



Strasbourg, 11 May 2005

ACFC/INF/OP/I(2005)003

ADVISORY COMMITTEE ON THE FRAMEWORK CONVENTION  
FOR THE PROTECTION OF NATIONAL MINORITIES

**Opinion on Bosnia and Herzegovina,  
adopted on 27 May 2004**

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## EXECUTIVE SUMMARY

The Advisory Committee received the initial State Report of Bosnia and Herzegovina on 20 February 2004 (due on 1 June 2001), i.e. after the Ministers' Deputies had authorised the Advisory Committee to start its monitoring in respect of Bosnia and Herzegovina on 3 September 2003. In the context of the examination of the State Report, a delegation of the Advisory Committee visited Bosnia and Herzegovina from 23 to 27 February 2004 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 adopted its opinion on Bosnia and Herzegovina at its 19th meeting on 27 May 2004.

The Advisory Committee notes with satisfaction that national minorities' issues have recently received some attention by the authorities, as evidenced by the adoption of a Law on the Protection of Rights of Persons Belonging to National Minorities and amendments to the Election Law. Furthermore, the harmonisation of legislation by the Entities has, *inter alia*, allowed for further development of minority language education.

The Advisory Committee considers that the implementation of relevant norms in practice remains a major problem. This is particularly so in relation to the Law on the Protection of Rights of Persons Belonging to National Minorities. The provisions on teaching minority languages, on media broadcasting for national minorities and on proportional representation in public authorities and in the civil service have not prompted substantial changes in practice. New consultation structures for national minorities, such as the proposed Council of National Minorities and corresponding bodies at the level of the Entities, have not been set up despite concrete legal obligations. These shortcomings need to be addressed as a matter of priority by the authorities both at the State and Entity levels.

As regards access to political posts, rigid rules are still in force at the State level but progress has recently been made at Entity level in terms of widening access to certain authorities. Further consideration should therefore be given by the authorities to finding ways and means of addressing the exclusion of, *inter alia*, persons belonging to national minorities from certain posts at State and Entity levels. Consideration should also be given to developing specific parliamentary mechanisms to better protect the interests of national minorities. Greater attention should be paid to tackling discrimination in practice, notably in access to employment, a problem affecting all those not belonging to the constituent people in a numerical majority in the area concerned.

Despite progress in the reconciliation process, there remains a lack of trust among ethnic groups and hostility related to the return of refugees and displaced persons. Efforts are needed to promote interethnic dialogue and to encourage wider acceptance of those currently referred to as "Others" as part of the society of Bosnia and Herzegovina.

Given the needs and the demands in this matter, the possibility to give greater support for initiatives coming from national minorities to promote their languages and cultures should be considered.

Serious problems remain in the application of the Framework Convention with regard to the Roma. Full and effective equality has not been secured for Roma, who continue to be exposed to discrimination and face particular difficulties in fields such as housing, health care, employment and education. A comprehensive national strategy is needed to improve their situation, drawing on the experience gained in the recent elaboration of an Action Plan on their educational needs. In this context, particular attention should be paid to ensuring improved participation of Roma in public affairs.

## I. PREPARATION OF THE CURRENT OPINION

1. The initial State Report of Bosnia and Herzegovina (hereinafter: the State Report) was due on 1 June 2001. At their 850<sup>th</sup> meeting on 3 September 2003, the Ministers' Deputies took note of the fact that Bosnia and Herzegovina had failed to supply its State Report 24 months after the Report was due and decided to authorise the Advisory Committee to commence monitoring in respect of Bosnia and Herzegovina.

2. In accordance with Rule 32 of the Committee of Ministers' Resolution (97) 10 and in the light of the above-mentioned decision of 3 September 2003, the Government of Bosnia and Herzegovina extended an invitation, on 26 September 2003, to the Advisory Committee to visit the country. The State Report was received on 20 February 2004 and a delegation of the Advisory Committee visited Bosnia and Herzegovina from 23 to 27 February 2004 in order to obtain supplementary information from representatives of the Government, NGOs and other independent sources on the implementation of the Framework Convention. In preparing this opinion, the Advisory Committee also consulted a range of written materials from various Council of Europe bodies, other international organisations, NGOs and other independent sources.

3. In the context of the examination of the State Report and in the light of the discussions held during its visit to Bosnia and Herzegovina, the Advisory Committee identified a number of points on which it wished to obtain fuller information. A questionnaire was therefore sent to the authorities of Bosnia and Herzegovina on 19 March 2004. The reply of the Government of Bosnia and Herzegovina to this questionnaire was received on 12 May 2004.

4. The Advisory Committee subsequently adopted this opinion at its 19<sup>th</sup> meeting on 27 May 2004 and decided to transmit it to the Committee of Ministers<sup>1</sup>.

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".

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<sup>1</sup> The Advisory Committee decided, at its 12<sup>th</sup> meeting on 30 November 2001, to introduce certain changes to the structure of its opinions. It decided to discontinue the practice of submitting a "Proposal for conclusions and recommendations by the Committee of Ministers" (Section V of the earlier opinions) and to introduce a new section IV, entitled "Main findings and comments of the Advisory Committee". The Advisory Committee also decided to submit its "Concluding remarks" in Section V instead of Section IV. These changes are effective as from 30 November 2001 and they apply to all subsequent opinions adopted in the first monitoring cycle. These changes have been made in the light of the first country-specific decisions on the implementation of the Framework Convention adopted by the Committee of Ministers in October 2001.

## II. GENERAL REMARKS

6. The Advisory Committee regrets that the State Report was received 31 months late, a matter which significantly hampered the monitoring of the Framework Convention in Bosnia and Herzegovina. The State Report mainly deals with the legislative and institutional framework and contains little explanation on the practice pertaining to the protection of national minorities in Bosnia and Herzegovina and no comments whatsoever in respect of certain provisions of the Framework Convention. The Advisory Committee also notes the lack of information on the implementation of the Framework Convention at the sub-State level, a matter that should be addressed through enhanced co-operation between the Entities and the State authorities. At the same time the Advisory Committee recognises the efforts made by the authors of the State Report to provide statistical data from various sources and recognises that efforts have been made to include elements of self-criticism.

7. The Advisory Committee obtained a somewhat fuller picture of the situation through the Government's written reply to its questionnaire and, in particular, through the above-mentioned visit to Bosnia and Herzegovina. The Advisory Committee finds that the visit, organised upon an invitation by the Government of Bosnia and Herzegovina, provided an excellent opportunity to have a direct dialogue with the relevant 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. The meetings took place not only in Sarajevo but also in Banja Luka, Prnjavor and Tuzla.

8. The Advisory Committee recognises the co-operative spirit shown by the authorities of Bosnia and Herzegovina in the process leading to the adoption of this opinion.

9. As regards the preparation of the State Report and despite its very late submission, it appears that the Entities have not been sufficiently associated with the drafting exercise. The Advisory Committee also notes that the State Report is not widely known among the various circles concerned, despite commendable efforts made by the State authorities to consult representatives of national minorities as well as certain NGOs. The Advisory Committee therefore 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.

10. The Advisory Committee notes that the consequences of the war, which ended in 1995 and resulted in a great deal of suffering, a high number of deaths<sup>2</sup> and the displacement of some 2,200,000 persons<sup>3</sup>, are still widely felt in Bosnia and Herzegovina today. This is the case not only in the socio-economic field, but also as far as inter-ethnic dialogue and human rights in general are concerned. This legacy significantly complicates the task of the authorities to implement the Framework Convention and makes resolute action to promote inter-ethnic tolerance and to fight all forms of discrimination a necessity.

11. As a result of the efforts to stop the war in Bosnia and Herzegovina, the Dayton-Paris General Framework Agreement for Peace in Bosnia and Herzegovina (hereinafter referred to

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<sup>2</sup> According to the State Report, some 250,000 people were killed.

<sup>3</sup> According to the State Report, out of this figure some 1,200,000 persons sought protection outside Bosnia and Herzegovina and nearly 1,000,000 persons were displaced within the territory of Bosnia and Herzegovina.

as GFAP) was signed in Paris on 14 December 1995 by the Republic of Bosnia and Herzegovina, the Republic of Croatia and the Federal Republic of Yugoslavia. The Constitution of Bosnia and Herzegovina is contained in annex 4 of the GFAP, which defines Bosniacs, Croats, and Serbs as “Constituent Peoples” and introduces the notion of “Others” (see Preamble). The Constitution prescribes that Bosnia and Herzegovina shall consist of two Entities, namely the Federation of Bosnia and Herzegovina and the Republika Srpska (see Article I). It commits Bosnia and Herzegovina and both Entities to ensure “the highest level of internationally recognised human rights and fundamental freedoms” (see Article II). Moreover, the GFAP provides for the direct participation of members nominated by the international community in certain domestic institutions, such as the Constitutional Court of Bosnia and Herzegovina, and creates the position of High Representative to oversee the implementation of the civilian aspects of the GFAP.

12. These and other features of the GFAP make the institutional arrangements of Bosnia and Herzegovina unique and have to be kept in mind when assessing the implementation of the Framework Convention in this country. As concerns the protection of national minorities in general and notwithstanding the somewhat rigid framework inherited under the GFAP and the important role played by the international community in Bosnia and Herzegovina, it is essential that all necessary measures be taken by the domestic authorities and that the latter feel increasingly responsible for the implementation of the Framework Convention in particular. This would in turn ensure that a sense of ownership of these measures develops in the local population.

13. The GFAP was instrumental in ending the war. In defining with precision the obligations of the ratifying Parties and establishing a complex institutional architecture, the GFAP has certainly significantly contributed to ensuring a lasting peace and stability in Bosnia and Herzegovina. The Advisory Committee underlines that these results have been achieved through a strong emphasis on ethnic belonging and territorial arrangements largely designed to cater for the needs of the so-called constituent peoples. While recognising that this approach has probably been necessary in the post-conflict rehabilitation phase, the Advisory Committee considers that there will be a growing need in the future to move from this emphasis on ethnic belonging and group rights towards a more inclusive approach focusing on individual human rights, which seems more in keeping with the aspirations of an increasing number of Bosnian citizens. Moreover, this move appears fully in line with the partial decision No. 5/98 of the Constitutional Court of 30 June and 1 July 2000, which not only deals with the collective equality of the three constituent peoples, but also with discrimination of individuals. Such a move will have to be coupled with an enhanced participation of all members of Bosnian society, especially those currently labelled as “Others”, either because they belong to national minorities or simply because they do not want to be associated with one of the three constituent peoples. Whereas a number of changes in this direction might be introduced by changing current practices or adapting existing legislation, it should not be ruled out that constitutional changes will be needed in the long term, once an emerging consensus develops on these issues.

14. The Advisory Committee underlines that the implementation of the Framework Convention in Bosnia and Herzegovina is seriously complicated by the lack of reliable data. The last general census of the population was taken in 1991, i.e. before the war, and it is widely recognised that its results no longer reflect the current demographic pattern of the country. Various calls for a new census have been voiced in the country, including by representatives of certain national minorities such as the Roma. At the same time, the 1991 census testifies to the extraordinary linguistic, ethnic and cultural diversity that has characterised Bosnia and Herzegovina for centuries and there is understandably some

reluctance in many circles to organise a new census before the process of return of refugees and displaced persons is completed, as provided for by annex 7 of the GFAP.

