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Advisory Committee on the Framework Convention for the Protection of National Minorities

Opinion on Croatia
adopted on 6 April 2001

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EXECUTIVE SUMMARY

Following the receipt of the initial State Report of Croatia on 16 March 1999 (due on 1 February 1999), the Advisory Committee commenced the examination of the State Report at its 4th meeting on 25 - 28 May 1999. In the context of this examination, a delegation of the Advisory Committee visited Croatia, on 23 - 26 October 2000, in order to seek further information on the implementation of the Framework Convention from representatives of the Government as well as from NGOs and other independent sources. The Advisory Committee subsequently adopted its opinion on Croatia at its 10th meeting on 6 April 2001.

While recognising the efforts that have been made by Croatia in particular with respect to the protection of the Italian minority, the Advisory Committee finds that the implementation of the Framework Convention is complicated by the legacy of the 1991-1995 conflict, which is still felt in Croatian society. This has often been a factor in wide-ranging difficulties encountered in terms of protecting the rights of the persons belonging to the Serb minority but it has also affected other national minorities. Despite these difficulties, recently there have been marked improvements in the statements and attitudes of the Government *vis-à-vis* the protection of national minorities.

The above-mentioned improvements constitute an essential basis for progress in the implementation of the Framework Convention and they have already resulted in certain positive developments in the legislative sphere. Despite these normative improvements, there remain a number of shortcomings in the field of legislation, which will need to be addressed in the context of the on-going legislative reform, including in the drafting of a new constitutional law on national minorities.

The main concern of the Advisory Committee is that practice related to the implementation of the Framework Convention has improved regrettably slowly. In particular at the local level, there appears to be a level of reluctance amongst certain authorities, not only with regard to remedying the negative consequences of past discriminatory practices and other minority-related problems, but also with regard to ensuring that such problems do not occur in today's Croatia. These problems are particularly prevalent in the framework of the return process but they are also severe in other fields. In this connection, the Advisory Committee considers that one area that merits particularly urgent attention and measures is the protection of national minorities, including the Serbian and Roma minorities, in the field of employment. The Advisory Committee also calls for further measures in the field of media, aimed at fair portrayal of persons belonging to national minorities and their improved access to various media.

The Advisory Committee is of the opinion that specific conclusions and recommendations by the Committee of Ministers could help to improve further the implementation of the Framework Convention in Croatia. It believes that such conclusions and recommendations could be helpful in a continuing dialogue between the Government and national minorities. The Advisory Committee, therefore, submits detailed draft conclusions and recommendations for consideration by the Committee of Ministers. The Advisory Committee stands ready to be involved in the monitoring of the follow-up to the conclusions and recommendations adopted by the Committee of Ministers in accordance with Rule 36 of the Committee of Ministers' Resolution (97) 10.

I. PREPARATION OF THE CURRENT OPINION

1. The initial State Report of Croatia (hereinafter: the State Report), due on 1 February 1999, was received on 16 March 1999. The Advisory Committee commenced the examination of the State Report at its 4th meeting on 25 - 28 May 1999.
2. After having identified a number of points on which it wished to have further information, the Advisory Committee submitted to the Croatian authorities a questionnaire on 26 November 1999. The Croatian Government replied to the questionnaire on 14 July 2000.
3. Further to a request from the Government of Croatia to meet with the Advisory Committee in accordance with Rule 32 of the Committee of Ministers' Resolution (97) 10, a number of meetings were organised between representatives of the Advisory Committee and representatives of the Government of Croatia in Zagreb on 23 - 26 October 2000. In the course of the visit to Croatia, the representatives of the Advisory Committee also held meetings with Members of Parliament, the Office of Ombudsman, representatives of minorities, media and NGOs and other independent bodies and experts as well as representatives of international organisations in order to seek further information on the implementation of the Framework Convention. When preparing the present opinion, the Advisory Committee also consulted a range of written materials from various Council of Europe bodies, other international organisations as well as from NGOs and other independent sources.
4. The Advisory Committee subsequently adopted the present opinion at its 10th meeting on 6 April 2001 and decided to transmit this opinion to the Committee of Ministers.
5. The present opinion is submitted pursuant to Article 26(1) of the Framework Convention, according to which, in evaluating the adequacy of the measures taken by the Parties to give effect to the principles of the Framework Convention, "the Committee of Ministers shall be assisted by an advisory committee", as well as pursuant to Rule 23 of Resolution (97) 10 of the Committee of Ministers, according to which the "Advisory Committee shall consider the state reports and shall transmit its opinion to the Committee of Ministers".

II. GENERAL REMARKS ON THE STATE REPORT

6. The Advisory Committee notes that the State Report describes at length certain aspects of minority protection in Croatia. It includes a range of interesting statistics, albeit some of which are outdated due to the population movements caused by the 1991-1995 conflict. At the same time, certain sections of the State Report provide only very limited information on a number of central elements of the Framework Convention, in particular the relevant practice.

7. The Advisory Committee did, however, obtain a considerably fuller picture of the situation through the Government's comprehensive written reply to a questionnaire by the Advisory Committee and, in particular, through the above-mentioned visit to Croatia (see paragraph 3 of the present opinion). The Advisory Committee finds that the visit organised upon an invitation by the Government of Croatia provided an excellent opportunity to have a direct dialogue with various sources. The additional information provided by the Government and by other sources, including by representatives of national minorities, was most valuable, especially as concerns the implementation of relevant norms in practice.

8. The Advisory Committee notes that certain minority organisations had an opportunity to provide their input in the process leading to the adoption of the State Report. It appears, however, that this consultation by the Government was quite limited in its scope and that a number of prominent non-governmental organisations dealing with minority issues were not informed about the process. The Advisory Committee would welcome an extension of such consultations in the future. The Advisory Committee notes with satisfaction that the text of the above-mentioned Government's reply to the questionnaire of the Advisory Committee was made available to non-governmental organisations in the course of the visit of the Advisory Committee. The Advisory Committee encourages the Government to take further measures to improve awareness of the Framework Convention, its explanatory report and the rules concerning its monitoring at the international level, including through publication and dissemination of the State Report and other relevant documents.

