹⁴ and freedom of conscience and belief¹¹⁵.

98. Since the Framework Convention itself does not define the concept of national minority, Switzerland made a declaration when it ratified the instrument, setting out its interpretation of the concept of national minority. In substance, that declaration is based on proposals made by working groups at international level¹¹⁶.

99. The Swiss declaration reads as follows:

“Switzerland declares that in Switzerland national minorities in the sense of the framework Convention are groups of individuals numerically inferior to the rest of the population of the country or of a canton, whose members are Swiss nationals, have long-standing, firm and lasting ties with Switzerland and are guided by the will to safeguard together what constitutes their common identity, in particular their culture, their traditions, their religion or their language.”¹¹⁷.

100. It appears from this definition that the Framework Convention can be applied in Switzerland not only to national linguistic minorities, but also to other minority groups of the Swiss population, such as members of the Jewish community and travellers¹¹⁸. Any person belonging to a national minority is entitled freely to choose whether or not to be treated as such. Each person concerned is entitled to decide whether or not he or she wishes to benefit from the protection of the Framework Convention. However, this does not mean that an individual is free arbitrarily to choose to belong to one of any of the national minorities. The

¹¹² See the 1998 annual report of the Foundation “Assurer l’avenir des gens du voyage suisses”, p. 9; Initial report of the Swiss Government presented to the Human Rights Committee of the United Nations pursuant to Article 40 of the International Covenant on Civil and Political Rights, Berne, 1995, paragraph 488; Second and third periodic reports presented by Switzerland to the UN Committee for the elimination of racial discrimination, Berne, May 2000, p. 18, paragraph 20. See also M. Michon, *Minorité: un concept commode mais ambigu*, in Tangram, Bulletin de la Commission fédérale contre le racisme, 3/1997, pp. 17 *et seq.*

¹¹³ See to this effect D. Thürer, *National minorities: a global, European and Swiss perspective*, in *The Fletcher Forum of World Affairs*, Vol. 19, No 1, Winter/Spring 1995, p. 62. See also G. Malinverni, *La protection des minorités en Suisse*, in *Minorités et organisation de l’Etat*, Brussels, Bruylant, 1998, p. 374.

¹¹⁴ Federal Constitution, Article 18.

¹¹⁵ Federal Constitution, Article 15.

¹¹⁶ See the Message on the Framework Convention, FF 1998 1033, 1041-1043, Ch. 142, and 1046-1048, Ch. 22. The definition given by Switzerland in its declaration takes up parts of the definition of the concept of “national minority” set out in Article 1 of the Additional Protocol of the Parliamentary Assembly of the Council of Europe of 1 February 1993. It is also based on Article 2(1) of the draft European Convention for the protection of minorities of 4 March 1991 drawn up by the European Commission for democracy through law. The definition adopted therefore corresponds to the concept of “national minority” prevailing in most other European countries.

¹¹⁷ The Parliament accepted without amendment the text proposed by the Federal Council in its Message on the Framework Convention, FF 1998 1033, 1047, Ch. 22. To be read together with the Federal Decree on the Council of Europe’s Framework Convention for the Protection of National Minorities, FF 1998 1062.

¹¹⁸ See the Message on the Framework Convention, FF 1998 1033, 1048, Ch. 22.

very wording of the Framework Convention (“every person belonging to a national minority”) shows that it is not a question of recognising a right of free choice, but in contrast that the wish to be identified with a national minority must be based on objective evidence¹¹⁹.

101. It should be noted that the declaration made by Switzerland when it ratified the Framework Convention links the status of national minority with citizenship. Consequently, a non-national cannot invoke the special protection granted to every person belonging to a national minority; such a person will nevertheless be protected by Article 27 of the United Nations Covenant on Civil and Political Rights¹²⁰.

102. Lastly, it should be noted that some cantonal constitutions also refer to the concept of minority. The Constitution of Berne, for example, provides that account shall be taken of the needs of linguistic, cultural and regional minorities and that, to this end, particular competences may be granted to such minorities¹²¹.

3. ADDITIONAL STATISTICAL INFORMATION

103. According to Article 65(1) of the Federal Constitution, the Confederation is to collect the necessary statistical data on the state and development of the population, the economy, society, the territory and the environment in Switzerland. The Federal Statistical Office, as the central statistical service of the Confederation, provides statistical services to the administrative units of the Confederation, other users of federal statistics and the general public¹²². In addition, the Federal Council has set up a Commission for Federal Statistics, which is responsible for advising the Federal Council and producers of statistics of the Confederation on all questions to do with federal statistics. This commission consists in particular of representatives of the cantons and municipalities¹²³. On the basis of criteria chosen completely independently, federal statistics supply representative information, notably on the state and development of the population¹²⁴. These activities are carried out in collaboration with the cantons and municipalities¹²⁵. The data collected for statistical purposes are subject to provisions on data protection and official confidentiality¹²⁶. The bases and the main statistical findings are published in the official languages in a form corresponding to users’ needs¹²⁷. The principal key data relating to Switzerland may also be consulted on the Internet site of the Federal Statistical Office¹²⁸. Every ten years, data relating to the structure of the population are collected throughout the territory of the Confederation¹²⁹. The last structural census was held in December 2000, but the results are not yet known.

¹¹⁹ See the Message on the Framework Convention, FF 1998 1033, 1046, Ch. 21.

¹²⁰ General Observation of the Committee on Human Rights in relation to the International Covenant on Civil and Political Rights 23 [50], Ch. 5.2, published in W. Kälin, G. Malinverni and M. Nowak, *Die Schweiz und die UNO-Menschenrechtspakte*, 2nd edition, Geneva, Basle, Frankfurt-am-Main, Helbling & Lichtenhahn/Brussels, Bruylant, 1997, p. 552.

¹²¹ Constitution of Canton Berne of 6 June 1993, RS 131.212.

¹²² Article 10(1) of the Federal Law of 9 October 1992 on Federal Statistics (LSF), RS 431.01.

¹²³ LSF, Article 13.

¹²⁴ LSF, Article 3(1).

¹²⁵ LSF, Article 3(1) in conjunction with Article 7.

¹²⁶ LSF, Article 14.

¹²⁷ LSF, Article 18(1).

¹²⁸ <http://www.bfs.admin.ch>

¹²⁹ Article 1 of the Federal Law of 26 June 1998 on the Federal Population Census, RS 431.112.

ARTICLE 4

1. The Parties undertake to guarantee to persons belonging to national minorities the right of equality before the law and of equal protection of the law. In this respect, any discrimination based on belonging to a national minority shall be prohibited.

2. The Parties undertake to adopt, where necessary, adequate measures in order to promote, in all areas of economic, social, political and cultural life, full and effective equality between persons belonging to a national minority and those belonging to the majority. In this respect, they shall take due account of the specific conditions of the persons belonging to national minorities.

3. The measures adopted in accordance with paragraph 2 shall not be considered to be an act of discrimination.

104. The general principle of equality before the law requires that all individuals should be treated in accordance with the same legal rules in all legal situations and all situations of their day-to-day lives. It is not confined to particular sectors, but applies to all areas of the law¹³⁰. Generally speaking, equality before the law and the prohibition of discrimination stem in Switzerland from Article 8 of the Federal Constitution, on the one hand, and, on the other, from international instruments, such as the European Convention on Human Rights, the United Nations Covenant on Civil and Political Rights and the United Nations Convention on the Elimination of all Forms of Racial Discrimination.

1. EQUALITY BEFORE THE LAW

105. The principle of equality before the law within the meaning of Article 8(1) of the Federal Constitution is an autonomous constitutional right. It guarantees, generally, the equality of individuals before all the institutions of the State¹³¹, particularly before police and judicial bodies. The Federal Court considers that the principle of equality before the law is breached where identical situations are not treated in a like manner in accordance with their similarity or where different situations are not treated differently in accordance with their different nature¹³². Equality before the law is a principle which applies both to legislative activity and to the application of the law¹³³. In the context of the principle of equality before the law, inequality of treatment may be allowed where the actual situations giving rise to it are genuinely different from the point of view of constitutional law. In all cases of unequal treatment, the court has to establish objectively the extent to which differentiation appears justified in the light of the actual situations¹³⁴.

2. THE PROHIBITION OF DISCRIMINATION

¹³⁰ J.P. Müller, *Grundrechte in der Schweiz; Im Rahmen der Bundesverfassung von 1999, der UNO-Pakte und der EMRK*, 3rd edition, Berne, Stämpfli, 1999, p. 396. See also W. Kälin, *Grundrechte im Kulturkonflikt*, NZZ Verlag, 2000, pp. 97 *et seq.*

¹³¹ J.P. Müller, *op. cit.*, p. 396.

¹³² See, for example, ATF 124 I 289, 292, recital 3b.

¹³³ ATF 121 II 198, 204, recital 4a.

¹³⁴ ATF 122 I 343, 349 *et seq.*, recital 4.

106. Article 8(2) of the Federal Constitution sets forth several prohibitions of specific forms of discrimination; however, the list is not exhaustive. By virtue of the principle of non-discrimination, no circumstance justifies a person belonging to one of the groups mentioned in the list being treated differently if that circumstance serves as a ground for discriminating against that group¹³⁵. Consequently, all discrimination based on membership of a national minority is prohibited.

3. MEASURES TAKEN TO ELIMINATE INDIRECT DISCRIMINATION OF WHICH NATIONAL MINORITIES MAY BE VICTIMS

107. Instances of discrimination also exist which do not stem from legal provisions themselves, but only from their practical consequences¹³⁶. The elimination of such indirect discrimination is an obligation imposed by the Constitution. Sometimes, interpretation of the provisions at issue in accordance with the Constitution suffices to prevent such indirect discrimination. At others, the principles of equality and non-discrimination are not enough to secure genuine equality as between persons or social groups. In such cases, therefore the specific situation of the latter may warrant special measures being taken in their favour¹³⁷. As a result, positive discrimination – that is to say, specific measures taken in favour of particularly underprivileged groups which are intended to correct a former or a present discrimination – is not only legal from the point of view of constitutional law, but may be required in certain circumstances¹³⁸. However, such a supporting measure must not penalise third parties in an intolerable manner, particularly those disadvantaged by the supporting measure¹³⁹. In addition, both at the cantonal and federal levels, this type of supporting measure must have a formal legal basis.

ARTICLE 5

1. The Parties undertake to promote the conditions necessary for persons belonging to national minorities to maintain and develop their culture, and to preserve the essential elements of their identity, namely their religion, language, traditions and cultural heritage.

2. Without prejudice to measures taken in pursuance of their general integration policy, the Parties shall refrain from policies or practices aimed at assimilation of persons belonging to national minorities against their will and shall protect these persons from any action aimed at such assimilation.

1. SAFEGUARDING AND DEVELOPING THE CULTURE AND IDENTITY OF NATIONAL MINORITIES AS REGARDS THEIR RELIGION, LANGUAGE, TRADITIONS AND CULTURAL HERITAGE

1.1. Religion

¹³⁵ Message of the Federal Council of 20 November 1995 on a new Federal Constitution (hereinafter: “Message on a new Federal Constitution”), FF 1997 I 1, 144 *et seq.*

¹³⁶ J.P. Müller, *op. cit.*, pp. 441-442.

¹³⁷ A. Auer, G. Malinverni and M. Hottelier, *op. cit.*, Vol. II, p. 513.

¹³⁸ See Message of the Federal Council of 2 March 1992 on the accession of Switzerland to the 1965 Convention on the Elimination of All Forms of Racial Discrimination and the related revision of criminal law, FF 1992 III 265, 284-285, Ch. 52.

¹³⁹ ATF 125 I 21, 37 *et seq.*, recitals 5b and c.

108. Whilst the principle of the religious neutrality of the State is not expressly enshrined in the Federal Constitution, it may be inferred directly from the general guarantee of religious freedom set forth in Article 15 of the Constitution¹⁴⁰. The principle of the religious neutrality of the State essentially signifies that the State must not identify itself with any particular belief, religion or religious belief whatsoever¹⁴¹. There is therefore no State religion in Switzerland. Admittedly, by virtue of Article 72(1) of the Federal Constitution, regulating relations between Church and State falls within the remit of the cantons. Indeed, the cantons may in particular recognise “official churches” and grant them certain privileges, hence the great institutional diversity in this area in the various cantons. But, as the Federal Parliament has repeatedly pointed out, the fact that a canton recognises a particular church as the “official church” does not signify that the doctrine of that church becomes the State religion¹⁴².

109. The religious neutrality of the State protects all religious beliefs or opinions, even very minority ones, as is the case in Switzerland with the Mormons, Jehovah’s Witnesses and Methodists. Thus, by guaranteeing the lay nature of certain State functions and the principle of the religious neutrality of the State, the Federal Constitution secures protection for religious minorities¹⁴³.

110. Freedom of conscience and belief of every individual is enshrined in Article 15 of the Federal Constitution¹⁴⁴. By virtue of that provision, every person is entitled, first, freely to choose his or her religion and to form his or her philosophical beliefs and to profess them individually or collectively and, secondly, to join a religious community or hence to become a member of one and take part in religious education. Moreover, no one can be compelled to join a religious community or to become a member of one, to perform a religious act or to take part in religious education¹⁴⁵.

111. The Constitution also protects the right to change one’s religion and hence to leave the church of which one is a member. Whilst the Federal Court allows churches to lay down a special procedure whereby one of their members may leave them, that procedure may not constitute an obstacle to the wishes of the person concerned¹⁴⁶. Freedom of conscience also prohibits requiring the swearing of oaths, whether before the courts or on appointment to public office, since the relevant provisions and practice enable the oath to be replaced by a solemn affirmation.

112. Religious opinion alone cannot release a person from a civic duty, such as military service, where refusal to serve is punishable by a term of imprisonment under the Military Criminal Code of 13 June 1927¹⁴⁷. An initial relaxation of this rule was effected, however, through the amendment of 15 July 1991 of Article 81 of the Military Criminal Code, which

¹⁴⁰ See Message on a new Federal Constitution, FF 1997 I 1, 158-159. See also ATF 113 Ia 304, 307.

¹⁴¹ A. Auer, G. Malinverni and M. Hottelier, *op. cit.*, Vol. II, p. 233.

¹⁴² See, for example, FF 1991 II 1541; FF 1974 II 973.

¹⁴³ See ATF 113 Ia 304; ATF 119 Ia 178, where it was made clear that the constitutional guarantee also protects minority beliefs within the ambit of a religion. There are no statistics on the number of members of such minority religions.

¹⁴⁴ Liberty of thought, conscience and religion is further guaranteed by Article 9 of the European Convention on Human Rights and Article 18 of the United Nations Covenant on Civil and Political Rights.