15. The Advisory Committee is fully aware of this dilemma and hopes that the conditions for the organisation of a new census will be met in the not too distant future. The Advisory Committee, however, finds it essential that the authorities, especially at the local level, do not use the absence of a recent census as an argument to justify inaction as concerns the protection of national minorities. This seems all the more important in the light of the fact that there is, regrettably, insufficient interest shown by the authorities for issues pertaining to national minorities, as evidenced by the continuous lack of implementation of the 2003 Law on the Protection of Rights of Persons Belonging to National Minorities (see related comments under Article 5 below).

16. The Advisory Committee wishes to specify that in examining the implementation of the Framework Convention by Bosnia and Herzegovina, it has taken into account the serious economic difficulties the country is facing at present. Aware of the importance of socio-economic conditions on the implementation of policies and measures that generally necessitate adequate financial resources, the Advisory Committee welcomes the efforts that have already been made by the authorities to protect national minorities but hope that they will be intensified in the near future.

17. In the following part of the opinion, it is Stated in respect of certain provisions 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 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

18. The Advisory Committee notes that several international treaties were first incorporated into the domestic legal order through the GFAP and were only subsequently ratified, as was the case with the Framework Convention. The Advisory Committee however regrets that so far, and with the notable exception of the Constitutional Court, little use of the Framework Convention has been made at domestic level, either by national authorities or by the Office of the High Representative and the former Human Rights Chamber.

#### Article 2

19. The Advisory Committee notes that the Constitutional Court in its partial decision No. 5/98 of 30 June and 1 July 2000 published in the Official Gazette of 14 September 2000, declared unconstitutional, *inter alia*, paragraph 5 of the Preamble of the Constitution of the Republika Srpska, which recognised “the natural and democratic right, will and determination of the Serb people from the Republika Srpska to link its State completely and tightly with other States of the Serb people”. The Advisory Committee welcomes the new wording of the Preamble of the Constitution of the Republika Srpska, which now, *inter alia*, expresses the intention “to contribute to the development of friendly relations among the peoples and States”, a wording that appears fully in the spirit of Article 2 of the Framework Convention.

#### Article 3

20. 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 the authorities of Bosnia and Herzegovina is therefore deemed to be the outcome of this examination.

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

22. 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 of the Framework Convention.

23. Bosnia and Herzegovina has not entered any declaration or reservation on the personal scope of application upon accession to the Framework Convention. The State Report only implicitly addresses this question in that it refers to the 2003 Law on the Protection of Rights of Persons Belonging to National Minorities, Article 3 of which gives a definition of the term “national minority” and contains a list of the groups protected:

*“A national minority, in the sense of this Law, is a part of the population - citizens of Bosnia and Herzegovina - that does not belong to one of the three constituent peoples of Bosnia and Herzegovina, and it consists of the people of the same or similar ethnic origin, same or similar tradition, customs, religion, culture, and spirituality, and close or related history and other features.*

*Bosnia and Herzegovina shall protect the position and equality of persons belonging to national minorities: Albanians, Montenegrins, Czechs, Italians, Jews, Hungarians, Macedonians, Germans, Poles, Roma, Romanians, Russians, Ruthenians, Slovaks, Slovenians, Turks, Ukrainians, and others who satisfy requirements from paragraph 1 of this Article.”*

24. The Advisory Committee finds it positive that this definition covers a large number of groups residing in Bosnia and Herzegovina, including numerically smaller ones<sup>4</sup>, and that the list of groups protected is not conceived as an exhaustive one. However, it notes that limiting the scope of the term national minority to citizens only may have a negative impact for example on the protection of those Roma or other persons whose citizenship status, following the break-up of the Socialist Federal Republic of Yugoslavia and the conflict in Bosnia and Herzegovina, has not been regularised (see related comments under Article 4 below, paragraph 47).

25. The Advisory Committee considers that there remains room for including further groups within the scope of the Framework Convention and legislation pertaining to its implementation. The Advisory Committee is of the opinion that it would be possible to consider the inclusion of persons belonging to other groups, including non-citizens as appropriate, in the application of the Framework Convention on an article-by-article basis, and takes the view that the authorities should consider this issue in consultation with those concerned.

26. As concerns the position of the Bosniacs, Croats and Serbs, the Advisory Committee notes that they are not considered as national minorities for the purposes of the 2003 Law on the Protection of Rights of Persons Belonging to National Minorities. The GFAP labels them “Constituent Peoples”, as reflected in the Preamble of the Constitution of Bosnia and Herzegovina. In accordance with the partial decision No. 5/98 of 30 June and 1 July 2000 of the Constitutional Court, Bosniacs, Croats and Serbs are to be considered constituent peoples across the whole territory of Bosnia and Herzegovina, no matter the Entity in which they reside. In other words, even if constituent peoples are, in actual fact, in a majority or minority position in the Entities, the express recognition of Bosniacs, Croats and Serbs as constituent peoples means that none of them is constitutionally recognised as a majority since they enjoy equality as a group.

27. The status of constituent peoples represents an important guarantee for the equal treatment of Bosniacs, Croats and Serbs in both Entities and the Advisory Committee acknowledges that this equal treatment has been instrumental in ensuring a lasting peace and stability in the country after the conflict. It is therefore fully understandable that there is no willingness among these groups to substitute their status of constituent people with that of

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<sup>4</sup> The results of the 1991 census in Bosnia and Herzegovina show that out of a total population of 4,377,033 people, Albanians numbered 4,922, Montenegrins 10,048, Czechs 590, Italians 732, Jews 426, Hungarians 893, Macedonians 1,596, Germans 470, Poles 526, Roma 8,864, Romanians 162, Russians 297, Ruthenians 133, Slovaks 297, Slovenians 2,190, Turks 267, Ukrainians 3,929, Yugoslavs 242,682, others 17,592; Did not declare their ethnicity 14,585, regional affiliation 224, unknown 35,670.

national minorities under the 2003 Law on the Protection of Rights of Persons Belonging to National Minorities.

28. The Advisory Committee nevertheless notes that Bosniacs and Croats *de facto* live in a minority situation in the Republika Srpska as do Serbs in the Federation, a point already stressed by the Constitutional Court<sup>5</sup>. In such a situation and notwithstanding their status of constituent peoples, these persons may find themselves in a vulnerable position and be subject to various types of discrimination (see related comments under Article 4 below). Taking into account the organisational autonomy enjoyed and the wide powers exercised by the Entities in a number of key areas like education, culture or media, the Advisory Committee considers that Bosniacs and Croats in the Republika Srpska as well as Serbs in the Federation could also be given the possibility - in case they so wish - to rely on the protection provided by the Framework Convention as far as the issues concerned are within the competence of the Entities. Taking into account the organisational autonomy enjoyed and the wide powers exercised by the Cantons in the Federation, the same possibility could also be given to the Croats and the Bosniacs living in the Cantons where they constitute a numerical minority. The Advisory Committee wishes to make clear that this possibility would by no means imply a weakening of their status as constituent peoples as provided for by the Constitution, but merely aim at offering an additional tool to respond to a specific need for protection. The Advisory Committee therefore takes the view that Bosnia and Herzegovina should consider this issue in consultation with those concerned.

29. As a matter of principle, the Advisory Committee underlines that the quasi-systematic use of the term "Others" at the constitutional level in relation to national minorities, in contrast with the so-called constituent peoples, raises some problems. On the one hand the concept of "Others" gives rise to diverging interpretations as to whether it only applies to persons belonging to national minorities or to all those not wishing to be associated with one of the three constituent peoples. On the other hand, several representatives of national minorities indicated that they perceived the term "Others" as offensive and implying exclusion rather than inclusion into Bosnian society. The Advisory Committee is therefore pleased to note that the 2003 Law on the Protection of Rights of Persons Belonging to National Minorities consistently uses the term "national minorities", which is also mentioned in Article II.5 of the Constitution. It expresses the hope that the competent authorities, both at State and Entity levels, will contemplate the possibility of consistently introducing similar terminology at the constitutional level.

30. The Advisory Committee notes that, in Bosnia and Herzegovina, the ethnicity of individuals is regularly referred to in a number of areas, in particular in access to political posts, in the allocation of public posts and, more generally, in access to employment. While recognising that this approach has contributed to reaching a certain balance between the three constituent peoples and admitting that there is a need to obtain quality data in these fields, the Advisory Committee emphasises that the collection of data on individuals' affiliation with a particular ethnicity needs to be coupled with adequate legal safeguards, bearing in mind the principles contained in the Committee of Ministers' Recommendation No. (97) 18 concerning the protection of personal data collected and processed for statistical purposes. In this context, it is particularly important to ensure that every person has the right to be treated or not to be treated as a person belonging to a given ethnic group and furthermore that no disadvantage should result from that choice. Moreover all persons concerned must be informed that the provision of ethnicity data is voluntary.

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<sup>5</sup> See paragraphs 58 and 59 of the Constitutional Court's partial decision No. 5/98 of 30 June and 1 July 2000.

31. The Advisory Committee notes that the Bosnian legal order does not seem to contain sufficient safeguards in this respect. In certain cases individuals are even *de facto* obliged to declare their ethnicity since identifying as “Others” raises some problems from the non-discrimination viewpoint (see related comments under Article 4 below, paragraphs 37-41. For instance Article 4.19, paragraph 5 of the Election Law prescribes that “*the candidates lists for the House of Representatives of the Federation of Bosnia and Herzegovina, the President and Vice-President of the Republika Srpska, and the National Assembly of the Republika Srpska shall indicate to which constituent people, or the group of Others, the candidates declare to belong.*” Even though it might pursue a legitimate aim, namely ensuring the equal representation of constituent peoples in public authorities, such an obligation is problematic from the point of Article 3 of the Framework Convention. The Advisory Committee therefore considers that the authorities should carry out a review of the legislation in this regard and, on that basis, adopt the necessary amendments to ensure full respect of the right not to be treated as a person belonging to a given ethnic group.

32. Bearing in mind that the last general census of the population was carried out in 1991, the Advisory Committee encourages the authorities to start a reflection on the possibility of organising a new census at some appropriate time in the future (see related comments in paragraphs 14 and 15 above under General remarks). In this respect, it will be essential that the reply to questions pertaining to ethnicity be conceived as optional and clearly marked as such. Consideration will have to be given to the possibility of explicitly offering neutral entries - such as “Bosnian” - for self-identification in addition to the list of ethnic groups when drawing up census forms. This is particularly important in view of the fact that a significant number of persons declared themselves “Yugoslavs” or simply refused to declare their ethnicity in the last census. This would also take account of the fact that today, a growing number of Bosnian citizens, notably from mixed marriages, do not necessarily feel at ease with an exclusive label of one of the three constituent peoples. It is advisable that the Government consult in due course not only representatives of the constituent peoples, but also representatives of national minorities on the organisation and modalities of the next census, particularly on the content of the census forms.

#### **Article 4**

33. The Advisory Committee notes with satisfaction that there exist general guarantees against discrimination, including in the Constitution of Bosnia and Herzegovina, in the Constitutions of the Entities and in the 2003 Law on the Protection of Rights of Persons Belonging to National Minorities. The Advisory Committee notes however that such provisions would merit being developed further and expects that consideration will be given to the development of comprehensive anti-discrimination legislation that protects individuals from discrimination by both public authorities and private entities.