9. The Advisory Committee recognises the co-operative spirit in which Croatia has participated in the process leading to the adoption of the present opinion. It welcomes the fact that subsequent to the submission of the State Report, the central authorities at the highest level have paid increasing attention, and shown commitment, to the principles contained in the Framework Convention. This commitment is laudable especially since the essential task of protecting minorities is complicated by the legacy of the 1991-1995 conflict, which is still widely felt in public administration and more generally in Croatian society, both by national minorities and the majority population. While causing tremendous difficulties, this legacy at the same time necessitates special measures aimed at rebuilding inter-ethnic tolerance and true and effective equality in society.

10. In the following part of the opinion it is stated in respect of a number of articles that, based on the information currently at its disposal, the Advisory Committee considers that implementation of the article at issue does not give rise to any specific observations. The Advisory Committee wishes to make clear that this statement is not to be understood as signalling that adequate measures have now been taken and that efforts in this respect may be diminished or even halted. Indeed, the Advisory Committee considers that the nature of the obligations of the Framework Convention requires a sustained and continued effort by the

authorities to respect the principles and achieve the goals of the Framework Convention. Furthermore, a certain state of affairs may, in the light of the recent entry into force of the Framework Convention, be considered acceptable at this stage but that need not necessarily be so in further cycles of monitoring. Finally, it may be the case that issues that appear at this stage to be of relatively minor concern, prove over time to have been underestimated.

III. SPECIFIC COMMENTS IN RESPECT OF ARTICLES 1-19

Article 1

11. The Advisory Committee notes that Croatia has ratified a wide range of relevant international instruments. Based on the information currently at its disposal, the Advisory Committee considers that the implementation of this article does not give rise to any further observations.

Article 2

12. Based on the information currently at its disposal, the Advisory Committee considers that the implementation of this article does not give rise to any specific observations.

Article 3

13. The Advisory Committee notes that the most recent normative listing of national minorities, contained in the amendments to the Constitutional Law of Human Rights and Freedoms and the Rights of National and Ethnic Communities or Minorities, adopted in May 2000, includes 22 minorities¹ and envisages also the inclusion of "others" in this list. In contrast, the preamble to the Constitution, as amended on 12 December 1997, suggests a more selective approach as it enlists only 10 national minorities, referred in the Constitution as "autochthonous", as well as a general category "others". The Advisory Committee considers that no undue differentiations should be made between various national minorities and therefore finds it regrettable that the preamble to the Constitution does not mention explicitly other minorities listed in the above-mentioned Constitutional Law, such as Bosniacs, Roma and Slovenes. (The way in which this more limited listing is reflected in the electoral system is examined under Article 15.)

14. The Advisory Committee underlines that in the absence of a definition in the Framework Convention itself, the Parties must examine the personal scope of application to be given to the Framework Convention within their country. The position of Croatia is therefore deemed to be the outcome of this examination.

15. Whereas the Advisory Committee notes on the one hand that Parties have a margin of appreciation in this respect in order to take the specific circumstances prevailing in their country into account, it notes on the other hand that this must be exercised in accordance with

¹ These are listed as follows: Albanians, Austrians, Bosniacs, Bulgarians, Czechs, Germans, Hungarians, Italians, Jews, Macedonians, Montenegrins, Poles, Roma, Romanians, Russians, Ruthenians, Serbs, Slovaks, Slovenes, Turks, Ukrainians, Vlachs.

general principles of international law and the fundamental principles set out in Article 3. In particular, it stresses that the implementation of the Framework Convention should not be a source of arbitrary or unjustified distinctions.

16. For this reason the Advisory Committee considers that it is part of its duty to examine the personal scope given to the implementation of the Framework Convention in order to verify that no arbitrary or unjustified distinctions have been made. Furthermore, it considers that it must verify the proper application of the fundamental principles set out in Article 3.

17. The Advisory Committee welcomes the fact that Croatia appears to interpret the term "national minority" and the personal scope of application of the Framework Convention in an increasingly inclusive manner and hopes that an inclusive approach will be adopted in the envisaged new constitutional law on national minorities, regardless of whether or not it will contain an explicit list of national minorities. The Advisory Committee is nevertheless of the opinion that it would also be possible to consider the inclusion of persons belonging to additional groups, including non-citizens as appropriate, in the application of the Framework Convention on an article-by-article basis, and the Advisory Committee takes the view that Croatia should consider this issue in consultation with those concerned.

18. The Advisory Committee notes that, in Croatia, ethnicity data is collected in various contexts, ranging from the registration of marriage to criminal procedure. The Advisory Committee emphasises that collection of data on individuals' affiliation with a particular national minority needs to be coupled with adequate legal safeguards. In this connection, measures should be taken to ensure that the right not to be treated as a person belonging to a national minority is also protected, and that the persons concerned are informed, as appropriate, of the voluntary nature of ethnicity data collection, as stipulated e.g. in the legislation pertaining to the census mentioned below in paragraph 20 of the present opinion.

19. The Advisory Committee further notes that, in Croatia, personal data pertaining to affiliation with a national minority is, in certain circumstances, made public. This is the case in the context of parliamentary elections. Bearing in mind the potentially sensitive nature of data concerning a person's affiliation with a national minority, the Advisory Committee is of the opinion that the public bodies should communicate such data to third parties only when necessary and that the principles contained in the Committee of Ministers' Recommendation No. (91)10 on the communication to third parties of personal data held by public bodies, should be taken into account.

20. In respect of the census of April 2001, the Advisory Committee expresses the hope that the census results in as accurate statistics on minority population as possible, bearing in mind also the large population movements that have taken place as a result of the 1991-1995 conflict. In this respect the Advisory Committee welcomes the fact that also those persons belonging to national minorities of Croatia who are currently living outside Croatia have an opportunity to participate in the census, in accordance with Article 2, paragraph 1, of the Law on the Census of Population, Households and Apartments, adopted on 27 June 2000, and expresses the hope that this provision is effectively implemented. The Advisory Committee also finds it essential that the census results are interpreted and processed in a manner that accommodates, to the extent possible, persons' subjective choices with respect to their affiliation with a minority. In addition, the Advisory Committee considers that, when drawing on the results of the census, authorities should take into account the reluctance by some

concerned to identify themselves as belonging to a national minority (see also related comments under Article 4).