¹⁴⁵ Reference is made in this connection to the first and second reports of Switzerland on the implementation of the United Nations Covenant on Civil and Political Rights, and more specifically the matters enlarged upon in Article 18.

¹⁴⁶ ATF 104 Ia 84.

¹⁴⁷ RS 321.0.

made it possible to carry out work of general interest instead of a term of imprisonment. On 19 May 1992, the people and the cantons accepted the proposal which had been put to them for a third time to introduce community service as a replacement. Article 59(1) of the Constitution now provides - alongside the rule laying down the obligation to serve - for the principle of community service, which is to be specified by the legislator. The Federal Law on Community Service, which entered into force on 1 October 1996, does not provide for an alternative to the obligation to serve: an individual is not entitled to choose freely between military and community service. But a person who makes a credible case before a civil commission that he is unable to reconcile the obligation to render armed service with his conscience (in particular for religious reasons) may perform substitute community service¹⁴⁸.

113. Religious freedom does not confer any right to special services with regard to burial in public cemeteries. The municipalities, which run the public cemeteries, are not under a duty to offer a religious community burial condition complying with all its ritual requirements. As a result, in the name of equal treatment, the authorities may impose common rules on all and refuse, for example, to create spaces reserved for any particular religious community. However, the Federal Court has recently held that whereas religious communities may not require an ad hoc grave in public cemeteries, they must in principle be able to organise their own private religious cemeteries¹⁴⁹. In this way, Switzerland, which is traditionally multi-cultural and multi-denominational, seeks to strike a balance between the different interests at stake¹⁵⁰.

114. For particulars of the right to manifest one's religion, the reader is referred to paragraphs 192 *et seq.* of this report.

1.2. Languages

115. As mentioned above, the national languages of the Confederation are French, German, Italian and Romanche¹⁵¹. French, German and Italian are also the Confederation's official languages¹⁵². The federal authorities use those three languages to communicate with citizens and the cantons and amongst themselves and federal legislative texts are published in them. As for Romanche, it is an official language only for the Confederation's relations with persons of Romanche tongue¹⁵³.

116. As for the distribution of competences between the Confederation and the cantons in this regard, in Switzerland language policy falls essentially within the competence of the cantons.

117. Under Article 70(3) of the Federal Constitution, the cantons, in like manner to the Confederation, have to encourage understanding and exchanges as between the linguistic communities.

¹⁴⁸ See Message of the Federal Council of 22 June 1994 on the Federal Law on Community Service (LSC), FF 1994, III 1597, 1618 *et seq.*

¹⁴⁹ ATF 125 I 300, 309. Accordingly, in the absence of proper grounds the cantons may not deny religious communities the possibility of arranging their own private religious cemeteries.

¹⁵⁰ It should be noted that some cantons (in particular, Neuchâtel, Argau, Basle-City, Thurgau, Lucerne, Zürich, Sankt-Gallen and Geneva) have Jewish cemeteries. In Canton Jura, a special section of a public cemetery is reserved for Jews. Likewise, in the cities of Berne, Geneva and Basle, part of a public cemetery is reserved for Muslims and there are plans to do likewise in the Cantons of Neuchâtel and Zürich.

¹⁵¹ Federal Constitution, Article 4.

¹⁵² Federal Constitution, Article 70(1), first sentence.

¹⁵³ Federal Constitution, Article 70(1), second sentence.

118. In addition, under Article 70(4) of the Federal Constitution, the Confederation has the task of supporting the multilingual cantons in the performance of their specific tasks.

119. Under Article 70(5) of the Federal Constitution, the Confederation is further empowered to support measures taken by Graubünden and Ticino in favour of the Romanche and Italian languages. The Federal Law of 6 October 1995 on Financial Aid for Safeguarding the Romanche and Italian Languages and Culture and its implementing ordinance, which entered into force on 1 August 1996, enable the Confederation to support measures contemplated by the two cantons in question¹⁵⁴. In 1999, that aid amounted to CHF 4,631,300 in the case of the Canton of Graubünden and to CHF 2,246,132 in the case of the Canton of Ticino¹⁵⁵.

120. The legislative provisions necessary in order to implement the aforementioned constitutional provisions are in preparation¹⁵⁶. Those provisions will govern in particular the use of the official languages by the federal authorities and administrations, promotion of understanding and exchanges as between linguistic communities and support from the Confederation for the multilingual cantons. These measures are intended further to reinforce the quadrilingualism of Switzerland, since, on the one hand, federal services will use the regional and minority languages and, on the other, measures will be taken to encourage the development of individual language competence. In order to give practical effect to those measures, the Confederation and the cantons will have to work together, in particular in order to create conditions which will enable innovative educational concepts taking account of the country's linguistic diversity to be implemented¹⁵⁷. Most official documents of the Confederation, in particular legislative texts, are translated into French, German and Italian. Some are also translated into Romanche¹⁵⁸.

121. As far as the cantons are concerned, it is important to note that they themselves determine their official languages while making sure that harmony is maintained between the linguistic communities and taking heed of the traditional territorial distribution of the languages and having regard to the indigenous linguistic minorities¹⁵⁹.

122. In Canton Berne, virtually 84% of the population is German speaking and some 8% French speaking. 8% of the population speak some other language. Under the Constitution of Canton Berne, French and German have the status of official languages of the canton. The canton and the municipalities may take account of the specific conditions resulting from the fact that the canton is bilingual. Citizens may address themselves to authorities whose competence extends to the entire territory of the canton in the official language of their choice¹⁶⁰.

123. Canton Fribourg has about 61% French speakers, as against 30% German speakers. 9% of the population speak some other language. Under the Constitution of Canton Fribourg, both French and German are recognised as being official languages. Their use is governed by

¹⁵⁴ RS 441.3 and 441.31.

¹⁵⁵ See the first periodic report of Switzerland on the European Charter for Regional or Minority Languages, September 1999, p. 6.

¹⁵⁶ See the report of 1 March 2000 on the programme for the 2000-2003 legislature, FF 2000 2168, 2193.

¹⁵⁷ Periodic report of Switzerland on the European Charter for Regional or Minority Languages, 1998, p. 14.

¹⁵⁸ See in this regard the Federal Law of 21 March 1986 on Official Publications, RS 170.512, and the Ordinance of 19 June 1995 on Translation within the General Administration of the Confederation, RS 172.081.

¹⁵⁹ Federal Constitution, Article 70(2).

¹⁶⁰ Article 6 of the Constitution of Canton Berne of 6 June 1993, RS 131.212.

applying the principle of the territoriality of the languages. The State is under a duty to encourage understanding as between the two linguistic communities¹⁶¹.

124. 60% of the population of Canton Valais-Wallis is French speaking and just under 29% German speaking. 11% of the population speak some other language. Under the Constitution of Canton Valais, French and German are recognised as being official languages and the principle of equal treatment of both languages has to be applied in both legislation and administration¹⁶².

125. Canton Graubünden is trilingual. Some 65% of its population is German speaking, 17% Romanche speaking and 11% Italian speaking. 7% of the population speak some other language. German, Romanche and Italian all have the status of official languages¹⁶³.

126. In Canton Ticino, about 83% of the population is Italian speaking and 10% German speaking. 7% of the population speak another language. The official language of the canton is Italian¹⁶⁴. This springs from a strict application of the principle of territoriality designed to protect Italian.

1.3. Culture

127. In Switzerland, freedom to participate in cultural life is guaranteed by constitutional law itself through freedom of information as an aspect of freedom of opinion, and also through freedom to form one's opinion¹⁶⁵. The federal structure itself constitutes an important guarantee for safeguarding and promoting Switzerland's cultural diversity. Under Article 69(1) of the Federal Constitution, the field of culture comes, in principle, within the competence of the cantons. It therefore falls to the cantons to provide the public aid necessary to encourage cultural activities. As for the Confederation, it may promote cultural activities of national interest¹⁶⁶ and encourage artistic and musical expression, in particular through the promotion of education¹⁶⁷. This competence for cultural promotion covers, *inter alia*, maintenance of the cultural heritage, contemporary artistic creation and the dissemination of culture¹⁶⁸. In performing its tasks, the Confederation has to take account of the cultural diversity of the country and, in particular, its linguistic diversity¹⁶⁹. In addition to the actual situations peculiar to the various linguistic regions, account should also be taken of the culture of the travellers¹⁷⁰. The Confederation supports, for instance, cultural institutions such as the Pro Helvetia Foundation¹⁷¹, the National Museum, the National Library and its collection of works of art.

¹⁶¹ Article 21 of the Constitution of Canton Fribourg of 7 May 1857, RS 131.219.

¹⁶² Article 12 of the Constitution of Canton Valais/Wallis of 8 March 1907, RS 131.232.

¹⁶³ Article 64 of the Constitution of Graubünden of 2 October 1892, RS 131.226.

¹⁶⁴ Article 1 of the Constitution of the Republic and Canton of Ticino of 14 December 1997, RS 131.226.

¹⁶⁵ J. Künzli and W. Kälin, Die Bedeutung des UNO-Paktes über wirtschaftliche, soziale und kulturelle Rechte für das schweizerische Recht in W. Kälin, G. Malinverni and M. Nowak, Die Schweiz und die UNO-Menschenrechtspakte, 2nd edition, Geneva, Basle, Frankfurt-am-Main, Helbing & Lichtenhahn/ Brussels, Bruylant, 1997, p. 152.

¹⁶⁶ E.g. organisation of the festivities for the 700th anniversary of the Confederation.

¹⁶⁷ Federal Constitution, Article 69(2).

¹⁶⁸ Message on a New Federal Constitution, FF 1997 I 1, 290.

¹⁶⁹ Federal Constitution, Article 69(3).

¹⁷⁰ Message on a New Federal Constitution, FF 1997 I 1, 290.

¹⁷¹ Federal Law of 17 December 1965 on the Pro Helvetia Foundation, RS 447.1.

128. Pro Helvetia, a foundation governed by public law, was formed in order to maintain and develop the intellectual heritage of the country and to maintain cultural relations with countries abroad¹⁷². Its activity comprises in particular:

- Maintaining the intellectual heritage of Switzerland and preserving the original features of its culture, having regard especially to its popular culture;
- Encouraging intellectual creation in Switzerland by drawing on the vital forces of the cantons, the various linguistic regions and the various cultural circles;
- Promoting cultural exchanges between those regions and those circles, together with cultural relations with foreign countries, in particular by making known beyond the national frontiers the works and activities of Switzerland in the fields of thought and culture.

The foundation implements its programme in collaboration with existing cultural institutions and associations, whose activities it undertakes to co-ordinate. In the absence of such groups or if existing groups are unsuited to performing a given task, the foundation may act itself¹⁷³. The annual programme of the foundation is drawn up in such a way as to take account of the four linguistic regions and the various cultural circles and aspects of the country¹⁷⁴. The foundation receives a subsidy from the Confederation. For the years 2000-2003, the Federal Parliament has decided to grant the Pro Helvetia Foundation a total of 128 million francs¹⁷⁵.

129. The Swiss National Museum is intended to receive and conserve national antiquities of importance from the point of view of history and the fine arts¹⁷⁶. It has offshoots in the various linguistic regions of the country.

130. The National Library has the task of collecting, cataloguing, conserving, making accessible and making known information printed or preserved on media other than paper which have a link with Switzerland¹⁷⁷.

131. The Confederation is also responsible for encouraging international cultural exchanges and regulating the import and restitution of cultural goods and the export of cultural goods of national importance¹⁷⁸.

132. Under Article 71 of the Federal Constitution, the Confederation may moreover promote Swiss film production and cinematographic culture and legislate in order to foster a varied supply of cinematographic works of quality.

133. Protection of nature and heritage falls within the remit of the cantons¹⁷⁹. Under the Federal Constitution, the Confederation is to perform its tasks having regard to the objectives of

¹⁷² Article 1 of the Federal Law on the Pro Helvetia Foundation.

¹⁷³ Article 2 of the Federal Law on the Pro Helvetia Foundation.

¹⁷⁴ Article 12 of the law on the Pro Helvetia Foundation.

¹⁷⁵ See Message of the Federal Council of 12 May 1999 relating to the financing of the activities of the Pro Helvetia Foundation from 2000 to 2003, FF 1999 7023, and the Federal Decree of 6 December 1999 concerning the Financing of the Activities of the Pro Helvetia Foundation, FF 2000 123.

¹⁷⁶ Article 2 of the Federal Law of 27 June 1890 on the Creation of a Swiss National Museum, RS 432.31.

¹⁷⁷ Article 2 of the Federal Law of 18 December 1992 on the Swiss National Library, RS 432.21.

¹⁷⁸ Message on a New Federal Constitution, FF 1997 I 1, 291.

¹⁷⁹ Federal Constitution, Article 78(1).

protection of nature and heritage. It is to administer the countryside, the physical configuration of localities, historical sites and natural and cultural monuments¹⁸⁰. The Confederation may also support efforts made in order to protect nature and heritage and to acquire or safeguard, by way of contract or compulsory purchase, objects of national interest¹⁸¹. It may additionally provide financial support for the cantons in their tasks of protecting the cultural heritage¹⁸².

134. Artistic freedom is guaranteed by Article 21 of the Federal Constitution. Artistic freedom applies, on the one hand, to artistic creation and, on the other, to the presentation of works of art and to the works of art themselves. It therefore protects not only the artists themselves, but also those persons who secure the publication of artistic creations, notably owners of art galleries, artists' agents, publishers and cinema owners¹⁸³.

135. It is deplorable that, in the past, the travellers were the victims of persecution in Switzerland, as elsewhere in Europe. In Switzerland, "L'oeuvre d'entraide pour les enfants de la grand-route", founded by Pro Juventute in 1926, seriously damaged the conditions of life of a number of travellers, by breaking up numerous families and discriminating against the travellers' culture, until it was wound up in 1973. In particular, abuses were perpetrated purportedly in order to protect nomad children, of whom more than 600 were forcibly settled. Following violent criticism in the media, the institution "Enfants de la grand-route" was wound up on 1973, which brought the abuses to an end. Since then both the Confederation and Pro Juventute have made public apologies to the travellers. In addition, in 1987 the Confederation – in collaboration with the cantons and Pro Juventute – proceeded to collect the files of "Oeuvre d'entraide" with a view to placing them in the federal archives and, at the same time, allowed persons affected to inspect them. Moreover, between 1988 and 1993, the Confederation paid out 11 million francs in damages to some 2,000 victims. Lastly, "l'Oeuvre d'entraide pour les enfants de la Grand-Route" was the subject of a scientific study carried out by Messrs. Leimgruber, Meier and Sablonier and commissioned by the Federal Department for Home Affairs. The findings of this study were presented and published in 1998¹⁸⁴. In response to this study, the Federal Council described the Confederation's responsibility, the damages paid to the victims and the problems connected with access to the files, and stated its determination to ensure that the interests of the travellers would be safeguarded in Switzerland both today and in the future¹⁸⁵. When consulted by the Federal Department for Home Affairs, the cantons, too, greeted the study with consternation. In the light of the results of this consultation, the Federal Council decided on 12 January 2000 to draw up a popular version of the study for the use of schools and educational establishments, to translate the document into French and Italian and to promote and co-ordinate future research work on the matter in concert with the cantons.