34. A Commission on Human Rights was established in accordance with Annex 6 of the GFAP and consisted of two parts, namely the Office of the Ombudsman and the Human Rights Chamber. These institutions were tasked to examine alleged or apparent violations of human rights, as well as alleged or apparent discrimination by public authorities. The Human Rights Chamber could be seized either by the Ombudsman on behalf of an applicant, or by an authority, or from a person, a group of persons or by an NGO claiming to be a victim of a human rights violation. Three Ombudsman institutions now exist in Bosnia and Herzegovina, one at the State level and one in each Entity. Each of these institutions is composed of 3 Ombudspersons (one Bosniac, one Croat and one Serb). The oldest Ombudsman institution (in

the Federation), which has been in existence for more than 10 years, has in particular proved instrumental in the fight against discrimination, including for persons belonging to national minorities as well as those belonging to constituent peoples in a minority situation.

35. The Advisory Committee notes that both the institutional framework as well as judicial and non-judicial remedies to fight against discrimination have been in a flux for some time. The responsibilities of the Human Rights Chamber have been transferred to the Constitutional Court as from 1 January 2004 and it is foreseen that a Human Rights Commission within the Constitutional Court will work from 1 January to 31 December 2004 to deal with the Human Rights Chamber backlog of approximately 9,500 cases. Moreover, it is envisaged to merge the three Ombudsman institutions in order to create a unified Ombudsman Office at the State level.

36. The Advisory Committee considers that during the whole process of implementing these important institutional changes, the authorities should take particular care to ensure that effective remedies remain at the disposal of individuals claiming to be victims of discrimination. In this context, it is particularly important that the Human Rights Commission within the Constitutional Court be provided with the necessary resources to deal with the remaining cases inherited from the Human Rights Chamber. It is also important that the merger of the three Ombudsman institutions, which should reduce the number of Ombudspersons from 9 to 1 and which appears necessary to reinforce multi-ethnic State institutions as well as to rationalise the use of public funds, takes place gradually so that popular confidence in the newly-established State Ombudsman institution can be strengthened<sup>6</sup>. It is however regrettable that the Ombudsperson and the two Deputies, who will compose this future unified institution, will be elected on an ethnic basis, a matter that will merit further consideration in the future. The Advisory Committee also considers that the authorities should pay increased attention to the lack of proper implementation of decisions or recommendations issued by these Human Rights institutions, a problem which, if it continues, is likely to undermine popular confidence in the effective functioning of these remedies, which are important, *inter alia*, for persons belonging to national minorities.

37. While appreciating the above-mentioned general guarantees against discrimination, the Advisory Committee notes at the same time that the rules governing the composition of some authorities at the State level is such as to legally exclude persons belonging to national minorities from accessing these political posts. This is for instance the case with regard to the tripartite Presidency of Bosnia and Herzegovina, which according to Article V of the Constitution shall consist of one Bosniac, one Croat and one Serb. Another example is the House of Peoples of the Parliament of Bosnia and Herzegovina, which according to Article IV of the Constitution shall comprise 15 delegates, two-thirds from the Federation (including five Croats and five Bosniacs) and one-third from the Republika Srpska (five Serbs). Moreover, Article IV of the Constitution makes it possible only for Serbs, Bosniacs and Croats to serve as Chair and Deputy Chairs of both Chambers of the Parliament, namely the House of Peoples and the House of Representatives.

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<sup>6</sup> See the Opinion of the Commission for Democracy through Law (Venice Commission) of 8 July 2002 on certain issues related to the Ombudsman institutions in Bosnia and Herzegovina and on certain commitments undertaken by Bosnia and Herzegovina upon accession to the Council of Europe, document CDL-AD(2002)10; see also Agreed Conclusions of the Working Meeting on "Restructuring Ombudsman Institutions in Bosnia and Herzegovina" of 19 April 2004, Venice Commission, document CDL(2004)028, which calls in particular for a transitional period during which the three institutions will co-exist.

38. In addition to obstacles faced by persons belonging to national minorities in the access to certain posts, the Advisory Committee notes that a number of persons belonging to each of the constituent peoples are also legally barred from accessing such posts. It is for instance impossible for a Serb residing on the territory of the Federation or for a Croat or a Bosniac residing on the territory of the Republika Srpska to be elected in the tripartite Presidency of Bosnia and Herzegovina given the wording of Article V of the Constitution. Similarly, a Serb from the Federation or a Croat or a Bosniac from the Republika Srpska will not be eligible to the House of Peoples of Bosnia and Herzegovina given the wording of Article IV of the Constitution.

39. The Advisory Committee considers that such arrangements raise issues of discrimination. While it may be said that they pursue a legitimate aim, namely to ensure equal representation of the three constituent peoples, their proportionality is questionable in terms of totally excluding in particular persons belonging to national minorities from accessing key-positions in public life. This therefore raises issues of compatibility with Article 4 of the Framework Convention. Notwithstanding that the institutional framework deriving from the Constitution and therefore from the GFAP has been instrumental in securing stability in Bosnia and Herzegovina and that amending the Constitution can only be envisaged once a broad consensus among political forces and constituent peoples has emerged at the national level, the Advisory Committee is of the opinion that consideration should be given to finding ways and means of remedying the total exclusion of persons belonging to national minorities from the above-mentioned posts, even if this cannot be achieved in the short term.

40. The Advisory Committee welcomes that following the Constitutional Court's partial decision of 30 June and 1 July 2000 on the status of constituent peoples, the constitutions of both the Federation and the Republika Srpska have been amended so as to make it possible for the three constituent peoples to be represented in the Parliaments of the Entities. More limited progress has been made to ensure representation of national minorities through the category of "Others". The Advisory Committee also notes that certain changes in the composition of legislative and executive authorities have been introduced both at municipal and - as far as the Federation is concerned - Cantonal level to comply with the aforementioned decision of the Constitutional Court.

41. The Advisory Committee regrets however that this process has not been fully completed. It appears for example that the House of Peoples of the Federation is still lacking 7 Serb Delegates and other problems remain at the Entity level, as recognised in the State Report. The President and the two Vice-Presidents of both the Federation and the Republika Srpska can for instance only be elected from among the constituent peoples. The same applies to the election of the President and the Vice-President of the Parliament Chambers of the Federation. Similarly, the three Ombudspersons of the Federation must be appointed from among each of the constituent peoples, thereby excluding persons belonging to national minorities. The Advisory Committee is of the opinion that such arrangements should also be reviewed as they raise issues of compatibility with Article 4 of the Framework Convention<sup>7</sup>. They also appear at variance with the general principle, set out in Article 19 of the Law on the Protection of Rights of Persons Belonging to National Minorities, that persons belonging to national minorities shall have the right to be proportionally represented in the bodies of public

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<sup>7</sup> See the Opinion of the Commission for Democracy through Law (Venice Commission) of 9-10 March 2001 on the implications of Partial Decision III of the Constitutional Court of Bosnia and Herzegovina in Case U 5/98 on the issue of the "Constituent Peoples", document CDL-INF(2001)6, which states in paragraph 15a) that "dividing the positions of responsibility between the representatives of the three constituent peoples entails a serious risk of discriminating against Others by excluding them from such posts".

authorities and other civil services at all levels. Consideration should therefore be given to finding ways and means of enabling persons belonging to national minorities to access the posts at issue, a matter which may ultimately require constitutional amendments at the Entity level.

42. While stressing the importance of having adequate legislation in place to protect persons belonging to national minorities from discrimination, the Advisory Committee is particularly concerned about problems related to the implementation of such legislation in practice. In this context, a range of information from both non-governmental and international sources, as well as from the Ombudsman institutions, mention the persistence of deeply-rooted discrimination in a number of areas. Discrimination is essentially targeted at persons who do not belong to the constituent group which is in a numerical majority at the Entity level or, for the Federation, at Cantonal level. The Roma are particularly more vulnerable in this respect.

43. Access to employment gives rise to discrimination in the Entities and especially in the Republika Srpska, where it remain excessively difficult for persons who are not Serbs to be recruited in the judiciary, in the police as well as in a range of public enterprises (see related comments under Article 15 below, paragraph 111). Discrimination also occurs in the return process of refugees and displaced persons particularly at local level, both in the Federation and in the Republika Srpska. The Advisory Committee therefore urges the authorities, especially at the Entity level, to tackle the widespread discrimination faced by those not belonging to the dominant constituent people more vigorously and to strengthen their action aimed at encouraging reconciliation (see related comments under Article 6 below).

44. As a particularly vulnerable group, the Roma are in the most difficult situation and exposed to widespread discrimination. This includes Roma who have been displaced, who have been repatriated from abroad or who came as refugees from Kosovo. According to the authorities, the Roma are the largest national minority and at least 20,000 of them live in the country. Other estimates suggest that Roma might be more numerous, ranging from 30,000 to 50,000<sup>8</sup> or even more.

45. The Advisory Committee notes that before the war, Roma used to live mainly in the territory of what is today the Republika Srpska. A very high number of them were expelled during the war, in particular from Prijedor, Vlasenica, Rogatica, Srebrenica, Zvornik and Bijeljina and reportedly few of them have returned there (see related comments under Article 6 below). Consequently most of the Roma today live in the territory of the Federation, with the largest concentration in the Tuzla Canton where the Cantonal authorities estimate their number to be 15,000. According to converging information from various sources including Roma representatives, Roma are marginalised, widely unemployed, often excluded from health care and social welfare and they do not enjoy basic necessary conditions of living in many of their settlements. Moreover, Roma children rarely attend school even at the primary level (see related comments under Article 12 below) and they experience various types of discrimination in access to services and public places, one recent example being in a public swimming pool in Živinice.

46. The authorities have so far not been able to secure full and effective equality between the Roma and the rest of the population. The Advisory Committee is particularly concerned about reports of the alarming situation in informal Roma settlements, where thousands of Roma, who face particularly serious difficulties, live in substandard housing conditions

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<sup>8</sup> See in particular estimates from Roma associations and NGOs mentioned in the State Report on page 33.

without basic sanitary facilities, electricity or reliable source of heating and with a lack of waste disposal services as well as insufficient access to fresh water. In many settlements, these conditions are such as to affect the overall health situation of their residents. The Advisory Committee is deeply concerned by these sub-standard living conditions and considers that these problems merit urgent attention and targeted measures by both domestic authorities as well as support by international donor agencies.

47. A particularly acute problem facing many Roma is the lack of personal documents, including birth certificates, personal identity documents, documents related to State-provided health insurance and social welfare as well as documents attesting to citizenship (see comments under Article 3 above, paragraph 24). One reason for this is the informal nature of many Roma settlements, whose residents are not legally registered at the local level and therefore blocked in practice from obtaining identity cards or refused access to social services such as health insurance or social benefits. The case of birth certificates has in particular been raised with the Advisory Committee: seemingly a number of Roma women leave hospitals after having given birth before being formally discharged as they cannot afford to pay the medical fee. As a result, these women do not acquire the necessary medical records for the purpose of registering the newborn, for whom it is then impossible to obtain a birth certificate. The Advisory Committee considers that the lack of personal documents creates a range of undue obstacles in the realisation of their basic human rights by many Roma and therefore urges the local authorities to step up their efforts to systematically register all their residents, irrespective of the legal status of the Roma settlements.

48. The Advisory Committee emphasises that Roma residing in settlements that have not been legalised are vulnerable to forced evictions without being provided alternative accommodation (see related comments under Article 6 below). It is therefore essential that the authorities address the legal status of these settlements as a matter of priority, and that no evictions involving human rights violations are carried out.