Article 4

21. The Advisory Committee recognises the recent efforts to eliminate those provisions in the legislation of Croatia that have resulted in discrimination against national minorities and supports the continuation of these efforts. The Advisory Committee also emphasises that the elimination of problematic provisions in laws adopted by Parliament should be coupled with similar efforts as regards norms of lower status. For example, the Advisory Committee considers it important that, following the laudable amendments to the Law on Reconstruction adopted in June 2000, Croatia ensures that the amended provisions are fully implemented and that rules concerning the implementation of the said law do not have a discriminatory content or impact.

22. The Advisory Committee also supports the efforts to address the persisting problems that are rooted in laws that were applicable during and immediately after the conflict. In this connection, the Advisory Committee considers that the impact that the loss of occupancy rights has had on persons belonging to a national minority merits particular attention.

23. The Advisory Committee notes with satisfaction that there exist general guarantees against discrimination in the Constitutional law on human rights and the rights of national and ethnic communities or minorities, as well as in the Criminal Code of Croatia, and the Committee encourages their full implementation. However, aside from the area of employment, there appears to be no specific anti-discrimination legislation pertaining to a number of important societal settings, such as education and housing. The Advisory Committee therefore associates itself with the conclusion drawn by the European Commission against Racism (ECRI) in its first Report on Croatia, made public on 9 November 1999, that it would be desirable to develop anti-discrimination legislation to cover such fields. The Advisory Committee emphasises that such legislation should protect individuals from discrimination by both public authorities and private entities.

24. While supporting efforts to develop legislation pertaining to discrimination, the Advisory Committee is particularly concerned about problems related to the implementation of such legislation in practice and credible reports concerning *de facto* discrimination in particular against persons belonging to the Serb minority. Such problems appear particularly prevalent in the context of return, including in decisions related to the repossession of property, and they have a negative impact on the sustainability of return. The Advisory Committee considers that the current situation is not compatible with Article 4 of the Framework Convention. The Advisory Committee therefore supports the Government's efforts to address these issues, including its attempts to address serious problems encountered in the operations and role of the Housing Commissions, and considers that the on-going work of such bodies as the Office of Ombudsman and relevant non-governmental organisations is also instrumental in tackling discrimination in practice and therefore merits increasing support. In this connection, the Advisory Committee should like to emphasise that in addition to the Serb minority, the housing problems rooted in the conflict also cause difficulties in terms of ensuring full and effective equality for persons belonging to other minorities, including Hungarians, Ruthenians and Ukrainians.

25. The Advisory Committee believes that, although a number of central authorities have made laudable statements on the need to encourage return and to fight discrimination, the attitudes and action of some authorities, in particular but not exclusively at the local level, still reflect an approach that is not compatible with Article 4 of the Framework Convention.

26. In addition to increasing focus on housing-related issues, the Advisory Committee considers that one key to reaching full and effective equality for persons belonging to national minorities is the launching of additional positive measures in the field of employment and it supports efforts to seek financing for such measures. In this regard, the situation of persons belonging to the Serb minority merits particular attention, taking into account the past discriminatory measures, stirred by the 1991-1995 conflict, aimed at curtailing their number in various fields of employment, ranging from law-enforcement to education (see also related comments under Article 15).

27. As regards the question of citizenship, the Advisory Committee notes that, despite certain improvements in the applicable rules and practice, persons belonging to national minorities still encounter difficulties, in an inequitable manner, in their attempts to invoke the relevant norms, including when seeking a confirmation of their Croatian citizenship. In particular, the Advisory Committee believes that additional efforts should be made to ensure equal treatment of all in this sphere, including by addressing the problems of Roma and persons belonging to other national minorities resulting from the past disappearance or destruction of their identity documents.

28. The Advisory Committee finds that Croatia has not been able to secure full and effective equality between the majority population and Roma and that the situation of Roma remains difficult in such fields as employment, housing and education. It appears, however, that Roma issues have recently received increasing attention from the central authorities. The Advisory Committee finds it important that this commitment increases the vigour with which sectoral projects for Roma, such as the ones in the field of education (see also comments under Article 12), are pursued and leads to the development, in consultations with Roma, of more comprehensive programmes and strategies to address the concerns of this national minority.

29. The Advisory Committee notes that, largely as a result of massive population movements, there are wide discrepancies between the official statistics of the Government and the actual number of persons belonging to national minorities in Croatia. The Advisory Committee is concerned that such wide discrepancies in figures can seriously hamper the ability of the state to target, implement and monitor measures to ensure the full and effective equality of persons belonging to national minorities. Croatia should seek to identify ways and means of obtaining reliable data. While the results of the census of April 2001 may be of assistance in this respect, they do not necessarily satisfy the continuous need for up-to-date data, especially since the demographic picture of Croatia may be subject to considerable changes in the coming years in particular as a result of return of forced migrants and permanent settlement of refugees from other parts of ex-Yugoslavia.

Article 5

30. The Advisory Committee welcomes the fact that the Government, for instance, through the Government Office for National Minorities and the Ministry of Science and

Technology, provides a substantial amount of support for projects of national minorities aimed at maintaining and developing their culture. It expresses the hope that the overall level of support will not be reduced. As regards the allocation of this support, the Advisory Committee considers that the involvement of representatives of national minorities in the decision-making process is essential to ensure that the support is provided in an optimum manner (see also related comments under Article 15).

Article 6

31. The Advisory Committee notes with satisfaction that there has been a marked improvement in the attitudes of highest central authorities vis-à-vis national minorities and that the Government has on a number of occasions emphasised the need for tolerance and for intercultural dialogue. Such messages are of utmost importance in Croatia, where inter-ethnic relations are still seriously affected by the legacy of the conflict. It is nevertheless disappointing to note that these views are not consistently reflected in the statements and acts of authorities, in particular those operating at the local level. In addition to governmental authorities, a constructive stance by other relevant actors, such as the Churches operating in Croatia, is essential to solidify a spirit of tolerance and intercultural dialogue. Against this background, the Advisory Committee believes that initiatives aimed at promoting intercultural dialogue need to be strengthened and expanded.

32. The Advisory Committee finds it important that the Programme to Establish Trust and the principles contained therein are implemented in practice. Considering that the committees that were established for this purpose have proved rather inefficient, the Advisory Committee welcomes the Government's recent efforts to improve requisite mechanisms.