136. Today, relations between the authorities and the travellers have improved. There is better mutual understanding and better collaboration. The travellers's culture and way of life are taken into account and the State endeavours to protect and assist them.

¹⁸⁰ Federal Constitution, Article 78(2).

¹⁸¹ Federal Constitution, Article 78(3).

¹⁸² J. Künzli and W. Kälin, *loc. cit.*, p. 152.

¹⁸³ J.P. Müller, *op. cit.*, p. 305, with a reference to the Message on a New Federal Constitution, FF 1997 I 1, 166.

¹⁸⁴ W. Leimgruber, T. Meier and R. Sablonier, *Das Hilfswerk für die Kinder der Landstrasse, Historische Studie aufgrund der Akten der Stiftung Pro Juventute im schweizerischen Bundesarchiv, Berne, Archives fédérales suisses, 1998.*

¹⁸⁵ Position of the Federal Council of 5 June 1998 with regard to the historical study on "l'oeuvre d'entraide pour les enfants de la grand-route".

137. Most of the travellers living in Switzerland are of Swiss nationality. As such, they are entitled to exercise all the rights guaranteed by the Constitution, the law and international treaties. In particular, they are entitled to have their own cultural life and to speak their language.

138. Whilst travellers of Swiss nationality are therefore subject to formal equality, federal law does not confer any special status on them. However, a parliamentary committee has studied the present and future problems of the travellers; according to that committee, “travellers constitute an ethnic and cultural minority in Switzerland, a minority that it would be good to get to know”¹⁸⁶. In a petition handed in to the Federal Council on 23 November 1993, the travellers asked for official recognition of their people, campsites specially equipped for them and signature of an inter-cantonal convention which would allow them to work in more than one canton.

139. The Swiss legal system, governing as it does an essentially sedentary society, responds only imperfectly to the specific concerns of the travellers. This is likely to make it difficult to give practical effect to their rights and may result in forms of indirect discrimination against them¹⁸⁷. With a view to eliminating such indirect discrimination, the legislation of Berne, for instance, draws a distinction between setting up habitable caravans on a campsite for more than three months subject to planning permission and the camping of vehicles belonging to travellers for a maximum of six months in places authorised by the municipal authority with the landowners’ consent, which is not subject to planning permission¹⁸⁸. The lack of campsites and transit areas, the diversity of the cantonal rules governing itinerant trades and the education of nomad children are the main problems facing the travellers.

140. A number of cantons and municipalities have reacted to the problem of the lack of campsites and transit areas enabling travellers to perpetuate their way of life. Accordingly, the cantons of Berne, Graubünden and Ticino have set up several campsites in recent years. Other cantons are in the process of tackling this problem. In various cantons, major efforts still have to be made in order to set up satisfactory campsites, thereby enabling the travellers to practise their way of life freely. In some municipalities, a majority of inhabitants have refused in a referendum to set up donated campsites for travellers.

141. The second area of concern is the major differences between the various cantonal rules governing itinerant trades. It should be noted, however, that the Federal Law on the Internal Market, which entered into force on 1 July 1996¹⁸⁹, and seeks in particular to facilitate occupational mobility and economic trade in Switzerland and to support the efforts made by the cantons to harmonise conditions for authorising access to the market¹⁹⁰, has already enabled the travellers’ situation to be improved. In addition, on 14 March 2001, the Federal Parliament adopted a bill and a message relating to a new law on itinerant trade. The new law will unify itinerant trade at federal level, it having been hitherto regulated by the cantons. It will repeal the

¹⁸⁶ Parliamentary initiative Foundation “Assurer l’avenir des gens du voyage”, report of the Social Security Committee of the National Council, FF 1991 IV 449, 453.

¹⁸⁷ See in this connection A. Rieder, Indirekte Diskriminierung – das Beispiel der Fahrenden, in W. Kälin, Das Verbot ethnisch-kultureller Diskriminierung, Verfassung und menschenrechtliche Aspekte, Geneva, Basle, Frankfurt-am-Main, Helbing & Lichtenhahn, 1999, pp. 149 *et seq.*; U. Glaus, Fahrende in der Schweiz: Gefangen zwischen direkter und indirekter Diskriminierung, *ibid.*, pp. 141 *et seq.*

¹⁸⁸ Article 4(1)(f) and Article 5(1)(k) of the Decree concerning the Procedure for the Grant of Planning Permission, Recueil systématique de la législation bernoise (RSB) 725.1.

¹⁸⁹ Federal Law on the Internal Market (LMI), which entered into force on 1 July 1996, RS 943.02.

¹⁹⁰ Article 1(2)(a) and (b) LMI.

plethora of regulations in this field and harmonise emoluments. The entry into force of this law will therefore facilitate the exercise of itinerant trades by travellers.

142. As for the education of nomad children, a number of cantons and municipalities have brought in flexible rules which will enable such children to attend school even if they accompany their parents on their travels in the summer period. In such cases, the children are monitored and trained remotely by teaching staff. Since primary schools fall within the competence of the municipalities, such remote education is occasionally denied to nomad children.

143. Since 1986 the Confederation has made a contribution to the “Association of Travellers” (Association des gens de voyage/Radgenossenschaft der Landstrasse), which was founded in 1975 to ensure that a varied range of assistance services is maintained for travellers. This annual flat-rate contribution is made to co-finance the running expenses of the Association’s secretariat. The mandate given to the Association is to provide services to travellers seeking assistance and to co-operate with other organisations of nomads. The amount of the annual contribution depends on the perceived requirements entered in the budget and in the Association’s programme of work: it covers approximately 85% of the Association’s aggregate expenses. The Association acts as an intermediary between the authorities and travellers, provides major services with regard to campsites and transit areas, intercedes in favour of travellers having difficulties with licences or education and provides advice in the field of legal assistance and social aid. This Association constitutes an important institution for public relations and sensitising public opinion to travellers’s concerns. By supporting this Association, the Confederation defends the interests of a Swiss cultural minority through an organisation independent of the State which is run by the travellers themselves.

144. Furthermore, in 1 May 1997 the Confederation created the Foundation “Assurer l’avenir des gens du voyage suisses”, whose mission is to contribute towards improving the conditions of existence of the nomadic population and to safeguarding its culture¹⁹¹. The Confederation has made available to the Foundation 1 million francs by way of founding capital¹⁹². Furthermore, it is to grant the Foundation in the first five years of its existence an annual operating contribution in the form of an aggregate framework appropriation of CHF 750,000. Before the expiry of each five-year period, a new framework appropriation is to be granted for the following period¹⁹³. In the first place, the Foundation sets out to be a forum within which representatives of the travellers, the municipalities, the cantons and the Confederation seek together to resolve a number of problems besetting travellers. The Foundation will shortly be publishing a study on “Land-use planning and travellers”, which will set out practical proposals with a view to securing living space for travellers. The Foundation also plays a role as an intermediary when specific problems have to be resolved. Lastly, it has the task of sensitising the public to the specific needs of travellers and in favour of various projects.

2. POLICY ON THE INTEGRATION OF NATIONAL MINORITIES

¹⁹¹ Article 1 of the Federal Law of 7 October 1994 on the Foundation “Assurer l’avenir des gens de voyage suisses”, which entered into force on 1 January 1997, RS 449.1.

¹⁹² Article 1 of the Federal Law on the Foundation “Assurer l’avenir des gens de voyage suisses”.

¹⁹³ Article 2 of the Law on the Foundation “Assurer l’avenir des gens de voyage suisses”.

145. In Switzerland, the concept of “integration” is normally employed in connection with the resident foreign population. Apart from that terminological question, it cannot be ignored that in Switzerland there is genuine co-existence and integration of numerous distinct populations. As can be seen throughout this report, Switzerland, which groups together in its territory numerous communities with different languages, cultures and religions, does everything possible, at both the cantonal and federal level, in order to secure the requisite protection for the national minorities.

3. PROTECTION AGAINST FORCED ASSIMILATION

146. Switzerland’s constitutional order and federalist structure guarantee effective protection against the assimilation of national minorities. What is more, the various measures described in this report all aim to ensure that persons belonging to a national minority are not assimilated by force, but preserve and perpetuate their culture and the main constituents of their identity, in particular their religion, language, traditions and cultural heritage.

4. OFFICIAL INSTITUTIONS CONTRIBUTING TO THE ATTAINMENT OF THE OBJECTIVES OF ARTICLE 5 TO A PARTICULAR EXTENT

4.1. The Federal Commission against Racism

147. This Commission was set up in the wake of Switzerland’s accession to the United Nations Convention on the Elimination of all Forms of Racial Discrimination¹⁹⁴. Created by the Decree of 23 August 1995 of the Federal Council, it is made up of representatives of minorities, religious communities, NGOs particularly involved in this area, the Conferences of Cantonal Chiefs of Police and Heads of Public Education, the social partners and experts. It considers the problem of racial discrimination and strives to attain better understanding between persons of different race, colour, national or ethnic origin or religion. It fights against all forms of racial discrimination, direct or indirect, and pays particular attention to prevention. Its chief activities are as follows:

- Direct actions: public information and organisation of and support for awareness and prevention campaigns designed to combat racism;
- Consultation: advice and support for the federal authorities (in particular in their legislative activities, in the execution of legal provisions and in the preparation of opinions and reports); advice and support for individuals (mediation);
- Co-operation: co-operation with authorities at every level (municipal, cantonal, federal and international) and with interested organisations and circles;
- Scientific analysis: studying the phenomenon of racism from the scientific and ethical points of view and analysis of information relating to specific events and their repercussions for society.

148. The Federal Commission against Racism also provides information for citizens on legal remedies and avenues in their disputes with the federal administration, clarifies the facts and endeavours to reconcile the parties. However, the Commission has no decision-making powers.

¹⁹⁴ The Convention of 21 December 1965 on the Elimination of all Forms of Racial Discrimination entered into force in Switzerland on 29 December 1994, RS 0.104.

149. Anti-Semitism in all its forms, the condition of Muslims and the condition of travellers in Switzerland are among the main concerns of the Federal Commission against Racism. For instance, it published a report on Anti-Semitism in Switzerland (1998) and another on the condition of Muslims in Switzerland (1999) and organised a seminar on the question of the institutional integration of Muslims in Switzerland (18 January 2000).

4.2. Other official institutions

150. At federal and cantonal level, there are other official organisations whose tasks are concerned with the protection of human rights in specific fields. Mention must be made in particular of the Federal Commissions dealing with aliens, refugees, women, the family and young people and of the Bureau for Equality between Men and Women of the Federal Department for Home Affairs, which has offshoots in numerous cantons and in the principal cities.

151. Moreover, the Cantons of Zürich, Basle-City and Basle-Land and the cities of Berne, Zürich and Winterthur have created posts of ombudsman responsible for assisting individuals in their relations with the administration.

ARTICLE 6

1. The Parties shall encourage a spirit of tolerance and intercultural dialogue and take effective measures to promote mutual respect and understanding and co-operation among all persons living on their territory, irrespective of those persons' ethnic, cultural, linguistic or religious identity, in particular in the fields of education, culture and the media.

2. The Parties undertake to take appropriate measures to protect persons who may be subject to threats or acts of discrimination, hostility or violence as a result of their ethnic, cultural, linguistic or religious identity.

1. MEASURES TO PROMOTE TOLERANCE

152. Switzerland seeks to use effective measures to promote the spirit of tolerance and intercultural dialogue. To this effect, it attaches a great deal of importance to education, culture and the media, which it regards as particularly attractive means of promoting those objectives¹⁹⁵. It should be stressed that, whilst those measures (see list of examples set out below) are aimed in a general manner at all the communities established in Switzerland, it is appropriate that they should have a manifest interest for the national minorities.

1.1. Education

¹⁹⁵ Apart from education, culture and the media, Switzerland has drawn up a non-exhaustive catalogue of existing measures for fostering mutual understanding between the communities established in the country. See the Message of the Federal Council of 2 March 1992 on the accession of Switzerland to the International Convention of 1965 on the Elimination of all Forms of Racism and the related revision of criminal law, FF 1992 III 265, 311, Ch. 81.

153. Education is a key sector from the point of view of encouraging tolerance and promoting inter-cultural dialogue. This is because teaching and education in schools ought to foster awareness on the part of children of the visible and covert forms of racism, encourage children to combat them and enable persons of different cultures to meet overtly without fear.

1.1.1. At the cantonal level

154. The cantons make numerous and varied efforts in the field of education and strive to foster inter-cultural understanding. They also support private initiatives to this effect.

155. Accordingly, the Conference of Cantonal Directors of Public Education (CDIP) has adopted a declaration in which it is stressed that, at all levels, schools must teach pupils respect for their fellows, tolerance between religious, ethnic, social and other groups and peace between peoples¹⁹⁶. Those principles are taken into account, *inter alia*, in the training – and continuing training – of teaching staff and in preparing school curricula and teaching materials. Intercultural education – a key concept of education in a multi-cultural society – constitutes a preferred educational instrument, not only for preventing racial discrimination, but also for awakening children's understanding of minorities and respect and tolerance in relations with other people coming from different cultures. The teaching of languages, particularly the national languages, also constitutes a major contribution by schools to intercultural understanding.

156. To take the example of Basle-City, anti-Semitic or racist prejudice is combated at university primarily through information. Accordingly, Judaism, its religion, culture and history have long formed part of teaching programmes and research projects. Recently, moreover, a university institute for Jewish studies has been set up in this canton. Public schools in Basle-City and Basle-Land also offer courses whose aim is to combat anti-Semitism and other forms of racism. At present, the Canton of Basle-City is paying particular attention to the subject of anti-Semitism in its teaching programmes and instruments. As a result, the history of Judaism, in particular during the Second World War, will be taught in all classes, up to secondary level, in history and German lessons.

157. Legal provisions, recommendations and directives designed to secure better integration of children of other cultural origins exist in numerous cantons. The Information and Documentation Centre for Questions of Training, which is attached to the CDIP Secretariat, collates these texts, thereby providing a detailed overview of the cantons' training policy in this context. However, a detailed presentation of all the activities carried out in this area is not possible within the confines of this report.