49. As a matter of principle, the Advisory Committee is deeply concerned that in Bosnia and Herzegovina, no authority seems to have perceived the scale of the problems faced by the Roma and the ensuing need to design and develop a comprehensive strategy at all levels to efficiently tackle these problems. The State Report for instance mentions only one case of discrimination in Kiseljak but fails to analyse the overall situation of exclusion faced by the Roma and the reasons behind it. The Advisory Committee was particularly struck that during discussions with both the Ministry of Health of the Federation and the Ministry of Labour and Social Welfare of the Canton of Tuzla, its interlocutors refused to admit the need for a systematic and coordinated action on behalf of Roma on the alleged ground that social action should have no link whatsoever with ethnicity.

50. Another complicating factor in this sphere is the extremely complex and heavy institutional structure of the State and especially the Federation. In this Entity, social welfare is a Cantonal power, but without all Cantons having adopted legislation thereon. The Cantons also have large competences to adopt implementing legislation on health care. The Advisory Committee has been given to understand that the current system results in significant differences between the Cantons and between the Entities and that no authority feels responsible for filling existing gaps in the social net. This situation has a negative impact on those having to deal with authorities of different levels in their daily life, in particular displaced persons such as the Roma who fled the Republika Srpska.



51. The Advisory Committee considers that the alarming situation of the Roma in Bosnia and Herzegovina necessitates, in consultation with Roma associations and other NGOs already active in this field, the development of a range of measures aimed at improving their overall socio-economic situation, notably in the field of employment, housing and health care. In this context, the Advisory Committee wishes to refer to the recently adopted Action Plan on the educational needs of Roma as a possible source of inspiration for the development of such measures, which have to be taken in close coordination with all the ministries involved (see related comments under Article 12 below). The Advisory Committee however takes the view that as long as the competent authorities do not accept the need to take special measures for disadvantaged groups such as the Roma, no real progress can be achieved, especially as concerns health care and social welfare.

52. Bearing in mind that no general census of the population has been carried out since 1991 and that the war has provoked large movements of the population in Bosnia and Herzegovina, the Advisory Committee notes that there are wide discrepancies between the latest official statistics of the Government and the unofficial estimates of the actual number and geographical location of persons belonging to national minorities. The Advisory Committee is concerned that such discrepancies in figures, which are particularly important as concerns Roma, can 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.

53. The Advisory Committee therefore welcomes the efforts made by the Ministry of Human Rights and Refugees in 2003 to collect statistical updated information based, *inter alia*, on the records of social work centres and enrolment to schools through the sending of specific questionnaires to some 70 municipalities where Roma residents were registered in 1991. The Advisory Committee urges the authorities to pursue further similar data collection and expand these measures to all national minorities pending the organisation of a new census (see related comments under paragraphs 14 and 15 of the General remarks and Article 3 above), bearing in mind the principles identified in the Committee of Ministers' Recommendation No. (97) 18 concerning the protection of personal data collected and processed for statistical purposes.

## **Article 5**

54. The Advisory Committee notes with satisfaction the adoption on 1 April 2003 by the Parliament of Bosnia and Herzegovina of a general Law on the Protection of Rights of Persons Belonging to National Minorities. This Law provides for a number of rights and principles in several key areas such as media, use of minority languages, education, culture and participation.

55. The Advisory Committee recognises that this Law has been instrumental in initiating at least a first public reflection on the place of national minorities in Bosnia and Herzegovina. The Law was however adopted through an expedited procedure, reducing public debates to the very minimum and making it impossible for the Parliament to consider comments and proposals by representatives of national minorities. As a result, the Law has been criticised by several representatives of national minorities for providing certain guarantees that are not particularly pertinent and, conversely, for ignoring certain key demands related for example to the elimination of constitutional and legal obstacles to political participation at all levels (see related comments under Article 4 above and Article 15 below). Furthermore, the Advisory Committee recalls that the systematic treatment of national minorities only under the constitutional category of "Others" continues, thereby reinforcing their marginalisation. Full and real access of persons belonging to national minorities to all authorities both at the State

and Entity levels still needs to be introduced and guaranteed in practice. The Advisory Committee takes the view that as long as these fundamental issues have not been dealt with satisfactorily, the 2003 Law on the Protection of Rights of Persons Belonging to National Minorities will have only a very limited impact on the situation of national minorities.

56. An important feature of the 2003 Law on the Protection of Rights of Persons Belonging to National Minorities is that it is a framework law, which does not provide detailed regulation and does not appear to provide for many concrete entitlements. As a consequence, the rights introduced cannot become operational until corresponding sectoral legislation is harmonised at the State level and/or full secondary legislation is passed at the entity level. This is for instance the case as concerns teaching of minority languages in the public school system (Article 14 of the Law), the obligation for radio and television public operators to broadcast special programmes for persons belonging to national minorities (Article 16 of the Law) or the general principle that persons belonging to national minorities shall have the right to be proportionally represented in the bodies of public authorities and other civil services at all levels (Article 19 of the Law). Article 26 of the Law makes provision for relevant legislation to be adopted and harmonised in the Entities with the new rights and principles within a six month deadline expiring on 14 November 2003.

57. The Advisory Committee is deeply concerned that nearly 6 months after the expiry of the said deadline, no tangible progress has been made at any level to adopt and harmonise the relevant legislation, except in the field of education (see related comments under Article 14 below). The same inaction has characterised the proposed setting up of consultative bodies for national minorities at both State and Entity levels (see related comments under Article 15 below). The examination of the draft implementing laws recently prepared by the Governments of the Entities should therefore be considered by the respective Parliaments as a matter of priority. The Advisory Committee is also not aware of any budgetary appropriations set aside by Entities or Cantons to implement the 2003 Law on the Protection of Rights of Persons Belonging to National Minorities as provided for by Article 8 of the said Law, albeit certain Municipalities seem to have done so. Consequently, there appears to be little implementation of this Law in practice, a State of affairs that has caused great disappointment amongst national minorities.

58. The Advisory Committee none the less welcomes some commendable steps taken at local level to support initiatives protecting and promoting cultures of national minorities. This is particularly the case in Banja Luka, one of the rare municipalities having introduced yearly appropriations earmarked for national minorities in the city budget and where an excellent co-operation and trustful relationship between the authorities and the associations of some 10 national minorities have developed in recent years. Similarly, the Municipality of Prnjavor regularly supports national minorities' cultural institutions and several of their projects in accordance with the traditional multiethnic character of the city.

59. The Advisory Committee notes however that to date, such support has been provided often on an *ad hoc* basis only and there are substantial differences in the commitment of the relevant authorities to such initiatives between the different municipalities. In this context, the Advisory Committee regrets that the 2003 Law on the Protection of Rights of Persons Belonging to National Minorities contains no real incentives for measures to support institutions - like cultural or documentation centres - set up by national minorities. The representatives of several national minorities have raised with the Advisory Committee the lack of premises and related State support for their associations as one of their basic needs to satisfy. Such demands come notably from the Poles, the Italians, the Macedonians and the

Czechs and the problem seems to be particularly acute in the city of Sarajevo. A further difficulty faced by national minorities willing to organise themselves to preserve their culture is the complex institutional structure of the State with its four layers of administration which, *inter alia*, generates practical obstacles hampering coordination of their activities at the national level (see related comments under Article 15 below).

60. Article 17 of the 2003 Law on the Protection of Rights of Persons Belonging to National Minorities essentially recalls that minorities have the right to establish such institutions but entails no obligation for the authorities to take positive action. Owing to their small size, their scarce resources and the fact that they are dispersed within the two Entities, a number of national minorities are under a long-range threat to the maintenance of their identity. Given the needs and the demands in this matter, the Advisory Committee considers that the competent authorities, especially at the local level, should consider giving greater support for initiatives coming from national minorities to support their languages and cultures. In doing so, the authorities should carefully consider cultural initiatives of Roma and other national minorities with no possibility to seek support from a “kin-State”.

## Article 6

61. The Advisory Committee notes with satisfaction that during its visit, the authorities, on a number of occasions, emphasised the need for tolerance and intercultural dialogue. The Advisory Committee was also pleased to see that the reconciliation process has progressed in Bosnia and Herzegovina despite the tragic events of the past. It appears however that a lack of trust between different communities still prevails and that efforts to promote intercultural dialogue, mutual understanding and co-operation between all persons irrespective of their ethnic, cultural, linguistic or religious identity need to be intensified, especially at the entity level.

62. The Advisory Committee wishes to emphasise that messages underlying the need for tolerance, intercultural dialogue and reconciliation are of utmost importance in Bosnia and Herzegovina today, a country largely characterised by the existence of three ethnically based political orders leaving little space for people who cannot or do not want to be associated with one of the three constituent peoples. In this context, the acceptance of “Others” and especially national minorities as part of Bosnian society is not sufficiently developed. Efforts to consolidate internal cohesion and feeling of belonging to a common society are all the more necessary in view of the weakness of the central authorities and the fact that the viability of the State continues to be questioned by some. The Advisory Committee expresses the hope that Bosnia and Herzegovina will gradually overcome these overly ethnically based politics to move towards a real Bosnian democratic citizenship, a move that is not facilitated by the existence of two separate bilateral agreements on special relations with neighbouring countries signed in 1998 by the Federation and in 2001 by the Republika Srpska. There are however encouraging signs that such a move enjoys growing support from the population, as suggested by the fact that an increasing number of applicants addressing the Office of the Ombudsman of the Federation have chosen not to indicate their ethnicity in their application forms in the last two years.

63. The Advisory Committee considers it essential for the implementation of Article 6 of the Framework Convention that in addressing war crimes, both through the domestic courts and through co-operation with the International Criminal Tribunal for the former Yugoslavia, the authorities of Bosnia and Herzegovina - particularly those of the Republika Srpska - make increased efforts and demonstrate full and active co-operation. It is also important for the

elimination of the lack of trust between different communities that increased efforts are made by the authorities to investigate the fate of missing persons (see related comments below under paragraph 68).

64. The implementation of Annex 7 of the GFAP - which provides for the return of refugees and displaced persons, reconstruction projects and other conditions needed for sustainable return - is crucial to reinforce the spirit of tolerance and the above-mentioned intercultural dialogue. The Advisory Committee therefore welcomes the latest statistics published in March 2004 on property law implementation, which suggest that the process of returning properties has been nearly completed, with 201,417 files finalised out of a total of 216,904 property claims registered.

65. While recognising that this is a major achievement given the complexity and the scale of the existing problems in this sphere, the Advisory Committee notes that many people whose property has been returned have not returned to their pre-war residence. A total of 985,003<sup>9</sup> returns in/to Bosnia and Herzegovina have been registered from the signing of the GFAP until 31 December 2003 but there remain hundreds of thousands of persons who have not returned. In the absence of a new census, the State Report merely assumes that a proportional number of persons belonging to national minorities is included in this figure.

66. Several reasons may discourage people from returning to their pre-war residence and encourage them to sell their properties, not least of all the lack of economic opportunities. The Advisory Committee recognises that the difficult economic situation is a general feature every returnee has to face in Bosnia and Herzegovina. Information from various sources however highlights specific difficulties affecting to a larger extent those returnees who do not belong to the locally dominant constituent people. Such difficulties result - at least partly - from discrimination in access to employment, in access to social rights (healthcare and pensions) as well as in access to education. Moreover, it appears that some politicians contribute to the creation of a hostile atmosphere which further obstructs the return process in certain regions. The resulting general lack of trust among communities makes it often a real challenge for the persons concerned to return to their original places of settlement.