33. The Advisory Committee welcomes the fact that the Law on Telecommunication, in its Article 78, calls on broadcasters to promote inter-ethnic understanding, and the Committee trusts that this principle will be born in mind also in the context of the granting of concessions. Recently, there have reportedly been certain improvements in the practical implementation of this principle. In spite of this, a regrettably high number of outlets, both in the field of print and electronic media, still report in a manner that strengthens existing negative stereotypes of some minorities.

34. The Advisory Committee considers it essential for the implementation of Article 6 of the Framework Convention that the issue of war crimes is treated without ethnic bias. It therefore regrets that the Government's recent efforts to this end have prompted reactions that are detrimental to a spirit of tolerance and intercultural dialogue in Croatia.

35. The Advisory Committee is concerned about the attacks on religious buildings and cemeteries, most frequently Serb Orthodox but also Jewish cemeteries and buildings. The Advisory Committee expresses the wish that the Government pays increasing attention to the prevention as well as investigation and prosecution of such incidents.

36. In general, the Advisory Committee welcomes the reported decrease in the number of ethnically motivated crimes but notes that such incidents still occur rather frequently and that, therefore, further efforts should be taken to counter this phenomenon. In this connection, the Advisory Committee attaches importance to the reports suggesting that the performance of the police, including with regard to ethnically motivated crime, has gradually improved and notes that in the Danube region these improvements led to the decision to cease the operations of the OSCE Police Monitoring Group in October 2000. The Advisory Committee considers, however, that the performance of the police on issues related to national minorities continues to merit attention, bearing in mind, for example, that police still appear to be overly hesitant to qualify alleged crime as motivated by ethnicity.

Article 7

37. The Advisory Committee is aware that Croatia is in the process of extending the normative guarantees relevant for the implementation of Article 7 of the Framework Convention. It attaches particular importance to the drafting of a law on association in a manner that fully secures the right of persons belonging to national minorities to establish and operate associations.

Article 8

38. The Advisory Committee has received reports about certain differences in the treatment of various religious entities with respect to their status in the army and other contexts. While recognising that the Framework Convention does not exclude all differences in the treatment of religious entities, the Advisory Committee considers that, where such differences exist, particular attention must be paid to the situation of persons belonging to national minorities with a view to guaranteeing them their rights under the present Article as well as their right to equality before the law and equal protection of the law, as guaranteed under Article 4.

39. The Advisory Committee appreciates the fact that the attendance in religious classes in schools is optional and notes the concern expressed to the Committee that such classes should be organised and scheduled in a manner that guarantees equal protection of the law to all persons belonging to national minorities.

Article 9

40. The Advisory Committee notes that Article 5 of the Law on Croatian Radio-Television (HRT), adopted on 8 February 2001, obliges HRT to "produce and/or broadcast programmes intended for the provision of information to the members of national minorities in the Republic of Croatia". Apart from this in itself positive but very general obligation, there are no detailed legislative provisions on broadcasting on/for persons belonging to national minorities within the public service broadcasting or provisions guaranteeing broadcasting in the languages of national minorities therein. At the same time, the fact that the above-

mentioned Law on Croatian Radio-Television envisages, in its Article 15, the appointment of a representative of national minorities to the HRT Council may contribute to the implementation of the principles contained in Article 9 of the Framework Convention, but this depends also on the status and development of the HRT as a whole.

41. As regards the relevant practice, the Advisory Committee notes with approval that the public service television has devoted a weekly programme to issues touching upon national minorities. At the same time, the Advisory Committee agrees with the comments made by a number of representatives of national minorities that, taking into account also the number of persons belonging to national minorities in Croatia, the time devoted to the programming on minorities and/or programming in minority languages in the public service television is much too limited in both time and substance and should be reviewed soon. As regards public service radio broadcasting, there appears to be a certain amount of programming in minority languages at the local level, which the Committee finds important, but at the state level such programming is again quite limited.

42. As concerns private broadcasting, the Advisory Committee welcomes the fact that Croatia has, through the adoption of the Law on Telecommunication in 1999, abolished the previously applicable undue limitations on the freedom to receive and impart information and ideas in a minority language. In accordance with Article 83 of the new Law, radio and television concession holders, at both state and local level, are entitled to broadcast in a minority language if this is envisaged in the programming sheets attached to the bids for obtaining a concession. In this connection, the Advisory Committee would support measures aimed at ensuring that broadcasters have a possibility to introduce minority language programming also after obtaining a concession. In general, the Advisory Committee expresses the view that broadcasting in a minority language should also receive attention in the context of the on-going revision of the applicable norms and expects that the norms on the granting of concessions and other related issues are implemented in a non-discriminatory manner.

Article 10

43. The Advisory Committee considers that the adoption of the Law on the Use of Language and Script of National Minorities, on 11 May 2000, further improves the legal framework relating to the implementation of Article 10 of the Framework Convention, to which the law explicitly refers. However, uncertainties persist as regards certain key aspects of the said law. In particular, the Advisory Committee notes with concern that the Governmental and parliamentary sources were uncertain as to whether the "equal official use of minority language" under Article 4, paragraph 1, point 1, of the law, and thereby the application of most of the provisions of the law, is obligatory for municipalities and towns where the persons belonging to a given national minority constitute an absolute majority of the population or whether it is enough that persons belonging to a specific minority constitute a relative majority.

44. Regardless of which one of the above interpretations eventually prevails, the Advisory Committee considers that the numerical threshold for the obligatory introduction of minority language in contacts with municipal and town authorities remains high from the point of view of Article 10 of the Framework Convention. It is therefore essential that those municipalities and towns which do not have this obligation but where persons belonging to a national

minority reside traditionally or in substantial number widely implement their discretionary power to provide for the official use of minority languages. Similarly, the Advisory Committee encourages a maximum implementation of the limited possibility provided by the law to grant a minority language an official status at the county level. It is equally instrumental that Croatian central authorities support such measures, including through the allocation of necessary resources.

45. As regards practice, which as yet is still largely unaffected by the recent legislative changes, the Advisory Committee welcomes the efforts that have been made to guarantee the right of persons belonging to the Italian minority to use their language in contacts with authorities in a number of municipalities and towns in Istria. The Advisory Committee considers that the experience gained in these efforts should be drawn upon in the implementation of the new law also with respect to other national minorities.