1.1.2. At the federal level

158. Among other things, the Confederation supports scientific research¹⁹⁷, including research into the notion of a multi-cultural society. In the context of national research programmes, the National Fund for Scientific Research, which is funded by the Confederation, has supported numerous projects (for example, programmes entitled "Cultural diversity and national identity" and "Migrations and cultural relations"), whose aims include better understanding of migrations

¹⁹⁶ The CDIP adopted this declaration on 6 June 1991. See the second and third periodical reports presented by Switzerland to the UN Committee for the Elimination of Racial Discrimination, Berne, May 2000, pp. 112 *et seq.*, paragraphs 238 *et seq.*

¹⁹⁷ Federal Constitution, Article 64(1).

and intercultural relations. A further objective of these projects is to support the public authorities and the organisations and private individuals active in the sphere of migration and intercultural relations by making available appropriate documentation and guidelines for action.

159. In the socio-cultural sphere, the Confederation is active in the field of youth policy. It should be pointed out that pluri-lingualism, multi-culturalism and transcending linguistic frontiers are expressly mentioned in the basic legal texts as criteria. Accordingly, the Confederation provides financial support for institutions whose aim is to promote exchanges between young people of different regions, even outside Switzerland, as part of extra-curricular activities. Such exchanges assist in the fight against racist or nationalist prejudice. The framework for Confederation's commitment includes the "Youth Campaign against Racism, Xenophobia, Anti-Semitism and Intolerance", the idea for which was launched by the Heads of State or Government of the member States of the Council of Europe, meeting in Vienna in October 1993. To this end, the Federal Council has set up a national commission responsible for co-ordinating activities undertaken at national, regional and local level and for supporting, through a special fund, young people's projects designed to sensitise a major part of public opinion to the need for a more tolerant, more open society and to encourage young people to take part in the fight against all forms of racism, xenophobia and intolerance.

1.2. Culture

160. In the field of culture, competence is vested primarily in the cantons and municipalities. In the cantons, and especially in the big population centres, numerous cultural events are organised and they contribute towards better understanding between the different cultures¹⁹⁸. As for the Confederation, it is competent to promote cultural activities of national interest and to encourage artistic and musical expression. In so doing, it is bound to take account of the cultural diversity of the country¹⁹⁹.

161. The Confederation does merely finance the Pro Helvetia Foundation; it also encourages intercultural understanding in a variety of spheres and supports certain minority groups which are anxious to preserve their cultural identities. For example, it supports the Foundation "Assurer l'avenir des gens de voyage suisses" (Securing the future of Swiss travellers)²⁰⁰ and the de facto association of Swiss nomads "Association des gens de voyage/Radgenossenschaft der Landstrasse" – Association of travellers).

162. Furthermore, in connection with the promotion of the cinema, the Confederation attaches particular importance to the quality and variety of cinematographic productions on offer and encourages the distribution in Switzerland of films from a variety of cultural environments²⁰¹. This is yet another contribution towards better intercultural understanding.

163. Lastly, it may be noted that the Swiss National Library, which is run by the Confederation, has launched a project for a multilingual national catalogue.

¹⁹⁸ It is not possible to provide a systematic account of these events within the confines of this report.

¹⁹⁹ Federal Constitution, Article 69(2) and (3).

²⁰⁰ Federal Law on the Foundation "Assurer l'avenir des gens de voyage suisses".

²⁰¹ Federal Constitution, Article 71. The present measures taken by the Confederation for the purposes of encouraging film-making in Switzerland are based on Articles 5 *et seq.* of the Federal Law of 28 September 1963 on the Cinema, RS 443.1, and on Articles 9 *et seq.* of the Ordinance of 24 June 1992 on the Cinema, RS 443.11.

1.3. The Media

164. In Switzerland, the independence of programme and scheduling and the freedom of the media are guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms²⁰², by the United Nations Covenant on Civil and Political Rights²⁰³ and by the Federal Constitution²⁰⁴. As a result, the Confederation cannot exercise a direct influence on radio and television programme schedules or on the content of the press. Likewise, radio and television programme schedulers are not, in principle, bound by federal, cantonal or municipal directives. In contrast, they must comply with legislative framework provisions. Laws in the formal sense which respect the principle of proportionality and have a public interest in view may restrict freedom of expression. Further, the media are subject to the ordinary law. Civil law and criminal law may restrict the freedom to disseminate information. In particular, Articles 28 *et seq.* of the Civil Code protect persons against unlawful attacks, in particular in the press, and Article 261bis of the Criminal Code²⁰⁵ makes it an offence to disseminate racist ideologies and incite racial hatred or discrimination based on racial origin.

165. The press (daily and weekly newspapers, magazines) is organised in a purely private form. Apart from the aforementioned provisions of the ordinary law, the amount of rules applicable to it is small.

166. In the case of radio and television, however, Article 93(1) of the Federal Constitution confers competence on the Confederation to legislate in their regard. In addition, Article 93(2) of the Federal Constitution sets forth the constitutional mandate of those media, which, as a whole, have to contribute to cultural development and to the free formation of opinion, take account of the specific characteristics of the country and of the needs of the cantons, present events faithfully and reflect the diversity of opinions in a fair manner. The independence of radio and television and the independence of programme design are guaranteed by Article 93(3) of the Federal Constitution.

167. The constitutional mandate is specified by the Federal Law on Radio and Television²⁰⁶, which sets out the principal rules and objectives and provides, in particular, that radio and television must take account of the diversity of the country and its population²⁰⁷.

168. In order to produce radio or television programmes, a concession must be granted listing the general principles relating to programme scheduling. As far as electronic media are concerned, there is in Switzerland a private sector, funded by advertising, and a public service, funded by licence fees paid by consumers.

169. The Société suisse de radiodiffusion (Swiss Broadcasting Company – SSR), an association formed under private law fulfilling a function of national interest, is responsible for performing a national public-service task. It is charged in particular with broadcasting programmes of equal value in all the official languages²⁰⁸. The SSR broadcasts ten radio

²⁰² Convention on the Protection of Human Rights and Fundamental Freedoms, Article 10.

²⁰³ United Nations Covenant on Civil and Political Rights, Article 19.

²⁰⁴ Federal Constitution, Articles 17 and 93.

²⁰⁵ See paragraphs 173 *et seq.* of this report.

²⁰⁶ Federal Law of 21 June 1991 on Radio and Television (LRTV), RS 784.40.

²⁰⁷ LRTV, Article 3(1).

²⁰⁸ Article 3 of the Concession granted to the SSR, FF 1992 VI 534.

stations (three in German, three in French, three in Italian and one in Rhaeto-Romance)²⁰⁹ as well as a full television station and a complementary television station for each linguistic region²¹⁰.

170. According to the concession granted to the SSR by the Federal Council on 18 November 1992, the radio and television stations must promote mutual understanding and exchanges between the various regions, linguistic communities and cultures of the country, and pay particular attention to the population of foreign origin²¹¹. The legislative provisions relating to advertising prohibit advertising which is contrary to good morals, supports or fosters acts of violence or detracts from the honour of third parties. Switzerland is a party to the Council of Europe Convention of 5 May 1989 on Transfrontier Television²¹², which provides that all transfrontier broadcasts must, in their presentation and content, respect human rights and human dignity. In particular, broadcasts must not constitute an incitement to racial hatred.

171. The SSR is financed substantially by a licence fee. The licence fee is allocated as follows: 43% to broadcasts in German, 33% to those in French and 23% to those in Italian. If these percentages are compared to those for the linguistic minorities set out above²¹³, it will be seen that the minorities are markedly favoured.

172. Whereas it is true that the SSR has a pre-eminent position at the national level, there is none the less a plethora of radio and television stations, some supported by the cantons, which broadcast programmes at local or regional level. In 1998 there were five television concessions and three radio concessions for broadcasting at national level or at the level of a linguistic region. One of them was specifically intended to improve understanding between the various religions and to explore ethical, religious and cultural issues²¹⁴.

2. APPROPRIATE MEASURES IN THE FIELD OF LEGAL PROTECTION

173. In Switzerland, persons who, on account of their language or their ethnic, cultural or religious identity, are liable to be exposed to discriminatory, hostile or violent acts or to the threat of such acts are protected at different levels. In their contacts with the authorities, they may invoke all the constitutional rights conferred upon them by the Federal Constitution, in particular the right to equality before the law. In the context of the criminal law, both ordinary and military, they qualify for the protection of the provisions against racial discrimination, which read as follows:

174. Article 261bis of the Swiss Criminal Code²¹⁵:

Racial discrimination

²⁰⁹ Article 2(1)(a) of the Concession granted to the SSR, FF 1992 VI 534.

²¹⁰ Article 2(1)(b) and (c) of the Concession granted to the SSR, FF 1992 VI 534; FF 1997 II 807.

²¹¹ Article 3 of the Concession granted to the SSR, FF 1992 VI 534.

²¹² RS 0.784.405.

²¹³ See paragraph 92 of this report.

²¹⁴ Concession of 10 May 1995 granted to Alphavision SA for “Fenêtre du dimanche”, FF 1995 IV 584; FF 1997 IV 1199.

²¹⁵ RS 311.0.

“Whosoever, publicly, incites hatred or discrimination towards a person or a group of persons by reason of their membership of a racial, ethnic or religious group;

Whosoever, publicly, propagates an ideology which seeks to disparage or denigrate systematically members of a race, an ethnic group or a religion;

Whosoever, with the same design, organises or encourages acts of propaganda or takes part in such acts;

Whosoever, publicly by words, in writing, by pictorial representation, gestures, assaults or by any other means, degrades or discriminates against a person or a group of persons in a manner which detracts from human dignity, by reason of their race, their membership of an ethnic group or their religion, or, for the same reason, denies, grossly minimises or seeks to justify a genocide or other crimes against humanity;

Whosoever refuses to provide a service aimed at the general public to a person or a group of persons because of their membership of a race, an ethnic group or a religion,

Shall be punished by imprisonment or a fine.”

175. Article 171c of the Military Criminal Code²¹⁶:

“1. Whosoever, publicly, incites hatred or discrimination towards a person or a group of persons by reason of their membership of a racial, ethnic or religious group;

Whosoever, publicly, propagates an ideology which seeks to disparage or denigrate systematically members of a race, an ethnic group or a religion;

Whosoever, with the same design, organises or encourages acts of propaganda or takes part in such acts;

Whosoever, publicly by words, in writing, by pictorial representation, gestures, assaults or by any other means, disparages or discriminates against a person or a group of persons in a manner which detracts from human dignity, by reason of their race, their membership of an ethnic group or their religion, or, for the same reason, denies, grossly minimises or seeks to justify a genocide or other crimes against humanity;

Whosoever refuses a service aimed at the general public to a person or a group of persons in a manner by reason of their membership of a race, an ethnic group or a religion,

Shall be punished by imprisonment or a fine.

2. If the offence is minor, it shall be punished by a disciplinary measure.”

176. It is further appropriate to quote Article 264(1) of the Criminal Code, which entered into force on 15 December 2000 and relates to the crime of genocide²¹⁷:

²¹⁶ RS 321.0.

²¹⁷ Federal Law of 24 March 2000 on the amendment of the Criminal Code, the Military Criminal Code and federal criminal procedure, FF 2000 2067.

“Whosoever, with the intention of destroying the whole or part of a national, racial, religious or ethnic group,

- a. kills members of the group or gravely injures their physical or mental integrity;
- b. subjects members of the group to conditions of existence which should result in its total or partial destruction;
- c. ordered or took measures seeking to impede births within the group;
- d. forcibly transferred or caused to be transferred children of the group to another group;

Shall be punished by life imprisonment or at least ten years’ imprisonment.”

177. Lastly, Article 6 of the Framework Convention is also covered in Switzerland by the requirements of the United Nations Convention on the Elimination of all Forms of Racial Discrimination. It should also be borne in mind that there is the Federal Commission against Racism, whose activities are described in paragraphs 147 *et seq.* of this report.

178. It is hard to draw up statistics on cases and on the success rate of proceedings brought for acts of discrimination, hostility or violence motivated by the victim’s ethnic, cultural, linguistic or religious identity. Consultation of the cantons has shown, however, that Article 261bis of the Criminal Code, which makes racial discrimination a criminal offence, has in fact been applied in a number of cases since it was enacted in 1995²¹⁸. However, the information furnished by the cantons does not mention the victims’ nationalities and so it is impossible to tell whether they belonged to a national minority within the meaning of the Swiss Declaration.

ARTICLE 7

The Parties shall ensure respect for the right of every person belonging to a national minority to freedom of peaceful assembly, freedom of association, freedom of expression, and freedom of thought, conscience and religion.

1. FREEDOM OF ASSEMBLY²¹⁹

179. Freedom of assembly is guaranteed by Article 22 of the Federal Constitution. This freedom is an important aspect of the democratic system²²⁰. Being included also in Article 11 of the European Convention on Human Rights and Article 21 of the United Nations Covenant

²¹⁸ Paragraph 6 of the second report of Switzerland to the European Commission against Racism, which was adopted on 18 June 1999, states that, since its enactment and up until the date of adoption of the report, Article 261bis of the Criminal Code had resulted in 130 decisions, a quarter of which resulted in a verdict of guilty.

²¹⁹ The right to freedom of expression is discussed in detail in the section on Article 9; the right to freedom of thought, conscience and religion in the section on Article 8 of the Framework Convention.

²²⁰ A. Auer, G. Malinverni and M. Hottellier, *op. cit.*, Vol. II, pp. 403-404. As those authors observe, freedom of assembly has a major political dimension. It is essentially through meetings that parties, associations, interest groups and the people form their opinions. See ATF 96 I 219, 224.

on Civil and Political Rights, it enshrines the right of any person to assemble with others, in particular in order to exchange ideas and to communicate them with others. The number of persons taking part in the meeting is irrelevant, as is the content of the message which they discuss, the venue for the meeting and its duration. It may be a recreational, cultural, political or friendly encounter, which may last a few minutes or several days and take place in a public or private place or in a procession²²¹. Freedom of assembly includes the right to call a meeting, organise it, participate in it or stand aside from it. Freedom of assembly is a human right and, as such, belongs to every natural person and hence also to every person belonging to a national minority. Freedom of assembly often constitutes for those who lack the means or the connections to have direct access to the media, the only avenue for intervening in the process for forming the democratic will. Consequently, freedom of assembly also protects the minorities' rights to participate²²². Legal persons may also rely on the freedom of assembly when they wish to organise a public meeting.

180. As regards the restrictions to which freedom of assembly may be made subject, they must be prescribed by law, cases of serious, direct and immanent danger being nevertheless reserved. They must further be justified by a public interest, respect the principle of proportionality and not devoid freedom of assembly of all substance²²³.