67. The Advisory Committee is particularly concerned by the fact that Roma encounter serious obstacles to exercise their right to return to their pre-war homes and to enjoy other related property rights. In numerous cases, Roma have allegedly faced obstruction by local authorities in seeking repossession on the ground, *inter alia*, that temporary occupants of their pre-war properties are themselves refugees and have nowhere to go. In instances where Roma have been successful in their claims for repossession of their property, the authorities have sometimes refused to give effect to their own decision by not ordering the eviction of the unauthorised occupants. A worrying phenomenon is the tendency for temporary occupants of Roma houses to loot or vandalise them before leaving, without the authorities taking any action to prosecute and punish the perpetrators. Such obstacles are reportedly frequent in certain municipalities of the Republika Srpska – particularly in Bijeljina and Gradiška -, albeit similar difficulties were also signalled in the territory of the Federation, notably in Donje Vukovije.

68. Return-related violence or hostility also continues to hamper sustainable return and various attacks and assaults on returnees appear to have continued in 2003. Such incidents generally target individuals from the non-dominant constituent people and, in particular, the

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<sup>9</sup> Out of which 438,415 are refugees and 546,588 are displaced persons according to the State Report.

Roma, thus discouraging these people from exercising their right to return. Demonstrations of local residents – both Serbs and Bosniacs – protesting against the proposed construction of a center for Roma have for example recently been registered in Prijedor. The attention of the Advisory Committee was also drawn to the situation of the Roma in the municipality of Zvornik, especially in Kozluk and Skočić village. Reportedly, a few hundred Roma were living in Zvornik before the war but many of them have never been found since the end of the conflict and are now missing. Allegations have been made that the authorities have not paid sufficient attention to the circumstances of these tragic events and that they have not conducted proper investigations. Roma houses have allegedly been systematically destroyed in this municipality and almost none of them have been reconstructed as yet. This state of affairs coupled with the general hostile attitude prevailing at the local level towards Roma has resulted in a very small number of Roma returns. The Advisory Committee has received some additional information from the authorities on the situation prevailing in Zvornik but such information remains insufficient. It therefore urges the competent authorities to conduct the necessary investigations into these allegations and take concrete steps to encourage Roma returns, including by improving their housing conditions.

69. Given that up until the war most of the Roma in Bosnia and Herzegovina lived in informal settlements without any clear legal title to use the land they were occupying, many of them, who either have remained or returned to such informal settlements, now live in constant threat of being forcibly evicted<sup>10</sup>. In several cases, including in the Bišće Polje area of Mostar and in the area of Butmir near Ilidža, informal Roma settlements have reportedly been demolished and their residents evicted, without the municipal authorities trying to provide alternative accommodation at all or only to those very few Roma who were registered in the municipality concerned. The Advisory Committee reiterates the need for the authorities to address the legal status of these informal Roma settlements as a matter of priority with a view to exploring all possibilities of legalising them or providing suitable alternative accommodation in a non-discriminatory manner, as was successfully done in the case of the Gorica settlement in Sarajevo as well as in the Brčko District, where municipal authorities pledged to legalise the Prutače settlement.

70. The Advisory Committee is concerned about reports indicating that some law-enforcement officials have prejudices against persons not belonging to the dominant constituent people, including Roma. Reportedly, Roma vendors in informal markets are frequently harassed and abusive police raids in Roma settlements are also signalled. These are matters that merit further attention by the authorities and, where appropriate, remedial measures. The general lack of confidence in law-enforcement authorities by the Roma partly explains why few incidents involving police abuse against Roma are reported, a state of affairs which is aggravated by the extremely low number of Roma employed as police officers (see related comments under Article 15 below).

71. In the field of media, there is a general tendency to focus on events pertaining to the three constituent peoples and neglect issues relating to national minorities. Moreover, some print and electronic media still report in a manner that strengthens existing negative stereotypes against certain national minorities such as the Roma and the Albanians. Similarly, some media also negatively portray those not belonging to the dominant constituent people, which undermines the spirit of inter-ethnic tolerance. The Advisory Committee is pleased to learn that the Press Council conducts permanent monitoring of print media, assessing these

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<sup>10</sup> According to the OSCE, about 50-70% of Roma communities in Bosnia and Herzegovina currently reside in informal settlements (see press communiqué of 13 May 2003 from the OSCE Mission to Bosnia and Herzegovina welcoming measures to legalise Roma settlement in Brčko).

phenomena. The Advisory Committee encourages the Press Council to raise public awareness about the results of this monitoring and the existing procedures available for alleged breaches of the code of conduct. Similar monitoring work could also be contemplated as concerns electronic media.

### **Article 7**

72. According to Article 10 of the 2003 Law on the Protection of Rights of Persons Belonging to National Minorities, individuals may freely display insignia and symbols of a national minority to which they belong provided they also display the official insignia and symbols of Bosnia and Herzegovina, as well as those of Entities, Cantons and municipalities.

73. The wording of this provision is problematic in that it prescribes the systematic additional use of State symbols, without distinguishing between the private and the public spheres. The Advisory Committee therefore encourages the authorities to consider amending this provision with a view to restricting the compulsory use of State symbols to the public sphere only. Should limitation be introduced in the private sphere as well, they should be admissible only where there is a necessity to protect a legitimate public interest.

### **Article 8**

74. The Advisory Committee notes that respect for the right to manifest one's religion is particularly important given the religious pattern of the different communities living in Bosnia and Herzegovina. In this context, the Advisory Committee notes the recent adoption, at the State level, of a Law on Freedom of Religions and Legal Status of Churches and Religious Communities (Official Gazette 5/44 of 9 March 2004), which contains new guarantees in this respect.

75. The Advisory Committee is concerned by the various obstacles placed to the reconstruction of religious buildings destroyed during the war. This is for example the case as concerns the mosques of Bijeljina and Zvornik, where the competent authorities of the Republika Srpska have refused to issue building permits. The Ukrainian Orthodox Church of Bijeljina has also not been rebuilt to date. The Advisory Committee therefore urges the competent authorities to do their utmost to address these problems and, where appropriate, swiftly implement relevant judicial decisions<sup>11</sup>.

### **Article 9**

76. The Advisory Committee welcomes the fact that Article 16 of the 2003 Law on the Protection of Rights of Persons Belonging to National Minorities in a number of respects reflects the principles contained in Article 9 of the Framework Convention and contains elements that support both passive and active access to the media by persons belonging to national minorities. The Advisory Committee however regrets that, owing to a lack of implementation mainly at the sub-State level, this provision is not yet fully operational, in particular as concerns the obligation for radio and television stations operating as public services to secure special informative programmes in minority languages at least once a week.

77. According to the Communications Regulatory Agency of Bosnia and Herzegovina, no application to set up a not-for-profit radio devoted to national minorities and broadcasting in

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<sup>11</sup> See in particular decision CH/96/29 of 11 June 1999 of the Human Rights Chamber in "Islamic Community vs Republika Srpska".

minority languages has ever been registered. A survey recently conducted by the Communications Regulatory Agency reveals that a number of broadcasters are in principle favourable to offering access for persons belonging to national minorities to their regular programmes. This contrasts with the current limited amount of programming in minority languages, notwithstanding certain information programmes broadcast in Turkish, Albanian, Hebrew and Roma languages by two private radio stations in Sarajevo and a Roma children programme broadcast by one radio in Kotor Varoš. The Advisory Committee therefore encourages the Communications Regulatory Agency to pay increased attention to Article 16 of the 2003 Law on the Protection of Rights of Persons Belonging to National Minorities and to take a more proactive attitude in the implementation of this provision, particularly when deciding upon the granting of licenses. Further efforts should also be made to raise awareness among national minorities about the new legal possibilities contained in the Law and to try and evaluate their needs in this field.

## Article 10

78. The Advisory Committee welcomes the wording of Article 7 of the Constitution of the Republika Srpska<sup>12</sup> and Article 6, Chapter I of the Constitution of the Federation<sup>13</sup> in that they make Serbian, Croatian and Bosnian official languages. It appears however that the possibility to make use of other languages in relations with administrative authorities has not been regulated by law at the entity level, in the Republika Srpska or in the Federation.

79. The Advisory Committee notes that Article 12 of the 2003 Law on the Protection of Rights of Persons Belonging to National Minorities prescribes the obligation for the competent authorities to ensure the use of minority languages in contacts with persons belonging to a national minority if the minority in question constitutes an absolute or relative majority in the city, municipality or local community at issue. Cities and municipalities may determine in their statutes that this possibility may also be used if the minority in question constitutes more than a third of the population in the city or municipality at issue.

80. Following the discussions the Advisory Committee has had with various authorities including in the Republika Srpska, it would seem that this provision of the Law is largely considered inapplicable in Bosnia and Herzegovina since there was not a single municipality in the country in which a given minority constituted a majority when the last general census was taken in 1991.

81. The Advisory Committee is concerned that the numerical threshold (an absolute or relative majority) contained in the said provision is so high that it might constitute an obstacle with respect to certain minority languages in areas inhabited by persons belonging to national minorities either traditionally or in substantial numbers, particularly at the level of local communities. The Advisory Committee also notes that such a numerical threshold raises doubts about its compatibility with the Constitution as suggested by the case-law of the

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<sup>12</sup> Article 7 of the Constitution of the Republika Srpska reads as follows:

“The official languages of the Republika Srpska are: the language of the Serb people, the language of the Bosniak people and the language of the Croat people. The official scripts are Cyrillic and Latin. In regions inhabited by groups speaking other languages, their languages and alphabet shall also be in official use, as specified by law”

<sup>13</sup> Article 6, Chapter I of the Constitution of the Federation reads as follows:

“The official languages of the Federation of Bosnia and Herzegovina shall be: Bosnian language, Croat language and Serb language. The official scripts shall be Latin and Cyrillic. Other languages may be used as means of communication and instruction”.

Constitutional Court itself<sup>14</sup>. It therefore encourages the competent authorities to assess the real needs on the basis of objective criteria when faced with such requests by persons belonging to national minorities, without necessarily restricting themselves to the results of the 1991 census. Moreover the Advisory Committee expresses the hope that the competent authorities will make systematic use of the possibility they have to rely on a lower threshold to activate the right to use minority languages in contacts with administrative authorities.

## Article 11

82. The Advisory Committee notes that Article 12 of the 2003 Law on the Protection of Rights of Persons Belonging to National Minorities provides the possibility to display local names, street names and other topographical indications in minority languages if the minority in question constitutes an absolute or relative majority in the city, municipality or local community at issue. Cities and municipalities may determine in their statutes that this possibility may also be used if the minority in question constitutes more than a third of the population in the city or municipality at issue. The Advisory Committee is concerned that the numerical threshold (an absolute or relative majority) contained in the said provision might constitute an obstacle with respect to certain minority languages in areas traditionally inhabited by substantial numbers of persons belonging to a national minority and expresses the hope that the competent authorities will make systematic use of the possibility they have to rely on a lower threshold.

83. The Advisory Committee finds it important that local names, street names and other topographical indications intended for the public reflect the multi-ethnic character of the area at issue, which is particularly relevant in the case of Bosnia and Herzegovina. In this context, the Advisory Committee notes that by its ruling of 26 March 2004, the Constitutional Court of Bosnia and Herzegovina instructed the authorities of the Republika Srpska to change the name of 12 municipalities and one city which have had the prefix “Serb” added to their names as a result of the 1992-1995 war. The Advisory Committee expresses the hope that the authorities concerned will promptly implement this judicial decision.