Article 11

46. The Advisory Committee notes with satisfaction that the above-mentioned Law on the Use of Language and Script of National Minorities, adopted on 11 May 2000, also contains provisions on the display of topographical indications in minority languages. The Advisory Committee expects that the law will be implemented in a non-discriminatory manner, but it notes that the uncertainties relating to the coverage of the law, mentioned above under Article 10 of the Framework Convention, pertain also to the implementation of these provisions. In the context of the implementation of the law, the experience gained in the efforts in Istria to provide topographical indications in Italian should be drawn upon.

Article 12

47. The Advisory Committee welcomes the initiatives, co-ordinated by the Ministry of Education, to conduct independent reviews aimed at ensuring that history textbooks do not foster negative stereotypes of national minorities and considers that the resulting findings that contribute to the reaching of this goal should be fully implemented.

48. The Advisory Committee has been informed about the problems of securing adequate textbooks for persons belonging to national minorities especially in secondary schools. Considering the importance of the matter, the Advisory Committee suggests that this issue is kept under constant review by the Government with a view to addressing any shortcomings, including through bilateral co-operation.

49. While recognising that there appears to be no large-scale separation of Roma children within the educational system of Croatia, the Advisory Committee is highly concerned about reports that in certain schools, Roma children are placed in separate classes and school facilities are organised and operated in a manner that appears to stigmatise Roma pupils. The Advisory Committee stresses that placing children in separate special classes should take place only when it is absolutely necessary and always on the basis of consistent, objective and comprehensive tests. The Advisory Committee supports the efforts of the office of the Ombudsman to review this situation with a view to ensuring that Roma children have equal access to, and opportunities to continue to attend, regular classes. The Advisory Committee is

aware of the reservations expressed by some Roma with respect to the integration of Roma pupils in regular classes and supports efforts to involve Roma parents and Roma organisations in the process aimed at remedying the current situation. The Advisory Committee considers that a key to reaching this aim is to secure that the education system reflects and takes fully into account the language and culture of the minority concerned, as stipulated in the principles contained in the Committee of Ministers' Recommendation No. (2000) 4 on the education of Roma/Gypsy children in Europe. The Advisory Committee notes that the Government of Croatia adopted in July 1998 a "Programme of Integration of Roma Children in the Educational and School System" which contains a number of useful ideas in this respect. The text of the Programme appears however rather cursory in nature, and the Advisory Committee considers that Croatia needs to develop, implement and evaluate further its measures aimed at improving the status of Roma in the educational system.

Article 13

50. Based on the information currently at its disposal, the Advisory Committee considers that the implementation of this article does not give rise to any specific observations.

Article 14

51. The Advisory Committee considers that the adoption of the Law on Education in Languages and Scripts of National Minorities on 11 May 2000 is an important measure in terms of the implementation of Article 14 of the Framework Convention. It welcomes the fact that the law seeks to ensure instruction in minority languages in a number of educational settings, ranging from pre-schools to secondary schools, and that the law does not envisage rigid ethnicity-related criteria with respect to access to minority language education. The Advisory Committee finds it commendable that the law provides that the setting up of schools, classes or educational groups with instruction in a minority language and script requires a smaller number of pupils than is the case for corresponding facilities with instruction in Croatian. The Advisory Committee regrets, however, that, aside from this general rule, the law does not stipulate clear numerical or other criteria that would trigger the introduction of instruction in a minority language even though in practice such criteria, which may cater also to the needs of numerically small and dispersed minorities, have reportedly been established.

52. As regards the practical situation, the Advisory Committee appreciates the efforts that have been made to provide opportunities for persons belonging to national minorities to be taught their minority language or to receive instruction in this language. The Advisory Committee notes that, although the legislative provisions on minority language education also apply to the Roma language, in practice primary and secondary schools offer no instruction in this language (stated reasons include the difficulties related to the number of dialects of the said language and the lack of qualified teachers). The Advisory Committee is therefore of the opinion that it needs to be examined to what extent the current status of the Roma language in the education system of Croatia meets the demands of persons belonging to this minority. Such an examination would help to establish whether further measures are needed to ensure adequate opportunities for being taught the Roma language or for receiving instruction in this language.

53. The Advisory Committee notes that efforts to ensure adequate teaching in, and instruction of, minority languages are at times hampered by a lack of qualified teachers in minority languages. The Advisory Committee, therefore, considers that the question of teacher training requires increased attention.

Article 15

54. In view of various submissions made during its visit to Croatia and in the light of information made available to it, the Advisory Committee is seriously concerned about the shortcomings pertaining to the effective participation of persons belonging to national minorities in economic life. While recognising that economic difficulties and unemployment also seriously affect persons belonging to the majority in Croatia, the Advisory Committee considers that persons belonging to national minorities are often in a particularly difficult situation as they are also affected by the negative results of past discrimination (often related to the conflict of 1991-1995) and present discrimination in this field (see also related comments under Article 4).

55. As regards participation of persons belonging to national minorities in state administration as employees, the Advisory Committee finds that the situation is disconcerting as regards persons belonging to the Serb minority but that it is very unsatisfactory also with regard to some, but not all, other national minorities. This is also clearly suggested in the valuable statistics provided by the Government in July 2000, which specify *inter alia* that, at that time, only 2.8 percent of the employees working in the bodies of state administration (excluding the Ministry of Interior and the Ministry of Defence) were persons belonging to the Serb minority and that there were only two Roma employed in these bodies.

56. The Advisory Committee is aware that the extraordinarily low representation of national minorities within the executive and in the judiciary is partially a result of past discriminatory measures (often related to the conflict of 1991-1995) aimed at curtailing, in particular, the number of persons belonging to the Serb minority in various bodies, including in courts.

57. With reference to the preceding two paragraphs, the Advisory Committee finds that the current situation is not compatible with Article 15 of the Framework Convention. In these circumstances, the Advisory Committee finds it instrumental that Croatia not only closely monitors the situation in all sectors with a view to ensuring that such practices are not repeated but also provides effective remedies to victims and introduces additional positive measures aimed at eradicating the persisting negative consequences of the past practices (see also comments under Article 4).