181. The right to hold meetings on private premises or in private grounds is limited only by police requirements relating to disturbance of the peace at night or the respect due to neighbours and by third parties' right of property. Meetings posing a threat to the constitutional order may also be prohibited or subjected to sanctions²²⁴ in the same way as meetings posing a threat to relations with foreign States²²⁵. However, the courts have held that a mere statement of a doctrine, albeit a revolutionary one, must be tolerated²²⁶.

182. Meetings which are liable to involve increased use of the public domain may be made subject to authorisation in so far as the law so provides. The police clause is reserved²²⁷. In the sphere of the use of the public domain, the exercise of police power is justified by the fact that it is impossible to predict all causes of disturbance indeterminately in the abstract. It should be noted that the authorities are not free to refuse authorisation to hold a meeting on a public thoroughfare; they must weigh all the interests at stake objectively and their decision must be amenable to judicial review. They must in particular take account of the importance of freedom of assembly, which, although it does not confer a right to use the public domain in terms of a particular place at a particular time, does confer a certain right to be taken into account when the exercise of freedom of assembly so requires²²⁸. Moreover, the Federal Court has held that freedom of assembly in the public domain can be restricted only on account of the direct and immanent danger which its exercise might objectively create for public order²²⁹. In particular, mere considerations of expediency do not constitute sufficient grounds for banning a meeting

²²¹ *Ibid.*, p. 403.

²²² The German Bundesverfassungsgericht (Federal Constitutional Court) has expressly recognised the function of the freedom of assembly in protecting political minorities, EuGRZ 1985, 450, 458.

²²³ Federal Constitution, Article 36(1) to (4).

²²⁴ Within the meaning of Article 275 of the Swiss Criminal Code.

²²⁵ Within the meaning of Articles 296 *et seq.* of the Swiss Criminal Code.

²²⁶ ATF 58 I 84.

²²⁷ In this connection, see the note on page 70(**translator's note: check page number once typeset**) of this report.

²²⁸ ATF 105 Ia 480; ATF 105 Ia 21.

²²⁹ ATF 107 Ia 226; ATF 108 Ia 300.

and in no case may the authorisation procedure lead to any form whatsoever of prior censorship²³⁰.

183. Furthermore, the prior authorisation system must be implemented with a degree of flexibility, in particular in the case of spontaneous peaceful demonstrations, which must not be dispersed by force merely on the ground that they were not authorised²³¹. The principle of proportionality also requires that, rather than being refused, authorisation should be coupled with conditions designed to avoid any threat to public order. Nevertheless, the authority should forgo making the grant of authorisation subject to conditions where the trouble liable to arise at a meeting may be obviated by other appropriate measures, in particular police surveillance. The extent of surveillance measures must, however, remain reasonable having regard to the interest in the meeting taking place. The authority's task is far from easy, since, in order to determine whether a given meeting is likely to pose a threat to public order, it will often have to predict how it will turn out. Here again, the principle of proportionality requires that any restriction should be based on serious reasons for believing that there is a threat to public order.

184. Lastly, the principle that any measure must affect the true perpetrator of the breach of public order implies that, saving an exception predicated by necessity, a meeting cannot be banned on the ground that it is liable to be disturbed by outsiders. The problem arises acutely with regard to counter-demonstrations. Whilst it is possible to ban the demonstration and the counter-demonstration in order to forestall violence, account must be nevertheless taken from the point of view of equal treatment, of the reciprocal interests of the demonstrators in order to avoid a grouping being able to announce a counter-demonstration merely in order to cause the demonstration itself to be banned²³².

2. FREEDOM OF ASSOCIATION

185. Freedom of association is guaranteed under Article 23 of the Federal Constitution. This freedom is also protected in Switzerland by Article 22 of the United Nations Covenant on Civil and Political Rights, by Article 8 of the United Nations Covenant on Economic, Social and Cultural Rights and by Article 11 of the European Convention on Human Rights. Freedom of association guarantees the right for every person to create with others an organised, voluntary grouping with a view to achieving certain common ends. It also covers the right to wind up such a grouping and to join or not to join one.

186. As a personal right, freedom of association may be relied upon by any individual and, consequently, by any person belonging to a national minority. As far as legal persons are concerned, former case-law of the Federal Court precluded them from invoking freedom of association²³³. In contrast, the European Court of Human Rights considers that legal persons governed by private law, in particular political parties, may rely on the protection of Article 11 of the ECHR²³⁴. Accordingly, such persons may appeal in their own name against a decision restricting their members' freedom of association or impeding their activity under their statutes

²³⁰ ATF 99 Ia 693; ATF 96 I 590. According to the case-law, the authority "may not refuse authorisation solely because it disapproves of the ideas and political objectives of the organisers". ATF 124 I 267, 269; ATF 108 Ia 300, 303.

²³¹ See to this effect G. Malinverni, *La liberté de réunion*, Geneva, Georg, Librairie de l'Université, 1981, pp. 148 *et seq.*

²³² ATF 103 Ia 314.

²³³ ATF 100 Ia 277, 286-287.

²³⁴ Judgment of the European Court of Human Rights of 25 May 1998 in *Socialist Party and Others v. Turkey* 1998-III 1233, § 26.

or their right to associate with each other. In contrast, legal persons governed by public law are not entitled to invoke freedom of association.

187. The concept of association as intended by Article 23 of the Constitution covers only associations which pursue a non-commercial purpose (in the broad sense). For their part, associations that set out to make a profit fall within the scope of Article 27 of the Constitution, which guarantees economic freedom. Whilst the protection of profit-making associations has a different legal basis (economic freedom), it is nevertheless equivalent when it comes to weighing up the interests at stake.

188. Freedom of association guarantees the right of every person to create associations, to accede or to belong to them and to participate in associative activities²³⁵. As a result, each individual is entitled to belong to an association or to join the trade union of his or her choice, without having to suffer disadvantages or sanctions as a result of his or her membership. However, it appears from the case-law that Article 23 does not grant any right to be admitted to an association against the wishes of its members, even if this causes the applicant to suffer economic damage²³⁶. Yet individuals do enjoy some protection against unjustified exclusion. They have the right to be heard beforehand, even if the statutes of the association allow persons to be excluded without any reasons being given²³⁷. Where necessary, it would have to be considered whether refusal to admit a person to an association on racial grounds falls within Article 8 of the Federal Constitution. Lastly, the right not to be forced to join an association or to belong to it and the right to leave it or to wind it up are also protected²³⁸.

189. The Swiss Civil Code regulates in detail the formation, organisation and winding up of non-profit-making associations having legal personality²³⁹ (*i.e.* “associations” in the narrow civil-law sense; other forms of non-profit-making association which cannot acquire legal personality or which have not yet acquired it are treated as partnerships governed by the Code of Obligations²⁴⁰).

190. Restrictions on freedom of association, as with any individual liberty, must be provided for by law, justified by a public interest and proportionate to the aim sought and not devoid of freedom of association of all substance²⁴¹. The Federal Court has declared that, by virtue of the principle of proportionality; a requirement for prior authorisation to form an association is unconstitutional²⁴². A prohibitory measure is justified only where the purpose or the means sought or used by an association are unlawful or dangerous for the State. If the unlawfulness relates to the fundamental legal rules in force, the notion of danger for the State is vaguer and its use might result in abuses. However, it can be inferred from the case-law of the Federal Court

²³⁵ Federal Constitution, Article 23(2).

²³⁶ ATF 86 II 365.

²³⁷ ATF 85 II 543; ATF 90 II 347. In addition, the Federal Court has recently held that, in the case of associations which adopt conduct of a dominant organisation in public and *vis-à-vis* authorities and potential customers of their members, each member’s right to develop his or her economic personality suggests that exclusion cannot be pronounced unless the association’s interest in the exclusion is greater than the member’s interest in conserving his or her status (in other words, only if there are proper reasons for pronouncing his or her exclusion), ATF 123 III 193.

²³⁸ Federal Constitution, Article 23(3).

²³⁹ Article 60(1) of the Swiss Civil Code of 10 December 1907 (RS 210.0) reads as follows: “Political, religious, scientific, artistic, charitable, recreational or other associations with no economic purpose shall acquire personality once they express in their statutes the intention to be organised corporately.”

²⁴⁰ Swiss Civil Code, Article 62.

²⁴¹ Federal Constitution, Article 36(1) to (4).

²⁴² ATF 96 I 229.

that only associations which aim to cause their views to prevail by means other than peaceful, democratic ones ought to be prohibited²⁴³. In such a case, the prohibition appears, moreover, to be in conformity with Article 17 of the European Convention on Human Rights and Article 5 of the United Nations Covenant on Civil and Political Rights. Furthermore, Article 275ter of the Criminal Code provides that the formation of associations dangerous to the State is a punishable offence. Although it falls to the cantonal authorities to take measures against unlawful or dangerous associations, the federal authorities may take measures against associations dangerous to the federal State. As far as associations within the meaning of Articles 60 *et seq.* of the Civil Code are concerned, Article 78 of that code provides that they may be wound up by the court if their aim is unlawful or contrary to morality. The following general rule may be inferred: whilst the political authorities may prohibit an association, it is for the court to declare it dissolved. For completeness' sake, it is added that Article 99 of the Military Criminal Code prohibits the foundation of movements seeking to ruin military discipline.

191. Historically, freedom of association was principally designed to guarantee the free formation of political parties; this is still one of its major functions today, together with the protection of the right to form trade unions. Under the Swiss democratic system, freedom of political association plays a preponderant role. In Switzerland there are some 16 political parties at the federal level. It would be necessary to go back to the troubled times of the Second World War to find instances in which the formation of political parties was prohibited on account of their dangerous nature. Thus, the Federal Council banned the Communist Party in 1937 and the so-called "frontist" parties in 1940. In the same period, the Federal Court held that Canton Zürich was entitled to ban formations constituted on a paramilitary model and that Canton Neuchâtel could prohibit the Communist Party²⁴⁴. It is reiterated that today such a measure would be conceivable only *vis-à-vis* a formation which sought to impose its ideas outside the democratic process.

²⁴³ ATF 110 Ib 18. The principle of proportionality applies: the measures will be of greater or lesser severity depending on the nature and the seriousness of the unlawfulness or the danger. The use of some unlawful measures, for example, may be penalised merely by a fine. In contrast, if the purpose or the whole of the means used are vitiated, the association will be prohibited. See J.-F. Aubert, *Traité de droit constitutionnel Suisse*, Vol. II, Neuchâtel, 1967, p. 753.

²⁴⁴ ATF 60 I 349; ATF 63 I 281.

ARTICLE 8

The Parties undertake to recognise that every person belonging to a national minority has the right to manifest his or her religion or belief and to establish religious institutions, organisations and associations.

1. THE RIGHT TO MANIFEST ONE'S RELIGION OR BELIEF

192. The right to manifest one's religion is guaranteed by Article 15 of the Constitution and the right to express a moral or other belief is guaranteed under the freedom of opinion provided for in Article 16 of the Federal Constitution. As with any fundamental freedom, the freedom to manifest one's religion or belief is vested in everyone and hence also in members of a minority. The right to manifest one's religion or belief may only be restricted on the ground of an overriding public interest and having regard to the general principle of proportionality. Thus, in an action concerning the refusal on the part of a prison to organise a collective religious service for Muslim detainees whereas it did do so for members of official churches of the canton, the Federal Court has held that "recognition of a religious community as an official church cannot be a criterion for holding that a collective religious service is permissible. Insofar as the decision to refuse to allow Islamic prisoners to hold their prayers on a Friday is based on the fact that the Islamic community does not enjoy any status under public law, it is contrary to Article 15 of the Federal Constitution"²⁴⁵.

193. Article 27(3) of the former Federal Constitution provided as follows: "Public schools must be able to be attended by members of all religions and they should not have to suffer in terms of their freedom of conscience and belief". Even though this provision has not been repeated verbatim in the new constitution, the principle remains valid²⁴⁶. The lay nature of public schools can be inferred from Articles 15 and 62 of the new Federal Constitution²⁴⁷. The Federal Court takes this requirement for public schools to be lay very seriously and has held that to fix a crucifix to the walls of public classes is contrary to Article 62²⁴⁸. In that case, it considered that the State, as the guarantor of the religious neutrality guaranteed by the Constitution, has to avoid itself becoming identified with a minority or majority religion, while ignoring different beliefs. In the view of the Federal Court, seeing a religious symbol in a classroom may injure the religious convictions of a person not belonging to the religion in question. By the same token, the Federal Court recently dismissed an appeal brought by a teacher in Geneva whom the cantonal authorities had refused permission to wear an Islamic scarf during lessons²⁴⁹. The Federal Court stressed in giving judgment that preservation of religious peace took precedence over the individual right to wear a religious symbol and that the ban on wearing an Islamic scarf also protected the right of pupils and parents. This judgment has recently been upheld by a judgment of the European Court of Human Rights²⁵⁰. It should be noted that the lay nature of

²⁴⁵ ATF 113 Ia 304.

²⁴⁶ See to this effect A. Auer, G. Malinverni and M. Hottelier, *op.cit.*, Vol. II, p. 236.

²⁴⁷ According to Article 62(2) of the new Federal Constitution, it falls to the cantons to provide sufficient basic education, which is accessible to all children. This education is obligatory and free of charge in public schools.

²⁴⁸ ATF 116 Ia 252.

²⁴⁹ ATF 123 I 96.

²⁵⁰ Judgment of 15 February 2001 in Dahlab v. Switzerland, application n° 42393/98.

public schools does not preclude religious education based on the precepts of the dominant religion of the canton, but such education may only be optional²⁵¹.

194. Since school is obligatory and regarded as a civic duty, in principle a pupil may not rely on freedom of conscience in order to obtain holidays²⁵². Nevertheless, an important change has taken place as a result of the case-law of the Federal Court, which based itself in particular on Article 9 of the European Convention on Human Rights in order to attenuate the absolute nature which former practice had conferred on that rule, on the ground that, from the point of view of the principle of proportionality, a categorical refusal to give any time off school was not compatible with religious freedom. Accordingly, in a recent judgment, the Federal Court upheld an appeal brought by the father of a girl of the Muslim faith to whom the cantonal authorities had refused to grant dispensation from swimming lessons (which were taken by boys and girls together) on the ground that no overriding public interest prevailed over the private interest in such a dispensation²⁵³. The public authorities are showing increasing understanding in their consideration of such requests for dispensations so as to ensure that, as far as possible, parents and children can perform the rites of their religion together.

195. In Switzerland, private religious schools exist alongside public schools. Such schools organise themselves freely in accordance with economic freedom and, where appropriate, on the basis of freedom of conscience and belief; this does not preclude a cantonal authorisation procedure designed to ensure that the level of private education corresponds to the standard of public schools²⁵⁴.