## Article 12

84. The Advisory Committee notes that on-going discussions in the field of primary and secondary education essentially focus on the status of the Serbian, Croatian and Bosnian languages and curricula and the ways and means to put an end to the so-called “two schools under one roof”, i.e. separate classes for Croat and Bosniac pupils which still exist *de facto* in certain parts of the Federation, particularly in Canton 6 (Middle Bosnia) and Canton 7 (Hercegovina Neretva). The current reform, which was accepted by Bosnia and Herzegovina as a Council of Europe post-accession commitment, also aims at moving from three distinct curricula - and set of textbooks - to a common core curriculum supplemented by a “national group of subjects”. The unification process of some 52 schools in the Federation, which have operated separate and completely parallel systems while coexisting in the same school buildings, has however met with difficulties and resistance, notably from Croat officials arguing that they need to maintain their own school system in order to avoid assimilation.

85. The Advisory Committee underlines that in the case of Bosnia and Herzegovina, the principles set out in Article 12, paragraph 2 of the Framework Convention, namely to facilitate contacts among students and teachers of different communities, are of central importance. The need to promote the reconciliation process and to enhance national cohesion at all levels in the

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<sup>14</sup> See fourth partial decision No. 5/98 of the Constitutional Court of 18-19 August 2000, paragraph 34.



post-conflict rehabilitation phase makes it crucial to eliminate elements of segregation such as using separate entrances for the same school buildings or peer pressure encouraging intolerance towards pupils from another ethnicity. Moreover, efforts to introduce a common core curriculum should be instrumental in facilitating the integration of returnee children and student mobility, which remains a challenge given the number of displaced persons and refugees (see related comments under Article 6 above, paragraph 66). In a longer-term perspective, efforts should also be made to encourage common approaches to the remaining 'national group of subjects' as well. At the same time, the Advisory Committee emphasises that the education reform and the unification process should take place in a manner that fully respects the principles enshrined in Article 14 of the Framework Convention concerning teaching of/in minority languages and ensures that persons belonging to each of the three constituent peoples have an equal right to use their language, without discrimination.

86. Given the allocation of powers between the State and the Entities - and particularly the Cantons which are responsible for educational matters in the Federation -, there is an urgent need to coordinate matters in the field of education to ensure that the principles of Articles 12 and Article 14 of the Framework Convention are consistently reflected in legislation and practice throughout the territory of Bosnia and Herzegovina. The Advisory Committee therefore welcomes the adoption on 17 February 2004 of an "Action Plan on the Educational Needs of Roma and Members of Other National Minorities in Bosnia and Herzegovina" by the Entities and Cantonal Ministers of Education. This Plan, which has been developed at the initiative of the OSCE following an eight-month consultation process with the various actors concerned, constitutes a sound basis for the competent authorities to try and meet the needs of the national minorities and especially the Roma. It builds upon three key instruments developed with the active participation of the Council of Europe: the May 2000 Education Agreement signed by the Ministers of Education of the three constituent peoples, the Education Reform Agenda, presented by the Ministers of Education and endorsed by the Peace Implementation Council in November 2002, as well as the 2003 Framework Law on Primary and Secondary Education in Bosnia and Herzegovina. The Action Plan calls for systematic action to ensure equal access to education for all and accommodation of educational needs for pupils belonging to national minorities.

87. As regards Article 12, paragraph 1 of the Framework Convention, the Advisory Committee notes that to date, measures to foster knowledge of the culture and history of national minorities are insufficient. As proposed by the Action Plan, such measures should be intensified with a view to giving all pupils a real chance to be acquainted with the multi-cultural character of Bosnia and Herzegovina. The Advisory Committee is indeed of the opinion that the benefits of inclusion and mainstreaming national minority issues into education could be instrumental in the post-conflict reconstruction effort.

88. Until recently, textbooks in the fields of history, literature, geography and social sciences have reportedly contained nationalist views and each school system (Bosniac, Croat and Serb) has presented its own interpretation of recent history. Against this background, the Advisory Committee welcomes the four-year process carried out by the Textbook Review Commission, which agreed to remove ethnically offensive terminology from some textbooks, to revise maps so as to present Bosnia and Herzegovina as a single State as well as to deal with controversial events from the past 10 years in a dispassionate way. The Advisory Committee encourages the authorities to continue this review process as well as the development of guidelines for history and geography textbook developers, an initiative supported jointly by the Council of Europe and the OSCE, to improve further the quality of textbooks.

89. The Advisory Committee is deeply concerned about the access of Roma children to education in Bosnia and Herzegovina. As recognised in the aforementioned Action Plan, a large majority of Roma children are unable to attend school due to their extremely poor living conditions. This often prevents their parents from providing them with proper clothing, textbooks and supplies. Transportation fees as well as small daily allowances for food are further obstacles faced by poor Roma families wishing to send their children to school. Discrimination and verbal harassment, including prejudicial attitudes towards the Roma by some teachers, school administrators and by other pupils, have also been signalled in some instances, which undermine Roma parents' confidence in the school system. The Advisory Committee therefore urges the authorities to tackle these problems with increased vigour. As a result of these and other factors, such as the lack of documentation for registration of children (see related comments under Article 4 above), the presence of Roma in schools is low and Roma pupils are nearly absent in the later grades of primary education and in secondary education<sup>15</sup>. Reportedly, the percentage of Roma girls attending schools is much lower than that of the boys, a factor that merits increased attention from the authorities.

90. The Advisory Committee considers that the aforementioned Action Plan contains a number of proposed measures that, if properly implemented, could significantly improve the situation of the Roma in education. In this context, the Advisory Committee was pleased to learn that 4 Cantons of the Federation as well as the Republika Srpska have already set aside specific appropriations in their 2004 budget to start implementing the Action Plan. Other Cantons should follow suit and secure as a matter of priority funds, *inter alia* for procurement of textbooks, supplies, meals and transport fees, as required by the Action Plan and by Article 18 of the 2003 Framework Law on Primary and Secondary Education<sup>16</sup>. The Advisory Committee considers that successful implementation of this Action Plan will to a large extent depend on the degree of commitment of all the authorities concerned. The Advisory Committee finds it important that the authorities intensify their efforts in this sphere, in particular to monitor and support - including amongst Roma parents - the implementation of legal provisions concerning compulsory education and school attendance. This should be done in consultation with the persons concerned and also bearing in mind the principles contained in the Committee of Ministers' Recommendation No. (2000) 4 on the education of Roma/Gypsy children in Europe.

### Article 13

91. According to Article 13 of the 2003 Law on the Protection of Rights of Persons Belonging to National Minorities, Entities and Cantons in the Federation shall within their legislation determine the possibilities for persons Belonging to national minorities to establish and maintain their own private institutions for education and professional training. Moreover, this provision foresees that financing of these institutions shall be secured by persons belonging to national minorities themselves.

92. The Advisory Committee wishes to make clear that the right granted by Article 13 of the Framework Convention may not be subject to undue restrictions and expects that the Entities will fully respect it when “determining the possibilities” for persons belonging to

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<sup>15</sup> According to a 2002 assessment report by UNICEF, the Council of Europe and the OSCE, approximately 80% of Roma do not attend school in Tuzla Canton (where the highest level of school enrolment exists).

<sup>16</sup> Article 18 of the 2003 Framework Law on Primary and Secondary Education reads as follows:

“During the period of obligatory education, governmental bodies are obliged to take necessary measures in order to ensure conditions for a free access and participation in education to all students, especially in the regard of ensuring access to free textbooks, handbooks and other didactic material”.

national minorities to set up and manage their own private educational and training establishments. In this context, it welcomes the fact that several associations of national minorities already organise additional classes in their language. The Advisory Committee also stresses that the wording of Article 13 of the 2003 Law on the Protection of Rights of Persons Belonging to National Minorities should not be interpreted in such a way as to limit the freedom of national minorities to seek resources to establish their own private institutions from domestic and international sources.

#### **Article 14**

93. The Advisory Committee notes that Article 14 of the 2003 Law on the Protection of Rights of Persons Belonging to National Minorities obliges Entities and Cantons in the Federation to ensure education in a minority language at the pre-school, primary and secondary levels if the minority in question constitutes an absolute or relative majority in the city, municipality or local community at issue. Regardless of the number of persons belonging to a national minority, Entities and Cantons in the Federation are also obliged to ensure that persons belonging to a national minority, if they so request, receive teaching of their language, literature, history and culture in the minority language as additional training.

94. The Advisory Committee is concerned that the numerical threshold (an absolute or relative majority) contained in the first part of the said provision might constitute an obstacle for receiving instruction in certain minority languages in areas inhabited by persons belonging to national minorities either traditionally or in substantial numbers, particularly at the level of local communities. In this context, the Advisory Committee notes with satisfaction that a more flexible approach seems to be suggested by Article 8 of the 2003 Framework Law on Primary and Secondary Education, which prescribes that the language and culture of any significant minority in Bosnia and Herzegovina shall be respected and accommodated within the school to the greatest extent practicable, in accordance with the Framework Convention for the Protection of National Minorities. The authorities should therefore endeavour to make use of this flexibility. The Advisory Committee also notes that legislation on Primary and Secondary Education in the Entities is being harmonised with the 2003 Framework Law on Primary and Secondary Education, a lengthy process that still needs to be completed in certain Cantons of the Federation.

95. The Advisory Committee welcomes the second part of Article 14 of the 2003 Law on the Protection of Rights of Persons Belonging to National Minorities, which provides for the introduction of the teaching of minority languages upon request by those concerned “regardless of the number of persons belonging to a national minority”. This constitutes a significant step forward and the Advisory Committee was pleased to learn that a new Law on Primary and Secondary Education was passed in Republika Srpska on 30 April 2004, abolishing the minimum legal threshold of 20 pupils previously applicable to have a minority language taught at the primary school level. The Advisory Committee encourages the competent authorities in the Cantons concerned to follow suit by speeding up the process of harmonising their legislation with both the 2003 Framework Law on Primary and Secondary Education and the 2003 Law on the Protection of Rights of Persons Belonging to National Minorities. Such harmonisation can indeed be instrumental in creating wider opportunities for persons belonging to national minorities to be taught or receive instruction in their language.

96. As concerns the situation in practice, it appears that additional classes for certain national minorities already exist both in the Federation and in the Republika Srpska. The Czechs, the Poles, the Italians and the Ukrainians have in particular expressed an interest to

consolidate and develop them further, while stressing at the same time that these classes are often organised and operated by their own associations and not within the public education system (see related comments under Article 13 above). Generally speaking and even when additional classes are organised by the associations of national minorities, there is a need to increase State support not least of all to pay for the teachers and their training, as well as to provide textbooks in minority languages. In this context, the Advisory Committee welcomes that Article 14 of the 2003 Law on the Protection of Rights of Persons Belonging to National Minorities obliges the competent authorities to ensure, *inter alia*, the financial resources, the training material for teachers as well as the printing of textbooks in minority languages for the realisation of the rights set out in this provision. The Advisory Committee expresses the hope that the Entities will endeavour to fully implement this provision once necessary consultation with national minorities has given a clearer picture of the needs in this sphere.

97. The Advisory Committee notes that the teaching of the Roma language is only occasionally available in certain schools in Bosnia and Herzegovina. It encourages the authorities to introduce more systematically Roma language teaching in schools attended by Roma children as well as develop curriculum resources to enable teachers to teach the Roma language, culture and history as provided for in the Action Plan on the Educational Needs of Roma and Members of Other National Minorities.

#### **Article 15**

98. The participation of persons belonging to national minorities in public affairs remains an issue of central importance which still needs to be addressed. The Advisory Committee recalls that the present situation, whereby persons belonging to national minorities are barred from accessing certain public posts both at the State and Entity level, raises issues of discrimination and is perceived by those concerned as a policy of exclusion (see related comments above under Article 4 above).