58. The Advisory Committee notes that the 1991 Constitutional Law of Human Rights and Freedoms and the Rights of National and Ethnic Communities or Minorities contains central provisions pertaining to the effective participation of persons belonging to national minorities. Thus, the decision, taken by the Parliament of Croatia on 20 September 1995, to suspend a number of key provisions of the said law seriously reduced the rights of persons belonging to national minorities in this sphere, affecting in particular the status of the Serb minority. Furthermore, in May 2000, the Parliament decided to delete most of the provisions

affected by the aforementioned suspension. The deleted provisions largely pertained to decision-making processes at the local level.

59. Against this background, the Advisory Committee attaches great importance to the ongoing efforts of Croatia to improve, in consultation with the European Commission for Democracy through Law (the Venice Commission) of the Council of Europe, the existing legislative framework in this field by adopting a new constitutional law on national minorities with a view to improving *inter alia* guarantees for the participation of persons belonging to national minorities in the decision-making processes at the local and regional level. In this connection, the Advisory Committee expresses the wish that the scope of the envisaged legislation will be drafted in a manner that also protects the rights of persons belonging to those national minorities that are not explicitly mentioned in the preamble of the Constitution (see also related comments under Article 3). The Advisory Committee also expects that the adoption of the said law will increase the stability and foreseeability of the legislative framework pertaining to national minorities, which has in recent years been in a constant state of flux. In this respect, the Advisory Committee supports efforts to ensure that the normative status of the said law will be such that the guarantees contained therein cannot be limited through subsequent legislation.

60. The Advisory Committee welcomes the efforts that have been made to secure representation of national minorities in Parliament and that, in the House of Representatives, there is a sub-commission specialising in issues concerning national minorities. It further welcomes the amendment to the Constitution of Croatia, adopted on 9 November 2000, which sanctions "special rights of members of national minorities to elect representatives into the Croatian parliament" and thereby constitutes a legal basis for further augmentation of the rights of persons belonging to national minorities in the electoral processes.

61. The Advisory Committee notes, however, that following the suspension of the relevant provisions of the Constitutional Law of Human Rights and Freedoms and the Rights of National and Ethnic Communities, the issue of guaranteed representation of national minorities in the House of Representatives is currently regulated in detail only through the Law on Elections of Representatives to the Croatian National Parliament, adopted on 29 October 1999. Pursuant to Article 17 of the said law, the seats guaranteed for representatives of the Serb minority were reduced from three to one. Furthermore, the Advisory Committee notes that guarantees for representation in the House of Representatives contained in Article 17 do not extend, for example, to the Roma or Slovenian minorities despite the fact that persons belonging to these minorities are more numerous than a number of other national minorities covered by the said provision. This state of affairs reflects the fact that these national minorities are not explicitly mentioned in the preamble of the Constitution.

62. Taking into account the foregoing and without suggesting that the number of persons belonging to a specific national minority should be the sole criterion in this context, the Advisory Committee finds it important that Croatia, including in the context of the drafting of a new constitutional law on national minorities and subsequent changes to its electoral laws, seeks to improve further its legislation and practice concerning the parliamentary representation of national minorities and to eliminate any imbalance and undue limitations that persist in this respect.

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

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

65. The Advisory Committee notes with deep concern the shortcomings that remain as concerns the effective participation of many Roma in social and economic life and the negative impact that these shortcomings have on the social and economic living-conditions of this minority in general and Roma women in particular. While recognising that some initiatives have been designed in this field, the Advisory Committee believes that the Government should intensify these efforts, including through the envisaged national strategy on Roma. In these efforts, particular attention needs to be paid to the situation of Roma women.

Articles 16

66. The Advisory Committee notes that the 1991-1995 conflict substantially altered the proportion of the population in a number of areas inhabited by persons belonging to national minorities and that the situation continues to change as a result of the on-going return process. In this connection, the Advisory Committee finds it essential that issues relevant for the return process, including cases of double-occupancy and other housing-related concerns, are addressed in a manner that fosters sustainable voluntary return (see also related comments under Article 4).

Article 17

67. The Advisory Committee expresses support for the on-going efforts to improve the implementation of the right of persons belonging to national minorities to establish and maintain contacts across frontiers. The Advisory Committee is convinced that improvements in this field, including with Bosnia and Herzegovina and the Federal Republic of Yugoslavia, would also help to address a number of concerns raised in the present opinion with respect to other articles of the Framework Convention.

Article 18

68. The Advisory Committee welcomes the fact that Croatia is party to a number of bilateral treaties and cultural agreements touching upon the protection of persons belonging to national minorities, including with Hungary and Italy, and recognises the importance of the 1996 agreement with the Federal Republic of Yugoslavia on the normalisation of relations. The Advisory Committee welcomes the attempts to conclude additional bilateral agreements with countries of the region.

Article 19

69. Based on the information currently at its disposal, the Advisory Committee considers that the implementation of this article does not give rise to any specific observations.

IV. CONCLUDING REMARKS

70. While recognising the efforts that have been made by Croatia in particular with respect to the protection of the Italian minority, the Advisory Committee finds that the implementation of the Framework Convention is complicated by the legacy of the 1991-1995 conflict, which is still felt in Croatian society. This has often been a factor in wide-ranging difficulties encountered in terms of protecting the rights of the persons belonging to the Serb minority but it has also affected other national minorities. Despite these difficulties, recently there have been marked improvements in the statements and attitudes of the Government *vis-à-vis* the protection of national minorities.

71. The above-mentioned improvements constitute an essential basis for progress in the implementation of the Framework Convention and they have already resulted in certain positive developments in the legislative sphere. Despite these normative improvements, there remain a number of shortcomings in the field of legislation, which will need to be addressed in the context of the on-going legislative reform, including in the drafting of a new constitutional law on national minorities.

72. The main concern of the Advisory Committee is that practice related to the implementation of the Framework Convention has improved regrettably slowly. In particular at the local level, there appears to be a level of reluctance amongst certain authorities, not only with regard to remedying the negative consequences of past discriminatory practices and other minority-related problems, but also with regard to ensuring that such problems do not occur in today's Croatia. These problems are particularly prevalent in the framework of the return process but they are also severe in other fields. In this connection, the Advisory Committee considers that one area that merits particularly urgent attention and measures is the protection of national minorities, including the Serbian and Roma minorities, in the field of employment. The Advisory Committee also calls for further measures in the field of media, aimed at fair portrayal of persons belonging to national minorities and their improved access to various media.