2. FINANCIAL SUPPORT FOR RELIGIOUS INSTITUTIONS

196. The cantons are free to determine their relations with the churches; in particular and while respecting freedom of conscience and belief, they may recognise one or more churches as “official churches” and take responsibility, for example, for paying their ministers, subsidising them or allowing them to levy taxes. The cantons’ practice has been held to be consistent with the general principle of equality.

ARTICLE 9

1. The Parties undertake to recognise that the right to freedom of expression of every person belonging to a national minority includes freedom to hold opinions and to receive and impart information and ideas in the minority language, without interference by public authorities and regardless of frontiers. The Parties shall ensure, within the framework of their legal systems, that persons belonging to a national minority are not discriminated against in their access to the media.

²⁵¹ ATF 23 II 1368.

²⁵² Article 49(5) of the former Federal Constitution expressly provided that “no-one may, on account of a religious opinion, avoid performing a civic duty”. This provision was not embodied *expressis verbis* in the new Federal Constitution. It is considered, however, that the principle remains valid. See in this connection the Message on a New Federal Constitution, FF 1997 I 1, 159.

²⁵³ ATF 119 Ia 178.

²⁵⁴ See H. Plotke, *Schweizerisches Schulrecht*, Bern, éditions Paul Haupt, 1979, Chapter 6.

2. Paragraph 1 shall not prevent Parties from requiring the licensing, without discrimination and based on objective criteria, of sound radio and television broadcasting, or cinema enterprises.

3. The Parties shall not hinder the creation and the use of printed media by persons belonging to national minorities. In the legal framework of sound radio and television broadcasting, they shall ensure, as far as possible, and taking into account the provisions of paragraph 1, that persons belonging to national minorities are granted the possibility of creating and using their own media.

4. In the framework of their legal systems, the Parties shall adopt adequate measures in order to facilitate access to the media for persons belonging to national minorities and in order to promote tolerance and permit cultural pluralism.

1. FREEDOM OF EXPRESSION, FREEDOM TO HOLD OPINIONS AND FREEDOM TO RECEIVE AND IMPART INFORMATION

197. Freedom to hold opinions and to receive and impart information is expressly enshrined in Article 16 of the Federal Constitution. It will be recalled that Article 10 of the European Convention on Human Rights and Article 19 of the United Nations Covenant on Civil and Political Rights also protect freedom to hold opinions and freedom of expression. That freedom encompasses the right to form, express and freely impart one's opinion²⁵⁵. Those rights are personal rights and, as such, any person – and hence any person belonging to a national minority – can rely on them.

198. In the context of direct democracy, the right to form one's opinion freely assumes particular importance. The right to form one's opinion presupposes a right to receive, without interference from the State and without regard to frontiers, opinions and information and to obtain information from sources available to all²⁵⁶. It presupposes, therefore, a right to information, since it is clear that, in order to form an opinion of one's own, it is also necessary to inform oneself. The right to form an opinion freely therefore precludes the public authority from imposing an opinion on an individual in any way whatsoever. It is in this way that the Federal Court considers that the creation of a State radio or television station is contrary to the freedom of opinion.²⁵⁷ It will be observed in this regard that Article 17 of the Constitution expressly guarantees freedom of the media. Radio and television are subject to a concession system and the grant of a concession comes within the remit of the federal authority. That system, which constitutes a derogation from the principles of free competition, is due in particular to the desire to maintain in a small multilingual country the broadcasting of national stations in the four national languages and to avoid an excessive concentration of those media in the hands of powerful groups. Radio and television have to present events faithfully and fairly reflect the diversity of opinions. Any person who considers that radio or television has breached their duty of objectivity may complain to an independent body and then to the Federal Court by way of an administrative appeal²⁵⁸. As for the right to obtain information from

²⁵⁵ Federal Constitution, Article 16(2).

²⁵⁶ Federal Constitution, Article 16(3).

²⁵⁷ ZBI 1982, p. 222.

²⁵⁸ Federal Constitution, Article 93(5). See also Articles 57 *et seq.* of the Federal Law of 21 June 1991 on telecommunications, RS 784.10.

sources available to all, it should be noted that, in the absence of a legal rule to the contrary, the concept of “sources available to all” does not cover acts of the administration. Moreover, the relevant case-law is rather restrictive, holding that there is a right to information only in four cases²⁵⁹: when the information has been declared to be freely accessible, when it has been provided freely by the authority²⁶⁰, when the exercise of a political right is at stake or, lastly, when an individual is personally concerned by the document that he asks to consult.

199. Likewise, freedom of expression plays a predominant role in the Swiss constitutional order, as shows the following quotation from a judgment of the Federal Court: “But freedom of expression is not merely, as is the case with other express or implied freedoms of federal constitutional law, a condition for the exercise of individual freedom and a vital factor for the development of the human person; it is still the foundation of any democratic State: by allowing the free formation of opinion, in particular public opinion, it is vital for the full exercise of democracy. It therefore warrants a separate place in the catalogue of individual rights guaranteed by the Constitution and preferential treatment on the part of the authorities²⁶¹ .

200. The field covered by freedom of expression includes all “products” or messages of human thought, whether they be a sentiment, a reflection, an opinion, information, etc.²⁶². However, according to the case-law of the Federal Court, freedom of expression covered only non-commercial content, on the ground that statements having principally a commercial aim were covered by economic freedom (Article 27 of the Constitution). The European Court of Human Rights does not draw such a distinction; in its view, commercial discourse is also protected by Article 10 of the European Convention on Human Rights²⁶³. This case-law is binding on the Swiss authorities as far as the interpretation of Article 10 of the European Convention on Human Rights and therefore enlarges the scope of freedom of communications to cover commercial advertising, but it does not affect the Federal Court’s power to define the scope of Articles 16 and 27 of the Federal Constitution independently²⁶⁴.

201. All mediums capable of carrying messages are protected: speech, writing, artistic or symbolic forms (banderols, badges, etc). In this regard, it should be noted that freedom of expression is also the source of other fundamental rights, such as the freedom of the media, discussed above, the freedom of the cinema, the artistic freedom and scientific freedom.

202. Freedom of expression may be subject to restrictions. In accordance with constitutional principles²⁶⁵ and also with Article 10 of the European Convention on Human Rights and Article 19 of the United Nations Covenant on Civil and Political Rights, such restrictions must satisfy certain conditions in order to be lawful: they must be founded on a legal basis, be justified by a public interest or by the protection of a fundamental right of another person, be proportionate and not violate the inviolable core of fundamental rights. In general, it is a question of striking

²⁵⁹ The case-law has been severely criticised in academic writings, in particular by M. Rosinelli, *Les libertés non-écrites*, Lausanne, Payot, 1987, pp. 163 *et seq.*, and D. Barrelet, *Droit suisse des mass media*, 2nd edition, Berne, Stämpfli, 1984, pp. 44 *et seq.* However, there is a draft federal law on transparency of the administration, under which any person may, subject to exceptions prescribed by law, have access to official documents of the federal administration without having to show a specific interest.

²⁶⁰ In such a case, the authority is bound by the principle of equality of treatment. ATF 107 Ia 312.

²⁶¹ ATF 96 I 592.

²⁶² Message on a New Federal Constitution, FF 1997 I 1, 160.

²⁶³ Judgment of the European Court of Human Rights of 24 February 1994 in *Casado Coca v. Spain*, Series A, No 285-A, § 35.

²⁶⁴ A. Auer, G. Malinverni and H. Hottelier, *op. cit.*, Vol. II, p. 265. ATF 123 Ia 12, 18; ATF 120 Ib 142, 148.

²⁶⁵ Federal Constitution, Article 36(1) to (4).

a balance, sometimes a delicate one, between the public interest in the maintenance of order and the private interest of the person in question, but also the public interest in freedom of expression.

203. The Criminal Code provides, *inter alia*, for the following restrictions on free expression:

- prohibition of defamation (Article 303);
- prohibition of the violation of business secrecy, secrecy relating to the private sphere, official, professional or military secrecy (Articles 162, 179, 179quater, 320, 321 and 329);
- prohibition of abuse of the telephone (Article 179septies);
- prohibition of public provocation of crime and violence (Article 259);
- prohibition of a breach of the peace of the dead (Article 262) or of interference with Swiss emblems (Article 270);
- prohibition of the representation of violence (Article 135);
- prohibition on prejudice to the freedom of belief and religion (Article 261);
- prohibition of racial, ethnic or religious discrimination (Article 261bis);
- prohibition of incitement to infringe military duties (Article 276)
- prohibition of subversive foreign propaganda (Article 275bis);
- prohibition of insulting a foreign State or an international institution (Articles 296 and 297)²⁶⁶.

204. In addition there are provisions protecting people's honour (Article 173 *et seq.*) or punishing certain sexual offences, such as pornography (Article 197).

205. Articles 28 *et seq.* of the Civil Code protect against unlawful attacks on a person's character, in particular in the press (right to damages, interim measures designed to forestall an attack, right of reply). It should be noted in this connection that a person accused of impugning another person's honour will not incur any penalty if he or she proves that the allegations were true or that he had serious grounds for believing that they were true (Criminal Code, Article 173(2)). Beneficiaries of freedom of expression and freedom of the press are therefore protected against abusive processes.

206. Prisoners can also avail themselves of freedom of expression and the right to receive information from generally accessible sources provided that prison order and security are not affected.

207. According to the case-law of the Federal Court, the use of the public domain for the purposes of manifesting an opinion may, "if it exceeds, by reason of its nature or intensity, habitual limits"²⁶⁷, be made subject to prior authorisation by the cantonal or federal authorities, even in the absence of an express legal basis. The authorities must take account of the principles of equal treatment and proportionality and of all the interests involved, while giving particular weight to the interests protected by fundamental rights²⁶⁸.

208. None of the restrictions described above is such as to constitute racial discrimination or discrimination against a national minority.

²⁶⁶ The Military Criminal Code contains equivalent provisions, such as Article 98 which makes provocation and incitement to infringe military duties an offence.

²⁶⁷ ATF 105 Ia 93.

²⁶⁸ ATF 107 Ia 294.

ARTICLE 10

- 1. The Parties undertake to recognise that every person belonging to a national minority has the right to use freely and without interference his or her minority language, in private and in public, orally and in writing.**
- 2. In areas inhabited by persons belonging to national minorities traditionally or in substantial numbers, if those persons so request and where such a request corresponds to a real need, the Parties shall endeavour to ensure, as far as possible, the conditions which would make it possible to use the minority language in relations between those persons and the administrative authorities.**
- 3. The Parties undertake to guarantee the right of every person belonging to a national minority to be informed promptly, in a language which he or she understands, of the reasons for his or her arrest, and of the nature and cause of any accusation against him or her, and to defend himself or herself in this language, if necessary with the free assistance of an interpreter.**

1. GUARANTEE IN LINGUISTIC MATTERS

1.1. Applicable provisions

209. At the federal level, Switzerland's linguistic diversity is taken into account by the Federal Constitution. Whereas French, German, Italian and Romanche are Switzerland's *national languages* (Article 4); the official languages of the Confederation are French, German and Italian (Article 70(1), first sentence). It is in those three languages that the federal authorities communicate with citizens, the cantons and among themselves and that federal legislative texts are published. As for Romanche, it is the official language for the Confederation's relations with Romanche-speaking people (Article 70(1), second sentence). In addition, the Confederation prohibits all discrimination on account of language (Article 8(2)). Lastly, Article 18 guarantees freedom of language. These provisions reflect the desire not only to secure linguistic freedom as a facet of human rights but also the desire to preserve the quadrilingual nature of Switzerland²⁶⁹.

210. Moreover, a number of international instruments ratified by Switzerland contain provisions which afford specific protection in linguistic matters. Thus, Switzerland is party to the European Charter for Regional or Minority Languages²⁷⁰ and the European Convention on Human Rights²⁷¹. Likewise, Switzerland is a party to the United Nations Covenant on Civil and Political Rights²⁷², the United Nations Covenant on Economic, Social and Cultural Rights, whose provisions on the right to education and on cultural rights also meet the aim of

²⁶⁹ J.P. Müller, *op. cit.*, p. 140.

²⁷⁰ See in this connection the Initial Report of the Swiss Government on the European Charter for Regional or Minority Languages.

²⁷¹ Articles 5(2) and 6(3), together with Article 14, of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

²⁷² Articles 26, 27 and 14(3)(a) and (f) of the United Nations Covenant on Civil and Political Rights.

protecting and promoting minority languages, and the Convention on the Rights of the Child, which provides for protection of children belonging to a linguistic minority.

1.2. Freedom of language in the Swiss legal order

211. Generally, Article 18 of the Federal Constitution guarantees every person the right to use his or her language freely and without interference, in private and in public, orally and in writing. This freedom is not confined to a particular geographical area, but belongs to all individuals irrespective of where they are or what language they use to express themselves. Freedom of language is a condition for the exercise of other freedoms, in particular freedom of expression, freedom of the press and political rights.

212. Freedom of language pursues a dual aim: first, that of fostering the development of the human being and enabling everyone to express themselves in their own language and, secondly, that of protecting linguistic minorities²⁷³. In Switzerland, the right to use one's language freely and without interference, in private and in public, orally and in writing, is regarded as a fundamental principle of the protection of persons belonging to national minorities. Indeed, the use of a minority language constitutes for persons belonging to national minorities one of their chief means of affirming and preserving their identity. It is also a means whereby they can exercise their freedom of expression.

2. USE OF A MINORITY LANGUAGE IN RELATIONS BETWEEN INDIVIDUALS

213. Freedom of language applies in the first place to relations between individuals. Strictly private relations form the solid core of the freedom which is protected against any interference on the part of the authorities. In private relations, the exercise of this freedom is not subject to any restriction.

214. Restrictions may be applied where it is a question of regulating the public sphere of relations between individuals, but only where the combined conditions of existence of a legal basis, an overriding public interest and respect for the principle of proportionality are present.

3. USE OF A MINORITY LANGUAGE IN RELATIONS WITH THE ADMINISTRATIVE AUTHORITIES

215. Freedom of language confers on individuals the right to use their language in their relations with the State. Individuals may address themselves to the administrative services of the Confederation in one of the four official languages and are entitled to receive a reply in the same language. Moreover, applications may be made to the Federal Court and the Federal Insurance Court in any one of the official languages. Individuals may use one of these languages in writing, in oral pleadings and in giving evidence. At present, no provision is made for the use of Romanche at the federal level for criminal trials²⁷⁴.

216. Some restrictions imposed by the principle of the territoriality of languages and the principles governing the use of the official languages at federal and cantonal level may be

²⁷³ G. Malinverni, *op. cit.*, p. 375.