99. The Advisory Committee also notes that the constant attention devoted to a strictly equal representation of the three constituent peoples within the authorities, the public administration and a range of public enterprises negatively affects efforts aimed at improving participation of national minorities. This attention often leads to multiplying posts in order to reach a mathematical equality between the three constituent peoples, as is for instance the case with the functions of Ombudspersons or deputy ministers, with a constant emphasis placed on the ethnicity of the incumbents.

100. Another factor reinforcing ethnic lines as the main pillar of State action in Bosnia and Herzegovina is the notion of “vital national interest” of the constituent peoples. This notion was introduced by the Constitution and is so broadly defined that it gives a quasi veto right to each constituent people caucus in the House of Peoples in matters such as education, religion, language, culture, tradition, cultural heritage, territorial organisation, organisation of public authorities and other issues declared of vital national interest by a qualified majority. The same system applies in the Parliaments of the Entities.

101. The notion of vital national interest, which secures a very strong mechanism of protection to the constituent peoples which are already in a dominant position, often detracts the attention of the Parliament and the political forces from what is not of interest to the constituent peoples. The legitimacy of this mechanism has already been questioned in certain contexts by the Constitutional Court, which came to the conclusion that such quasi veto powers granted, at the level of the Entities, to the caucuses of the constituent peoples were

unconstitutional<sup>17</sup>. The Advisory Committee notes with concern that the national minorities, which are in need of specific protection mechanisms given their vulnerable position, do not benefit from this notion since the “Others” do not have the right to invoke a violation of their own vital national interest in the Parliament, neither at the State nor the Entity level. The Advisory Committee notes that recurring criticism has been raised concerning the application of the notion of vital national interest, which not only fails to protect the most vulnerable groups but also leads to a certain paralysis of the institutions, as witnessed in May 2004 with the Framework Law on Higher Education which could not be adopted because of the opposition from the Croats. When consideration is given to this question in the future, the Advisory Committee expects that due regard will be given to the interests of national minorities.

102. As recognised in the State Report and as was confirmed by certain representatives of national minorities such as the Montenegrins, it appears that in the limited cases where there exists a possibility for national minorities to be represented in elected bodies through the category of “Others”, there have been cases of abuse. This for instance happened in the 2003 elections at the House of Peoples of the Federation. This Chamber should comprise 7 Delegates from among the category of “Others” in accordance with Article 6, chapter IV A of the Constitution of the Federation: None of these 7 Delegates (one “Muslim” and six “Bosnians”) actually comes from the national minorities mentioned in Article 3 of the 2003 Law on the Protection of Rights of Persons Belonging to National Minorities. In the Council of Peoples of the Republika Srpska, which should comprise 4 members from the category of “Others” according to Article 71 of the Constitution of the Republika Srpska, one Slovenian, one Ukrainian and one Jewish Delegates have been elected together with one “Yugoslav”, the latter being a group not mentioned in the said law.

103. In view of the foregoing, the Advisory Committee considers that the competent authorities should review the current representation of “Others”. Whereas it is fully legitimate to enable people not wishing to be associated with one of the three constituent peoples and not belonging to national minorities to sit in elected bodies, it is important that this does not happen at the expense of national minorities. The authorities should therefore adopt the necessary amendments in electoral laws to ensure that persons belonging to national minorities have a real chance to be elected in the category of “Others”.

104. As regards participation at the local level, the Advisory Committee welcomes the amendments to the Election Law passed in April 2004, which for the first time provide for the right of persons belonging to national minorities to elect their representatives in Municipal Councils and Municipal Assemblies - with a minimum number of seats guaranteed - and for the national minorities associations to nominate their candidates. The Advisory Committee considers that such a right, which is not construed as a representation mechanism for “Others”, constitutes a significant progress in terms of participation and better reflects the general principle that persons belonging to national minorities shall have the right to be proportionally represented in the bodies of public authorities and other civil services at all levels enshrined in Article 19 of the Law on the Protection of Rights of Persons Belonging to National Minorities. At the same time the Advisory Committee finds it extremely regrettable that these changes were published at too late a stage in the Official Gazette for them to be applicable to the next municipal elections in October 2004, which will significantly delay positive changes in

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<sup>17</sup> See the Constitutional Court’s partial decision No. 5/98 of 30 June and 1 July 2000, paragraphs 55, 112, 116 and 124.

practice. It expresses the hope that similar amendments will be considered in the future for elections at both the Entity and State levels.

105. More generally, the Advisory Committee expresses the hope that ongoing work to amend the election law will in the future also address the representation of national minorities at Cantonal, Entity and State level with a view to remedying existing shortcomings in this field. In the longer term, consideration should also be given to render access to political posts less dependent on ethnicity, which might also involve constitutional changes once a wider consensus has been reached on this matter. One step in this direction should be the abolition of the obligation for candidates standing for elections to declare their ethnicity (see related comments under Article 3 above).

106. The Advisory Committee deplores that the Council of National Minorities, which should have been established no later than 14 November 2003 as a special advisory body to the Parliamentary Assembly of Bosnia and Herzegovina gathering representatives of national minorities, has still not been set up in accordance with Article 21 of the 2003 Law on the Protection of Rights of Persons Belonging to National Minorities. Such a body would be instrumental to enhance the participation of persons belonging to national minorities in view of the many obstacles hampering their direct access to a number of elected bodies. Furthermore, the Council of National Minorities would certainly fill a vacuum, namely the absence of the State-wide network of associations. Associations can indeed only be established at the Entity level, which makes the comprehensive defence of national minorities interests at State level a real challenge.

107. The Advisory Committee also regrets that similar Councils of National Minorities have to date not been established in the Federation and in the Republika Srpska despite the same deadline. The Advisory Committee is of the opinion that inaction in this field by the Parliaments of both Bosnia and Herzegovina and the Entities is a further example of the insufficient interest from the authorities for the situation of those not belonging to the constituent peoples (see related comments under Article 5). It therefore calls on the authorities to set up the said bodies as a matter of priority and to ensure adequate funding contributing to their independence.

108. As concerns the participation of Roma, the Advisory Committee considers that the situation is particularly alarming given that they are represented only in very isolated cases at the municipal level even though they constitute the largest minority and the most vulnerable group. Following the election of a nine member Roma Council in November 2001 from among 22 Roma NGOs, an Advisory Board for Roma was recognised by the Council of Ministers in 2003. This Advisory Board, which is made up of 9 representatives of the Roma Council and 9 representatives of different ministries involved, has adopted a Work Plan for 2002-2006 listing, among other priorities, the issues of lack of birth certificates and housing conditions. Additionally, under the auspices of the Advisory Board, the Roma representatives on the Board developed a National Action Plan for Roma, which involves a more comprehensive assessment of the obstacles currently facing the Roma community and which should lead to the development and implementation of a real Strategy.

109. The Advisory Committee welcomes that the Advisory Board for Roma includes Roma representatives and notes that it should regularly be consulted on relevant issues and has the competence to take initiatives and address recommendations to any competent State body. The Advisory Committee however regrets that the Advisory Board has not been in a position to achieve tangible results since its establishment, as recognised by its members. This is certainly

due to a range of factors, not least of all to the fact that it enjoys little co-operation from the part of the competent ministries, which consult it only occasionally on issues affecting the Roma minority and whose official representatives rarely attend its meetings. Furthermore, it appears that the limited resources of the Advisory Board hardly suffice to cover travel expenses of its members, so that it has only convened 5 times since its establishment in 2003 and was not in a position to carry out any concrete project.

110. The Advisory Committee considers that the authorities should examine ways and means to strengthen the work of the Advisory Board for Roma, including by relying more systematically on its expertise and improving co-operation from the competent ministries. Moreover, consideration should be given to involve more consistently the Advisory Board in the efforts made to develop and monitor global measures for Roma in such fields as education, health care and social welfare. The Advisory Committee welcomes in this respect the consultation process that took place in the elaboration of the recently adopted Action Plan on the educational needs of Roma and is of the opinion that the Advisory Board for Roma, together with the future Council of Minorities, could be instrumental in the supervision of its implementation (see related comments under Article 12 below).

111. As regards the participation of national minorities in the civil service, as well as in public enterprises, the State authorities were regrettably not in a position to provide statistical data that would make a global analysis possible, albeit the Advisory Committee was given to understand that such statistical information is collected by certain ministries at the Entity level. The Advisory Committee also notes that as a result of the general re-appointment process carried out in 2003 and 2004 under the authority of the High Judicial and Prosecutorial Councils, staff of the judiciary is made up of Bosniacs (46%), Croats (18%), Serbs (33%) and "Others" (3%). As far as the police service is concerned, 5,377 police officers are Bosniacs, 1,898 Croats, 5,715 Serbs, 146 "Others" and 13 "unknown". These figures and especially their breakdown by Entities suggest that there remains scope for improvement as concerns the representation of persons not belonging to the locally dominant constituent people including those belonging to national minorities (see related comments under Article 4 above, paragraph 43). In this context, information from various sources point to a clearly insufficient representation of persons belonging to national minorities - especially Roma - at the municipal, Cantonal and Entity level. More generally, the Advisory Committee is of the opinion that participation in social and economic life for those not belonging to the locally dominant constituent people should be enhanced.

112. During its discussions with the Ministry of Interior of the Tuzla Canton, the Advisory Committee was pleased to learn that a specific action plan had been adopted in order to increase the number of civil servants recruited from among constituent peoples and national minorities currently under-represented - particularly the Serbs and the Roma - with a view to reaching by 2005 the proportions of the 1991 census. The Advisory Committee welcomes action plans of this type and encourages other ministries to follow suit, particularly in the Republika Srpska where the under-representation of national minorities and certain constituent peoples seems to be a recurrent problem. More generally, the Advisory Committee takes the view that the State authorities should closely monitor developments in this respect and encourage the adoption of positive measures by the Entities, particularly as regards the recruitment of Roma in the police.

## **Article 16**

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

**Article 17**

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

**Article 18**

115. To date, Bosnia and Herzegovina has not concluded any bilateral agreement specifically devoted to the protection of the languages and cultures of its national minorities. The Advisory Committee notes that representatives of several national minorities, in particular the Italians and the Hungarians, have expressed their strong interest in benefiting from such bilateral agreements. The conclusion of such agreements might prove instrumental to assist a number of national minorities in such fields as education and culture, in particular in view of their small size and the limited support they receive from the State of Bosnia and Herzegovina.

116. While recognising that the States concerned have not shown great interest so far to the conclusion of such bilateral agreements, the Advisory Committee considers that the authorities might take new initiatives in this field, as required by Article 6 of the 2003 Law on the Protection of Rights of Persons Belonging to National Minorities. The Advisory Committee therefore welcomes the on-going attempts to conclude a bilateral agreement of this nature with Slovenia and encourages the authorities to follow suit with other States.

**Article 19**

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



#### IV. MAIN FINDINGS AND COMMENTS OF THE ADVISORY COMMITTEE

118. The Advisory Committee believes that the main findings and comments set out below, could be helpful in a continuing dialogue between the international community, the Government and national minorities, to which the Advisory Committee stands ready to contribute.

##### **In respect of General remarks**

119. The Advisory Committee *finds* that several features of the GFAP make the institutional arrangements of Bosnia and Herzegovina unique and have to be kept in mind when assessing the implementation of the Framework Convention in this country. Bearing in mind the strong emphasis on ethnic belonging and the territorial arrangements, the Advisory Committee *considers* that there will be a growing need in the future to move from this emphasis on ethnic belonging and group rights towards a more inclusive approach focusing on individual human rights, which seems more in keeping with the aspirations of an increasing number of Bosnian citizens.