73. The Advisory Committee is of the opinion that specific conclusions and recommendations by the Committee of Ministers could help to improve further the

implementation of the Framework Convention in Croatia. It believes that such conclusions and recommendations could be helpful in a continuing dialogue between the Government and national minorities. The Advisory Committee, therefore, submits detailed draft conclusions and recommendations for consideration by the Committee of Ministers. The Advisory Committee stands ready to be involved in the monitoring of the follow-up to the conclusions and recommendations adopted by the Committee of Ministers in accordance with Rule 36 of the Committee of Ministers' Resolution (97) 10.

V. PROPOSAL FOR CONCLUSIONS AND RECOMMENDATIONS BY THE COMMITTEE OF MINISTERS

With a view to the foregoing, the Advisory Committee is of the opinion that the Committee of Ministers should consider the adoption of the following draft conclusions and recommendations with respect to Croatia:

The Committee of Ministers,

Having regard to the Framework Convention for the Protection of National Minorities and the initial State Report submitted by Croatia, on 16 March 1999, on the implementation of the Framework Convention;

On the basis of the opinion adopted by the Advisory Committee on 6 April 2001;

Welcoming the efforts that have been made by Croatia to implement the Framework Convention;

Considering that specific conclusions and recommendations could help further to improve the implementation of the Framework Convention by Croatia;

Adopts the following conclusions and recommendations and invites Croatia to inform the Advisory Committee, within one year from the adoption of the present decision, of follow-up made in this respect.

In respect of Article 3

The Committee of Ministers *concludes* that it would also be possible to consider the inclusion of persons belonging to additional groups in the application of the Framework Convention on an article-by-article basis, and the Committee of Ministers *recommends* that Croatia consider this issue in consultation with those concerned.

The Committee of Ministers *concludes* that data on individuals' affiliation with a particular national minority is collected in various contexts in Croatia and *recommends* that Croatia ensures that collection and possible publication of such data is coupled with adequate legal safeguards, also taking into account the principles contained in the Committee of Ministers' Recommendation No. (91) 10 on the communication to third parties of personal data held by public bodies.

In respect of Article 4

The Committee of Ministers *concludes* that recent efforts to eliminate those provisions in the legislation of Croatia that have resulted in discrimination against national minorities have not consistently led to corresponding changes in other norms and in practice and *recommends* that Croatia increase its efforts to ensure that improvements in legislation are also reflected in the norms of lower status and in practice.

The Committee of Ministers *concludes* that there is no specific anti-discrimination legislation pertaining to a number of important societal settings and *recommends* that Croatia develop its anti-discrimination legislation to cover such fields.

The Committee of Ministers *concludes* that the socio-economic differences between the majority population and Roma remain extremely high and *recommends* that Croatia design and implement further initiatives with regard to Roma, aimed at promoting full and effective equality.

The Committee of Ministers *concludes* that the wide discrepancies between existing official statistics of the Government and the actual number of persons belonging to national minorities in Croatia seriously hamper the ability of the state to target, implement and monitor measures to ensure the full and effective equality of persons belonging to national minorities. While recognising that the census of April 2001 may be of assistance in this respect, the Committee of Ministers *recommends* that Croatia also consider additional ways and means of obtaining reliable up-to-date statistical data.

The Committee of Ministers *concludes* that there are still reports about *de facto* discrimination including in the context of return and that the current situation is in this respect not compatible with Article 4 of the Framework Convention. The Committee of Ministers *recommends* that Croatia pursue its efforts to address this problem, including with regard to the repossession of property.

The Committee of Ministers *concludes* that the on-going work of such bodies as the Office of Ombudsman of Croatia and relevant non-governmental organisations is also instrumental in tackling discrimination in practice and *recommends* that increasing support be given for such work.

The Committee of Ministers *concludes* that persons belonging to national minorities still encounter difficulties in their attempts to invoke the norms related to citizenship and *recommends* that Croatia take additional efforts in this sphere.

In respect of Article 5

The Committee of Ministers *concludes* that Croatia has provided a substantial amount of support for projects of national minorities aimed at maintaining and developing their culture and *recommends* that such support be maintained and that representatives of national minorities be involved in the allocation of this support.

In respect of Article 6

The Committee of Ministers *concludes* that the Government has, on a number of occasions, emphasised the need for tolerance and for intercultural dialogue. The Committee of Ministers *recommends* that further measures be taken to ensure that this stance is taken increasingly often by other relevant actors, including by local authorities.

The Committee of Ministers *concludes* that, despite certain improvements, a number of media outlets report in a manner that strengthens existing negative stereotypes of some minorities. The Committee of Ministers *recommends* that further measures be taken to promote inter-ethnic understanding in the field of media.

The Committee of Ministers *concludes* that religious buildings and cemeteries have been the target of attacks and *recommends* that the Government pay increasing attention to the prevention as well as investigation and prosecution of such incidents.

The Committee of Ministers *concludes* that, despite certain improvements, ethnically motivated crime still occurs and police appear to be hesitant to qualify alleged crime as motivated by ethnicity. The Committee of Ministers *recommends* that the existing efforts in this sphere be pursued and expanded to address this issue.

In respect of Article 8

The Committee of Ministers *concludes* that there appear to be certain differences in the treatment of various religious entities with respect to their status in some contexts and *recommends* that in such cases particular attention be paid to the situation of persons belonging to national minorities with a view to guaranteeing them their rights under Articles 4 and 8 of the Framework Convention.

In respect of Article 9

The Committee of Ministers *concludes* that the general obligation to produce and/or broadcast programmes intended for persons belonging to national minorities has only resulted in very limited programming in the public service broadcasting (HRT). The Committee of Ministers *recommends* that this situation be reviewed with a view to having additional time allocated for such programming and that the related initiative of appointing a representative of national minorities to the HRT Council be implemented without any unnecessary delay.

As concerns private broadcasting, the Committee of Ministers *concludes* that the legal status of minority language has improved but the relevant norms still restrict the introduction of minority language programming after the granting of a concession. The Committee of Ministers *recommends* that the latter issue and other factors related to broadcasting in a minority language be given full attention including in the context of the on-going revision of the applicable norms and in the implementation of these norms.