²⁷⁴ See Article 97 of the Federal Law of 15 June 1934 on criminal procedure, RS 312.0. This situation should change in future. This is because, under Article 70(1) of the new Federal Constitution, Romanche is recognised as being an official language for the purposes of the Confederation's relations with Romanche-speaking persons. Both the bill on the Federal Court and the bill on federal criminal procedure take account of this change.

made to the freedom of language. In this respect, Switzerland approved the Framework Convention with the following declaration:

“Switzerland declares that the provisions of the Framework Convention governing the use of the language in relations between individuals and administrative authorities are applicable without prejudice to the principles observed by the Confederation and the cantons in the determination of official languages.”

217. The principle of the territoriality of languages, which is, moreover, expressly enshrined in the Federal Constitution²⁷⁵, aims to guarantee Switzerland’s linguistic plurality²⁷⁶. According to this principle, the cantons have the competence to determine their official language(s) and, in so doing, must take account of the linguistic composition of the population. Accordingly, a number of cantons have adopted two, or even three, official languages²⁷⁷. Consequently, the principle of the territoriality of languages enables the linguistic minorities to use their own language in official relations with the authorities or at school in those cantons where their language is a majority language. In contrast, the official languages preclude the use of another national language in relations with the authorities. Apart from the recognition of official languages, the independence of the cantons in linguistic matters entails cantonal competence to adopt *complementary* measures requiring a particular language to be used for relations between individuals and the State²⁷⁸. Accordingly, the multilingual cantons may delegate to decentralised public authorities competence to prescribe the use of a particular language in education or before the courts²⁷⁹. Again, by virtue of the principle of territoriality, the cantons have to adopt measures designed to safeguard the extent and homogeneity of Switzerland’s linguistic territories.

4. GUARANTEES RELATING TO THE USE OF LANGUAGE IN CRIMINAL MATTERS

218. The right of all persons belonging to a national minority to be informed, in the shortest possible time and in a language which they understand, of the reasons for their arrest, the nature and cause of the charges laid against them, and the right to defend themselves in that language is guaranteed in Switzerland, *inter alia*, by Articles 5 and 6 of the European Convention on Human Rights, by Article 14 of the United Nations Covenant on Civil and Political Rights and by Article 31(2) of the Federal Constitution.

219. In Switzerland, those rights are guaranteed, not only to every person belonging to a national minority, but more generally to all individuals.

220. It should be noted that, when it ratified the European Convention on Human Rights, Switzerland made an interpretative declaration indicating that the free assistance of an interpreter did not permanently absolve the beneficiary from payment of the resulting costs. Since the validity of that interpretative declaration has been contested both by the Federal Court²⁸⁰ and by the European Court of Human Rights²⁸¹, Switzerland accepted Article 10(3)

²⁷⁵ Federal Constitution, Article 70(2).

²⁷⁶ ATF 122 I 236.

²⁷⁷ See paragraphs 121 *et seq.* of this report.

²⁷⁸ A. Auer, G. Malinverni and M. Hottelier, *op.cit.* Vol. II, p.462.

²⁷⁹ For example, the Canton of Graubünden leaves the municipalities essentially free to determine what language is to be used for administrative purposes and teaching in schools.

²⁸⁰ ATF of 17.12.1991 in *G.F. v. Court of Justice of the Canton of Geneva*, published in the *Revue suisse de droit international et de droit européen*, 2/1992, pp. 486 *et seq.*

of the Framework Convention for the Protection of National Minorities without any declaration or reservation²⁸². It should further be noted that on 24 August 2000, Switzerland notified the Secretary-General of the Council of Europe that it was withdrawing its interpretative declarations and reservations on Article 6 of the European Convention on Human Rights.

ARTICLE 11

1. The Parties undertake to recognise that every person belonging to a national minority has the right to use his or her surname (patronymic) and first names in the minority language and the right to official recognition of them, according to modalities provided for in their legal system.

2. The Parties undertake to recognise that every person belonging to a national minority has the right to display in his or her minority language signs, inscriptions and other information of a private nature visible to the public.

3. In areas traditionally inhabited by substantial numbers of persons belonging to a national minority, the Parties shall endeavour, in the framework of their legal system, including, where appropriate, agreements with other States, and taking into account their specific conditions, to display traditional local names, street names and other topographical indications intended for the public also in the minority language when there is a sufficient demand for such indications.

1. USE OF SURNAME (OR PATRONYMIC)

221. The right of every person belonging to a national minority to use their surnames and forenames in a minority language together with the right to official recognition of those names is primarily designed to avoid such persons being obliged to relinquish their surname or the forcible change of their surname by the authorities merely because the persons concerned belong to national minorities, as has occurred in the past in some countries²⁸³.

222. These rights have been guaranteed in Switzerland since 1907 by the Civil Code, which provides that a person whose surname is contested may apply to the court to have his right recognised²⁸⁴. A person who suffers injury as a result of the usurpation of his surname may bring an action to restrain this, without prejudice to the award of damages in the event of fault²⁸⁵. If there are just grounds, the Government of the canton of a person's domicile may authorise that person to change his surname²⁸⁶. However, only Roman script is accepted in the registers of marriages, births and deaths²⁸⁷. The right to one's surname is also protected by Article 8 of the European Convention on Human Rights.

²⁸¹ Judgment of 22 May 1990 in *Weber v. Switzerland*, Series A, Vol. 177.

²⁸² See Message on the Framework Convention, FF 1998 1033, 1053, Ch. 23.512.

²⁸³ See Message on the Framework Convention, FF 1998 1033, 1053-1054 Ch. 23.52.

²⁸⁴ Swiss Civil Code, Article 29(1).

²⁸⁵ Swiss Civil Code, Article 29(2).

²⁸⁶ Swiss Civil Code, Article 30(1).

²⁸⁷ Article 40(1) of the Ordinance on Civil Status of 1 June 1953, RS 211.112.1.

2. DISPLAYING SIGNS AND OTHER INFORMATION OF A PRIVATE NATURE VISIBLE TO THE PUBLIC

223. In Switzerland, the right to display in their minority language signs, inscriptions and other information of a private nature²⁸⁸ visible to the public arises out of freedom of language. However, this right does not preclude a requirement for such inscriptions also to be displayed in the official language or languages of the country.

224. The fundamental rights guaranteed by the Federal Constitution, such as freedom of communication and freedom of language, apply indiscriminately to all persons belonging to a national minority. The guarantee of freedom of expression includes freedom of choice of the means of expression²⁸⁹. Streamers, badges, flags and signs, for example, constitute such means of expression protected by the law. Any restriction of fundamental rights must be founded upon a legal basis and satisfy requirements relating to the protection of the public interest²⁹⁰. Such a restriction must further respect the principle of proportionality and must not detract from the inviolable core of fundamental rights²⁹¹. When the public domain is used for the dissemination of ideas, that freedom may be made subject to authorisation, notably where it is foreseeable that an intensity will be reached that will limit other persons' use of the public domain to a significant degree, where it is necessary to co-ordinate the co-existence of divergent interests or where the situation entails considerable dangers for public order²⁹². In the context considered here, it is necessary also to take account of legally permissible restrictions which may be contained in cantonal or municipal building regulations. The Federal Court has had to consider the case of a building regulation of a municipality with a majority of Romanche speakers which authorised illuminated signs only in the Romanche language. A trader who wished to install an illuminated sign in Italian contested the regulation. The Federal Court held that, in view of the numerous threats to the Romanche language, the measures intended to safeguard areas with a Romanche-speaking majority – both from the point of view of their extent and that of their homogeneity – could be regarded as falling within a major public interest and that, in the specific case, a scrupulous examination of the interests involved permitted the conclusion that there was an overriding interest in the prohibition of signs drawn up in a language other than Romanche²⁹³.

3. PLACE NAMES

225. The determination of place names comes fundamentally within the competence of the cantons, or even the municipalities. As far as the Confederation is concerned, it has adopted an ordinance concerning the names of places, municipalities and stations²⁹⁴. It includes provisions on collecting, spelling and changing the names of places, municipalities and stations. The main criterion used in collecting and changing names is accuracy. In the Canton of Graubünden, many place names and names of districts and municipalities in the Romanche region were

²⁸⁸ The expression “private nature” refers to everything which is not of an official nature. See the Explanatory Report of February 1995 on the Framework Convention for the Protection of National Minorities, § 69.

²⁸⁹ Article 10(2) of the United Nations Covenant on Civil and Political Rights.

²⁹⁰ Federal Constitution, Article 36(1) and (2).

²⁹¹ Federal Constitution, Articles 36(3) and (4). The inviolable core of fundamental rights in the matter of communication is constituted by the prohibition of censorship.

²⁹² ATF 121 I 279, 282, recital 2a. See also J.P. Müller, *op. cit.*, p. 218.

²⁹³ ATF 116 Ia 345.

²⁹⁴ Ordinance of 30 December 1970 concerning the names of places, municipalities and stations, RS 510.625.

formerly indicated in German. Things have changed and today most districts, municipalities and places have their authentic name.

ARTICLE 12

1. The Parties shall, where appropriate, take measures in the fields of education and research to foster knowledge of the culture, history, language and religion of their national minorities and of the majority.

2. In this context the Parties shall inter alia provide adequate opportunities for teacher training and access to textbooks, and facilitate contacts among students and teachers of different communities.

3. The Parties undertake to promote equal opportunities for access to education at all levels for persons belonging to national minorities.

226. This article reflects the philosophy of the Framework Convention in the fields of education and research, which is to promote a spirit of tolerance and intercultural dialogue. In this respect, it complements Article 6(1) of the Framework Convention²⁹⁵.

227. Fostering knowledge of the culture, history, language and religion of the national minorities while facilitating contacts among students and teachers of different communities is one of the means used by Switzerland in order to strike a balance between the national minorities' interest in preserving their identity and integrating persons belong to those minorities into civil society, thereby strengthening social cohesion.

228. In Switzerland, education and training are primarily matters for the cantons, which endeavour, in different ways, to foster understanding and tolerance between cultures and support activities undertaken by individuals with a view to better intercultural understanding. The Swiss Conference of Cantonal Directors of Public Education has stressed that schools have a duty at all levels to train pupils to respect their neighbours, to be tolerant of differences between religious, ethnic, social and other groups and about peace between peoples²⁹⁶. In the context of its youth policy and through the use of subsidies, the Confederation supports several activities in this area. Action undertaken to date by the municipalities, the cantons and the Confederation is consistent with the principles of Article 12 of the Framework Convention and warrants being pursued.

229. As regards equal opportunities for access to education at all levels for persons belonging to national minorities, it should be observed that, in Switzerland, all children, regardless of their nationality, origin or gender, must receive sufficient education²⁹⁷. The fact that public education is free of charge is the corollary of the obligatory nature of public primary education²⁹⁸, since otherwise the obligation could not be effectively satisfied. It is in the

²⁹⁵ See paragraphs 152 *et seq.* of this report.

²⁹⁶ FF 1992 III 265. It should be noted that the Swiss Conference of Cantonal Directors of Public Education is in the course of drawing up new recommendations in which it calls for a reform in the co-ordination of language teaching during compulsory schooling.

²⁹⁷ Federal Constitution, Article 62(2), first sentence.

²⁹⁸ Federal Constitution, Article 62(2), second and third sentences.

interest, not only of every individual, but also of the State: in particular, it is important for democracy that young people should grow up in a situation of equality.

ARTICLE 13

1. Within the framework of their education systems, the Parties shall recognise that persons belonging to a national minority have the right to set up and to manage their own private educational and training establishments.

2. The exercise of this right shall not entail any financial obligation for the Parties.

230. The right to found a private school is partly guaranteed by the provisions of Article 27 of the Federal Constitution, which relates to economic freedom. The extent of the freedom to set up and manage a minority-language private school depends on cantonal law.

231. All the cantons recognise, explicitly or implicitly, the freedom to set up and manage private schools. Subject to compliance with legal requirements designed to make sure that children receive adequate instruction at least equivalent to that provided in the public schools and to authorisation issued by the Education Department of the canton concerned, any person may in theory provide private education in a minority language.

232. Under the Federal Constitution, education is free of charge in public schools²⁹⁹. Provided that nothing to the contrary is laid down in cantonal law, private schools are free to require their users to pay school fees³⁰⁰.

²⁹⁹ Federal Constitution, Article 62(2), third sentence.

³⁰⁰ M. Borghi, *op. cit.*, Article 27, note 56.

ARTICLE 14

1. The Parties undertake to recognise that every person belonging to a national minority has the right to learn his or her minority language.

2. In areas inhabited by persons belonging to national minorities traditionally or in substantial numbers, if there is sufficient demand, the Parties shall endeavour to ensure, as far as possible and within the framework of their education systems, that persons belonging to those minorities have adequate opportunities for being taught the minority language or for receiving instruction in this language.

3. Paragraph 2 of this article shall be implemented without prejudice to the learning of the official language or the teaching in this language.

233. Language teaching has always been of vital importance³⁰¹. However, as a result of the virtually exclusive cantonal competences in the field of public education, large differences have emerged between cantons. Nevertheless, two generally accepted rules have come to apply as regards language teaching at school: the language of instruction in public schools is the official language of the territory³⁰² and the second language taught is in principle a national language. In this connection, it should be observed, however, that calls for English to be the second language taught in schools (and no longer a national language) are becoming increasingly insistent in numerous German-speaking cantons.

234. Encouragement of bilingual education constitutes an aim of education policy. Accordingly, in the context of formulating basic principles for implementing Article 70 of the Federal Constitution, the Confederation and the cantons have undertaken actively to promote bilingual education³⁰³. Bilingual schooling seems to provide an appropriate solution as regards the right to receive education in one's own language, irrespective of the status of the municipality concerned. In particular, bilingual education affords a flexible solution for bilingual regions and is an even more appropriate method for the Rhaeto-Romanche region, since it will both enable the needs of a bilingual population to be met and promote Romanche. Bilingual education encourages the development of the personality and the elimination of intolerance and discrimination based on language. This solution is perfectly compatible with the principle of territoriality³⁰⁴. Bilingual education is also an appropriate means of increasing the effectiveness of language meaning and of complementing other forms of teaching other languages. Measures to promote bilingual education have increased, especially in the multi-lingual cantons, which constitute an important contribution to the intercultural understanding of national minorities in Switzerland³⁰⁵.

³⁰¹ Numerous speakers in debates in the Swiss Parliament have stressed the importance in Switzerland of teaching the national languages for fostering understanding between the various linguistic communities.

³⁰² In cantons with only one language, the official language of the canton is the language of instruction in public schools. B. Wilson, *La liberté de la langue des minorités dans l'enseignement*, Basle, Geneva, Munich, Heling & Lichtenhahn/Brussels, Bruylant, 1999, pp. 169-170.

³⁰³ See Postulat Robert (92.455) of 18 December 1992: Promotion of bilingual education.