In respect of Article 10

The Committee of Ministers *concludes* that the Law on the Use of Language and Script of National Minorities, adopted on 11 May 2000, has improved the legal framework relating to Article 10 of the Framework Convention, although the numerical threshold for the obligatory introduction of minority language in contacts with municipal and town authorities is high and

although uncertainties persist as regards the scope of certain key aspects of the said law. The Committee of Ministers *recommends* that such uncertainties be eliminated and that Croatia take measures aimed at obtaining a maximum level of implementation of the law, including where introduction of the official use of minority languages is discretionary.

In respect of Article 11

The Committee of Ministers *concludes* that the Law on the Use of Language and Script of National Minorities provides a legal framework for the display of topographical indications in minority languages. With reference to its earlier recommendations under Article 10 of the Framework Convention, the Committee of Ministers recommends that Croatia also take measures aimed at obtaining a maximum level of implementation of this aspect of the law.

In respect of Article 12

The Committee of Ministers *concludes* that there exist important initiatives on independent reviews aimed at ensuring that history textbooks do not foster negative stereotypes of national minorities. The Committee of Ministers *recommends* that the findings of such reviews be fully implemented.

The Committee of Ministers *concludes* that there have been problems with regard to securing adequate textbooks for persons belonging to national minorities especially in secondary schools and *recommends* that the Government keep this issue under constant review with a view to addressing any shortcomings.

The Committee of Ministers *concludes* that in certain schools in Croatia, Roma children are reportedly placed in separate classes, and school facilities are organised and operated in a manner that appears to stigmatise Roma pupils. The Committee of Ministers *recommends* that this questions be reviewed, and necessary measures taken, with a view to ensuring that Roma children have equal access to, and opportunities to continue to attend, regular classes, bearing in mind the principles contained in the Committee of Ministers' Recommendation No. (2000) 4 on the education of Roma/Gypsy children in Europe.

In respect of Article 14

The Committee of Ministers *concludes* that the adoption of the Law on Education in Languages and Scripts of National Minorities on 11 May 2000 is an important measure in terms of the implementation of Article 14 of the Framework Convention albeit it does not stipulate clear numerical or other criteria that would trigger the introduction of instruction in a minority language. As regards current practice, the Committee of Ministers *concludes* that no school in Croatia offers instruction in the Roma language and that efforts to ensure adequate teaching in, and instruction of, minority languages are at times hampered by a lack of qualified teachers in minority languages. The Committee of Ministers *recommends* that Croatia take measures aimed at obtaining a maximum level of implementation of the said law and that any obstacles in this respect, including any shortcomings in terms of teacher training, are addressed. The Committee of Ministers further *recommends* that the Government examines to what extent the current status of the Roma language in the education system of Croatia meets the demands of the persons belonging to this minority.

In respect of Article 15

The Committee of Ministers *concludes* that there exist shortcomings pertaining to the effective participation of persons belonging to national minorities in economic life and that the situation is disconcerting as regards participation of persons belonging to national minorities in various fields of public service employment. The Committee of Ministers *concludes* that in this respect the current situation is not compatible with Article 15 of the Framework Convention. The Committee of Ministers *recommends* that Croatia closely monitor the situation in all sectors with a view to ensuring that no discriminatory measures are taken and introduce additional positive measures aimed at eradicating the persisting negative consequences of the past practices.

The Committee of Ministers *concludes* that the suspension and deletion of a number of central provisions of the 1991 Constitutional Law of Human Rights and Freedoms and the Rights of National and Ethnic Communities or Minorities have seriously reduced the rights of persons belonging to national minorities, in particular with respect to decision-making processes at the local level. The Committee of Ministers further *concludes* that the situation may be remedied through the on-going efforts of Croatia to improve the existing legislative framework in this field by adopting a new constitutional law on national minorities. The Committee of Ministers *recommends* that Croatia continue to pursue this issue as a matter of priority, aiming at comprehensive guarantees, *inter alia*, with regard to the participation of persons belonging to national minorities in the decision-making processes at the local and regional level. The Committee of Ministers further *recommends* that the envisaged legislation be drafted in a manner that protects the rights of persons belonging to those national minorities that are not explicitly mentioned in the preamble of the Constitution and that the said law be given an adequate normative status.

The Committee of Ministers *concludes* that, while Croatia has made important efforts with regard to representation of national minorities in Parliament, the seats guaranteed for representatives of national minorities in the House of Representatives are currently allocated in a manner that excludes a number of national minorities and provides the Serb minority with only one seat instead of the previous three seats. The Committee of Ministers *recommends* that Croatia seek to improve further its legislation and practice concerning the parliamentary representation of national minorities and eliminate any imbalance and undue limitations that persist in this respect.

The Committee of Ministers *concludes* that Croatia has established important bodies dealing specifically with issues concerning national minorities but that there is a certain lack of co-ordination and complementarity between them. The Committee of Ministers *recommends* that Croatia continue to pursue initiatives aimed at improving the effectiveness of these bodies and, in doing so, ensure that persons belonging to national minorities have a central standing in the resulting organisational structure.

The Committee of Ministers *concludes* that there remain shortcomings as concerns the effective participation of many Roma in social and economic life and *recommends* that Croatia intensify its efforts in this sphere and, in doing so, pay particular attention to the situation of Roma women.

In respect of Article 16

The Committee of Ministers *concludes* that the proportion of the population in a number of areas inhabited by persons belonging to national minorities has been subject to substantial changes and that the return process is of central importance in this respect. The Committee of Ministers *recommends* that Croatia address issues relevant for the return process, including cases of double-occupancy and other housing-related concerns, in a manner that fosters sustainable voluntary return.

In respect of Article 17

The Committee of Ministers *concludes* that there are on-going efforts to improve the implementation of the right of persons belonging to national minorities to establish and maintain contacts across frontiers and *recommends* that Croatia pursue such efforts further.

In respect of Article 18

The Committee of Ministers *concludes* that Croatia is party to a number of bilateral treaties and cultural agreements touching upon the protection of persons belonging to national minorities and *recommends* that Croatia pursue its attempts to conclude additional bilateral agreements with countries of the region.

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