³⁰⁴ B. Wilson, *op. cit.*, p. 283.

³⁰⁵ In the late 1980s, a number of pilot projects were started in the bilingual cantons. There are already secondary schools in Zürich, Fribourg, Biel/Bienne, Thun, Sion, Sierre and Neuchâtel that offer teaching culminating in a secondary school leaving certificate bearing the mention "bilingual". Moreover, exchanges of

ARTICLE 15

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

1. PARTICIPATION OF NATIONAL MINORITIES IN CULTURAL, SOCIAL AND ECONOMIC LIFE

235. The effective participation of persons belonging to national minorities in cultural, social and economic life³⁰⁶ is guaranteed in Switzerland to every individual by the Federal Constitution, the Cantonal Constitutions and by the international instruments to which Switzerland is a party, such as the European Convention on Human Rights, the United Nations Covenant on Civil and Political Rights and the United Nations Covenant on Economic, Social and Cultural Rights.

236. An analysis of the rights guaranteed by those legal instruments is not feasible within the confines of this report. However, it is appropriate to observe that the catalogue of those rights accrues to “every individual” and that therefore any person belonging to a minority also is a beneficiary thereof. In practice, the participation of national minorities in cultural, social and economic life is encouraged by the fact that citizens’ participation in community life is very developed in Switzerland.

2. PARTICIPATION OF NATIONAL MINORITIES IN PUBLIC AFFAIRS

237. As far as public affairs are concerned, it is important to note that under the Swiss federalist system, minorities established in any given region are guaranteed representation in the federal institutions and organisational independence is given to the cantons and the municipalities. This system therefore constitutes a pre-eminent way of meeting the objectives of Article 15 of the Framework Convention. The instruments of direct democracy also enable national minorities to make themselves heard and to defend their own interests.

2.1. Representation of minorities in the central institutions of the State

238. In the first place, minorities are protected through their representation in the central institutions of the State. Not only the Federal Parliament³⁰⁷, but also the Federal Council³⁰⁸ and the Federal Court³⁰⁹ are made up so as to represent the various components of the Swiss State.

whole or half classes and the teaching of certain subjects in the second language have gradually been introduced in several schools on linguistic borders and between different language regions.

³⁰⁶ For fuller and more detailed information on cultural, social and economic rights in Switzerland, see the Initial Report of the Swiss Government on the Application of the International Covenant on Economic, Social and Cultural Rights.

³⁰⁷ See paragraphs 44 *et seq.* of this report.

³⁰⁸ See paragraphs 39 *et seq.* of this report.

³⁰⁹ See paragraphs 48 *et seq.* of this report.

239. As far as the Federal Parliament is concerned, as a result of the system for the distribution of the 200 seats of the National Council, the small cantons always are entitled to at least one seat³¹⁰. Furthermore, the Council of the States markedly favours the small cantons, since they have two representatives just like the large cantons. Those representatives, moreover, are generally elected in such a way that the various components of the canton, for example the two religions or the two main political tendencies, are represented³¹¹. It should be noted that, with a view to increasing understanding between linguistic communities and making Switzerland aware of the specific problems of the minorities, the Parliament decided to hold its spring 2001 session in the Canton of Ticino and not, as is usually the case, in Berne. Likewise, in 1993, the Parliament held its autumn session in French-speaking Switzerland.

240. As for the Federal Council, there is an unwritten rule that, of the seven members, the French-speaking and Italian-speaking minorities should be represented by at least two members of the Federal Council. According to another unwritten rule, which has been observed since 1959, the four main political parties share out the seven government seats in accordance with a so-called magic formula under which two seats are allocated to three of them and one seat to the fourth. Those four parties, known as the governmental parties, represent approximately 80% of the political forces of the Parliament³¹².

241. Lastly, as regards the Federal Court, its composition reflects the various political and religious tendencies of Switzerland and its judges are elected in such a way that all the regions of the country are represented³¹³.

2.2. Protection of minorities in the context of the organisational independence of the cantons

242. Secondly, minorities are also protected in Switzerland thanks to the independence of the cantons as regards everything connected with their own organisation³¹⁴. It is not possible to describe here in detail all the fields which fall within the competence of the cantons and guarantee a fair representation of the minorities, but it is nevertheless worth mentioning the following: cantonal institutions (cantonal electorate, cantonal Parliament, cantonal Government, cantonal courts), organisation of the municipalities and political rights (right to stand for election, cantonal referendum and popular initiative).

2.3. Protection of minorities in connection with the preparation, adoption and implementation of the law

243. Thirdly, it should be noted that the minorities participate both in the preparation and the adoption and implementation of the law.

244. As far as the preparation of the law is concerned, it is general practice, for instance, to consult or involve organisations representative of the various national minorities when drawing up bills, especially those of concern to them.

245. As regards the implementation of the law, it may be noted, by way of example, that the requirement for a double majority of the people and the cantons for revisions of the Constitution

³¹⁰ Federal Constitution, Article 149(4).

³¹¹ See G. Malinverni, *op.cit.*, pp. 360-361.

³¹² See G. Malinverni, *op.cit.*, pp. 361-362.

³¹³ *Ibid.*, p.362.

³¹⁴ Federal Constitution, Articles 3 and 43.

and the adoption of legislative texts providing for accession to organisations dealing with collective security or to supranational communities enables a minority to defeat a bill accepted by the majority³¹⁵. By the same token, exercising the right to call a referendum enables national minorities to combat the adoption of legislation which they do not like by requiring the legislation to be subjected to a plebiscite³¹⁶. Lastly and above all, it should be borne in mind that the right of initiative enables a minority of the population (religious, linguistic or other, provided that it succeeds in obtaining the signatures of 100,000 citizens) to propose legislation favourable to them at the Constitutional level³¹⁷.

246. Lastly, as far as the implementation of federal law is concerned, this is a matter in principle for the cantons³¹⁸. In exercising that competence, the Confederation must leave them the widest possible leeway and take account of their specific characteristics³¹⁹. What is more, the cantons also have a degree of independence in legislative and judicial matters. Accordingly, this independence is capable of allowing the interests of national minorities to be taken into account and fairly represented, be this as regards the implementation of federal law, the adoption of new legislation or the administration of justice.

ARTICLE 16

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

247. According to Article 53 of the Federal Constitution, the Confederation has a duty to protect the existence and status of the cantons and likewise their territory. In the first place, any change in the number of cantons or in their status is subject to the approval of the electorate concerned and of the cantons concerned and to the vote of the people and the cantons. Secondly, any modification to the territory of a canton is also subject to the approval of the electorate concerned before being approved by the Federal Parliament. As for the correction of cantonal borders, this is carried out by agreement between the cantons.

248. It follows from these rules that, in Switzerland, any change in the confines of administrative districts with a view to limiting the enjoyment of the rights and freedoms arising out of the Framework Convention is prohibited. In contrast, it is possible to change the confines of a region with a view to a minority obtaining autonomy³²⁰. In Switzerland, there is an example of this, the case of the Canton Jura.

249. In 1815, the districts of the Jura, the majority of whose French-speaking population was – and remains – Catholic, were attached to Canton Berne, the majority of whose population is Protestant and German speaking.

³¹⁵ Federal Constitution, Articles 140(1)(a)and(b) and 142(2).

³¹⁶ Federal Constitution, Article 141(1).

³¹⁷ Federal Constitution, Articles 138 and 139. See also Article 160 of the Federal Constitution.

³¹⁸ Federal Constitution, Article 46(1).

³¹⁹ Federal Constitution, Article 46(2).

³²⁰ See G. Malinverni, *op.cit.*, pp. 372 *et seq.*

250. That minority wished to become an independent canton. But in order to achieve this, it was necessary to sever Canton Berne of a part of its territory. In 1970, the population of that canton accepted for plebiscites which might possibly result in the creation of a new canton to be organised in the districts of the Jura. Three successive plebiscites were then held.

251. In the first plebiscite, held on 23 June 1974, the population of the seven Jura districts of Canton Berne came out in favour of the creation of a new canton. In order to determine its frontiers, the second plebiscite, held on 16 March 1975, enabled each district to be asked whether it wished to separate from or remain attached to Canton Berne. The three northern districts opted for separation, the four southern districts for maintenance of the status quo. Finally, the third plebiscite, held in October 1975, enabled eight municipalities located on the dividing line between the northern and southern districts to express the wish to join the new canton, whilst six such municipalities came out in favour of remaining part of Canton Berne.

252. In order to accept a newcomer into the Confederation, it was still necessary to have the agreement of the majority of the Swiss people and the cantons. Agreement was given in a constitutional referendum held on 25 September 1978. A majority of 82% of the electorate and all the cantons voted in favour of the creation of the new Canton of Jura. A vote was held on amending Article 1 of the Federal Constitution, which lists the Swiss cantons.

253. As an example of switching a territory to a different canton, reference may be made to the attachment of Laufen to the Canton of Basle-Land.

254. The question of which canton Laufen should belong to, which had divided the inhabitants of the valley for many long years, emerged in the wake of the creation of Canton Jura. In the context of the Jura plebiscites, the Bernese district of Laufen had reserved the right to opt to be attached to one of the neighbouring cantons (Basle-City, Basle-Land, Solothurn). After expressing their preference for the option of attachment to the Canton of Basle-Land in the vote held in 1980, the citizens of Laufen in September 1983 rejected the draft treaty for accession to the Canton of Basle-Land which had been put to the vote for their approval. In December 1988, the Federal Court ordered the vote to be re-held on account of the massive intervention in terms of public funds of the Government of Berne in the campaign which preceded the votes³²¹. On 12 November 1989, 51.7% of the citizens of Laufen (the turnout was 93.6%) came out in favour of the draft treaty of accession and hence for attachment to the Canton of Basle-Land. The result of this second vote was also brought before the Federal Court, but without success³²². Once the citizens of Basle-Land had also voted in favour of attaching Laufen to their canton, the people and all the Swiss cantons voted on 26 September 1993 in favour of the Federal Order attaching Laufen to the Canton of Basle-Land. Laufen has been an integral part of the Canton of Basle-Land since 1 January 1994³²³.

255. Lastly, for the question of changing the canton of a municipality, Article 53(3) of the new Federal Constitution has introduced a major change in comparison with the previous law³²⁴.

³²¹ ATF 114 Ia 427.

³²² ATF 117 Ia 41.

³²³ U. Häfelin and W. Haller, *Schweizerisches Bundesstaatsrecht*, fourth edition, Zürich, Schulthess, 1998, n°236.

³²⁴ Under the former Constitution, most academic writers and case-law took the view that the cession of an entire municipality to the neighbouring canton did not constitute a mere correction of a border without any political dimension. Consequently, the approval of the people and the cantons was constitutive also in the event that a municipality switched to a different canton and the procedure did not fundamentally differ from that which had to be followed when founding a canton or switching a region to a different canton. As a result, the Bernese

Changing the territory of a canton still has to be submitted to the approval of the electorate concerned and the cantons concerned. But the approval of the constituent is no longer necessary. Only the approval of the territorial change by the Federal Parliament, in the form of a Federal Order subject to an optional referendum, is now required³²⁵.

ARTICLE 17

1. The Parties undertake not to interfere with the right of persons belonging to national minorities to establish and maintain free and peaceful contacts across frontiers with persons lawfully staying in other States, in particular those with whom they share an ethnic, cultural, linguistic or religious identity, or a common cultural heritage.

2. The Parties undertake not to interfere with the right of persons belonging to national minorities to participate in the activities of non-governmental organisations, both at the national and international levels.

256. This Article contains two major undertakings for the purpose of maintaining and developing the culture of persons belonging to national minorities and for safeguarding their identity, as envisaged by Article 5 of the Framework Convention. The right of persons belonging to national minorities to establish free and peaceful contacts across national frontiers together with the right to participate in the activities of national or international non-governmental organisations are based to a large extent on paragraphs 32.4 and 32.6 of the Document of the Copenhagen Meeting of the OCSE on the Human Dimension. They merely make explicit rights which flow from the freedoms of expression and association which are guaranteed in Switzerland by constitutional law, the European Convention on Human Rights and the United Nations Covenant on Civil and Political Rights.

ARTICLE 18

1. The Parties shall endeavour to conclude, where necessary, bilateral and multilateral agreements with other States, in particular neighbouring States, in order to ensure the protection of persons belonging to the national minorities concerned.

2. Where relevant, the Parties shall take measures to encourage transfrontier co-operation.

257. This provision encourages the States Parties to conclude, where justified by particular situations, bilateral and multilateral agreements for the protection of national minorities. This

municipality of Vellerat joined Canton Jura on 1 July 1996 after the people and the cantons had given their approval. See U. Häfelin and W. Haller *op. cit.*, n°219.

³²⁵ A. Auer, G. Malinverni and M. Hottelier, *op.cit.*, Vol. I, p.317.

is intended to enable the States, on the basis of the principles of the Framework Convention, to find “tailor-made” solutions to specific problems encountered. This is an important means of calming or avoiding disputes between States in connection with the question of national minorities. Reference may be made here to the various agreements concluded by Switzerland to this effect³²⁶.

258. Article 18 of the Framework Convention also encourages transfrontier co-operation and is consistent in this regard with the Federal Council’s policy as defined in its report of 7 March 1994 on transfrontier co-operation and the participation of the cantons in foreign policy³²⁷. In this connection, it may be noted that Switzerland has acceded to other instruments – such as the Madrid Convention of 21 May 1980 on Transfrontier Co-operation between Territorial Communities or Authorities and the Karlsruhe Agreement of 23 January 1996 between the Swiss Federal Council acting on behalf of the cantons of Solothurn, Basle-City, Basle-Land, Argau and Jura, of the one part, and the Government of the Federal Republic of Germany, the Government of the French Republic and the Government of the Grand Duchy of Luxembourg, of the other part, on Transfrontier Co-operation between Territorial Communities and Local Public Bodies – which aim, *inter alia*, to foster more harmonious economic and social development of frontier regions. It should further be noted that transfrontier co-operation falls within the remit of the cantons, which act with the support of the Confederation, in particular within the framework of the Community initiative INTERREG.

ARTICLES 19 TO 32

259. No particular comment is called for on the provisions relating to possible derogations from the principles of the Framework Convention (Article 19) and on its interpretation and implementation (Articles 20, 21, 22 and 23). No comment need be made likewise on the provisions relating to the mechanism for the monitoring of the implementation of the Framework Convention by the parties (Articles 24, 25 and 26) or on the final provisions (Articles 27 to 32).

³²⁶ See paragraph 78 of this report.

³²⁷ Report of the Federal Council of 7 March 1994 on Transfrontier Co-operation and the Participation of the Cantons in Foreign Policy, FF 1994 II 604.