120. The Advisory Committee *finds* that the timing of a next census is an open question and *considers* it essential that the authorities, especially at local level, do not use the absence of a recent census as an argument to justify inaction as concerns the protection of national minorities.

##### **In respect of Article 3**

121. The Advisory Committee *finds* that domestic legislation pertaining to national minorities covers a large number of groups, including smaller ones, and it *finds* that it would 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. The Advisory Committee *considers* that the authorities should examine this issue in consultation with those concerned.

122. The Advisory Committee *finds* that the status of constituent peoples represents an important guarantee for the equal treatment of Bosniacs, Croats and Serbs in both Entities. It also *finds* that Bosniacs and Croats *de facto* live in a minority situation in the Republika Srpska as do Serbs in the Federation, a situation that may put these persons in a vulnerable position and expose them to various types of discrimination notwithstanding their status of constituent peoples. The Advisory Committee therefore *considers* that Bosniacs and Croats in the Republika Srpska as well as Serbs in the Federation could be given the possibility - in case they so wish - to rely on the protection provided by the Framework Convention as far as the issues concerned are within the competence of the Entities. The Advisory Committee *considers* that the same possibility could also be given to the Croats and the Bosniacs of the Federation living in the Cantons where they constitute a numerical minority. The Advisory Committee *considers* that the authorities should examine this issue in consultation with those concerned.

123. The Advisory Committee *finds* that the quasi-systematic use of the term "Others" at the constitutional level in relation to national minorities, in contrast with the so-called constituent peoples, raises some problems. It *considers* that the possibility to introduce the concept of

“national minorities” at the constitutional level, both at the State and Entity levels, should be examined.

124. The Advisory Committee *finds* that the ethnicity of individuals is regularly referred to in a number of areas, in particular in access to political posts, in the allocation of public posts and, more generally, in access to employment. In this context, the Advisory Committee *considers* particularly important that domestic legislation contain sufficient safeguards to ensure that every person has the right not to be treated as a person belonging to a given ethnic group and that no disadvantage shall result from that choice, which does not seem to be the case. The Advisory Committee therefore *considers* that the authorities should carry out a review of the legislation in this regard and, on that basis, adopt the necessary amendments to ensure full respect of the right not to be treated as a person belonging to a given ethnic group.

#### **In respect of Article 4**

125. The Advisory Committee *finds* that both the institutional framework as well as judicial and non-judicial remedies to fight against discrimination have been in a flux for some time and that reforms in this sphere should extend until 2005 at least. The Advisory Committee *considers* that during the whole process of implementing these important institutional changes, the authorities should take particular care to ensure that effective remedies remain at the disposal of individuals claiming to be victims of discrimination.

126. The Advisory Committee *finds* that the rules governing the composition of some authorities at the State level is such as to legally exclude persons belonging to national minorities as well as certain persons belonging to constituent peoples from accessing these political posts. The Advisory Committee *considers* that such arrangements raise issues of compatibility with Article 4 of the Framework Convention. The Advisory Committee also *considers* that thought should be given to finding ways and means of remedying the total exclusion of persons belonging to national minorities from the above-mentioned posts, even if this cannot be achieved in the short term.

127. The Advisory Committee *finds* that the constitutions of both the Federation and the Republika Srpska have been amended so as to make it possible for the three constituent peoples to be represented in the Parliaments of the Entities, but that more limited progress has been made to ensure representation of national minorities through the category of “Others”. The Advisory Committee however *considers* that this process has not been fully completed and that the remaining effects of exclusion should be reviewed, a matter which may ultimately require constitutional amendments at the Entity level.

128. The Advisory Committee *finds* that access to employment gives rise to discrimination in the Entities and especially in the Republika Srpska. It *finds* that discrimination also occurs in the return process of refugees and displaced persons particularly at the local level, both in the Federation and in the Republika Srpska. The Advisory Committee *considers* that the authorities, especially at the Entity level, should tackle the widespread discrimination faced by those not belonging to the dominant constituent people more vigorously and to strengthen their action aimed at encouraging reconciliation.

129. The Advisory Committee *finds* that there are alarming reports on the situation of Roma living in informal Roma settlements in substandard housing conditions without basic facilities, which in some cases may affect their overall health situation. The Advisory Committee

*considers* that these problems merit urgent attention and targeted measures by both domestic authorities as well as support by international donor agencies.

130. The Advisory Committee *finds* that a particularly acute problem facing many Roma is the lack of personal documents, including birth certificates, personal identity documents, documents related to State-provided health insurance and social welfare as well as documents attesting to citizenship. The Advisory Committee *considers* that the lack of personal documents creates a range of undue obstacles in the realisation of basic human rights by many Roma. It also *considers* that the local authorities should step up their efforts to systematically register all their residents, irrespective of the legal status of the Roma settlements.

131. The Advisory Committee *finds* that certain competent authorities fail to accept the need to take special measures for disadvantaged groups such as the Roma, especially as concerns health care and social welfare. It *considers* that given the scale of the problems faced by the Roma, there is a need to design and develop a comprehensive strategy at all levels to efficiently tackle their problems.

132. The Advisory Committee *finds* that efforts have been made by the Ministry of Human Rights and Refugees in 2003 to collect statistical updated information based *inter alia* on the records of social work centres and enrolment to schools through the sending of specific questionnaires to some 70 municipalities where Roma residents were registered in 1991. The Advisory Committee *considers* that the authorities should pursue similar data collection further and expand these measures to all national minorities pending the organisation of a new census.

### **In respect of Article 5**

133. The Advisory Committee *finds* that the general Law on the Protection of Rights of Persons Belonging to National Minorities, adopted on 1 April 2003, has been instrumental in initiating a first public reflection on the place of national minorities in Bosnia and Herzegovina. It also *finds* that the rights introduced by this Law cannot be made operational until corresponding sectoral legislation is harmonised at State level and/or full secondary legislation is passed at the Entity level. The Advisory Committee *considers* that no tangible progress has been made at any level yet to adopt and harmonise the relevant legislation, except in the field of education and that the same inaction has characterised the proposed setting up of consultative bodies for national minorities at both the State and Entity levels.

134. The Advisory Committee *finds* that some commendable steps have been taken at the local level to support initiatives protecting and promoting cultures of national minorities, albeit on an *ad hoc* basis only. It also *finds* that representatives of several national minorities, such as the Poles, the Italians, the Macedonians and the Czechs, have raised the lack of premises and related State support for their associations as one of their basic needs. The Advisory Committee *considers* that given the needs and the demands in this matter, the competent authorities, especially at the local level, should consider giving greater support for initiatives coming from national minorities to support their languages and cultures.

### **In respect of Article 6**

135. The Advisory Committee *finds* that the reconciliation process has progressed in Bosnia and Herzegovina despite the tragic events of the past. It *finds* however that a lack of trust between different communities still prevails and *considers* that efforts to promote intercultural

dialogue, mutual understanding and co-operation between all persons irrespective of their ethnic, cultural, linguistic or religious identity need to be intensified, especially in the Entities.

136. The Advisory Committee *finds* that the process of returning properties has been nearly completed, which represents a major achievement, given the complexity and the scale of the existing problems in this sphere. The Advisory Committee *finds* that Roma encounter serious obstacles to exercise their right to return to their pre-war homes and to enjoy related property rights and that return-related violence and hostility continues to hamper sustainable return. It also *finds* that many people whose property has been returned do not return to their pre-war residence, which may be explained by several reasons. The Advisory Committee *considers* that such difficulties result - at least partly - from discrimination in access to employment, in access to social rights (healthcare and pensions) as well as in access to education. It also *considers* that some politicians contribute to creating a hostile atmosphere which further obstructs the return process in certain regions.

137. The Advisory Committee *finds* that many Roma in Bosnia and Herzegovina live in informal settlements without any clear legal title to use the land they are occupying. The Advisory Committee *considers* that there is a need for the authorities to address the legal status of these informal Roma settlements as a matter of priority with a view to exploring all possibilities of legalising them or providing suitable alternative accommodation in a non-discriminatory manner.

138. The Advisory Committee *finds* that in the field of media, there is a general tendency to focus on events pertaining to the three constituent peoples and neglect issues relating to national minorities. The Advisory Committee *finds* that the Press Council conducts permanent monitoring of print media assessing these phenomena and *considers* that the Press Council should raise public awareness about the results of this monitoring and about the existing procedures available for alleged breaches of the code of conduct, and that similar monitoring work could also be contemplated as concerns electronic media.

### **In respect of Article 8**

139. The Advisory Committee *finds* that there are various obstacles placed to the reconstruction of religious buildings destroyed during the war and *considers* that the competent authorities should do their utmost to address these problems and, where appropriate, swiftly implement relevant judicial decisions.

### **In respect of Article 9**

140. The Advisory Committee *finds* that Article 16 of the 2003 Law on the Protection of Rights of Persons Belonging to National Minorities reflects in a number of respects the principles contained in Article 9 of the Framework Convention and contains elements that support both passive and active access to the media by persons belonging to national minorities. The Advisory Committee *considers* that, owing to a lack of implementation mainly at the sub-State level, this provision is not fully operational yet.

141. The Advisory Committee *finds* that there is currently a limited amount of programming in minority languages, notwithstanding certain information programmes broadcast in Turkish, Albanian, Hebrew and Roma languages by two private radio stations in Sarajevo and a Roma children programme broadcast by one radio station in Kotor Varoš. The Advisory Committee *considers* that the Communications Regulatory Agency should pay increased attention to

Article 16 of the 2003 Law on the Protection of Rights of Persons Belonging to National Minorities and take a more proactive attitude in the implementation of this provision, particularly when deciding upon the granting of licenses, and that further efforts should be made to raise awareness among national minorities about the new legal possibilities contained in the Law.

### **In respect of Article 10**

142. The Advisory Committee *finds* that various constitutional and legal provisions govern the use of languages in official dealings. The Advisory Committee *considers* that the numerical threshold (an absolute or relative majority) contained in Article 12 of the 2003 Law on the Protection of Rights of Persons Belonging to National Minorities is so high that it might constitute an obstacle with respect to certain minority languages in areas inhabited by persons belonging to national minorities either traditionally or in substantial numbers, particularly at the level of local communities. It also *considers* that the competent authorities should make systematic use of the possibility they have to rely on a lower threshold.

### **In respect of Article 11**

143. The Advisory Committee *finds* that the numerical threshold (an absolute or relative majority) contained in Article 12 of the 2003 Law on the Protection of Rights of Persons Belonging to National Minorities might constitute an obstacle with respect to certain minority languages in areas traditionally inhabited by substantial numbers of persons belonging to a national minority and *considers* that the competent authorities should make systematic use of the possibility they have to rely on a lower threshold.

### **In respect of Article 12**

144. The Advisory Committee *finds* that the principles set out in Article 12, paragraph 2 of the Framework Convention, namely to facilitate contacts among students and teachers of different communities, are of central importance in Bosnia and Herzegovina. It *considers* it crucial to eliminate elements of segregation such as using separate entrances for the same school buildings or peer pressure encouraging intolerance towards pupils from another ethnicity. The Advisory Committee also *considers* that the education reform and the unification process should take place in a manner that fully respects the principles enshrined in Article 14 of the Framework Convention.

145. The Advisory Committee *finds* that measures to foster knowledge of the culture and history of national minorities are insufficient. It *considers* that such measures should be intensified with a view to giving all pupils a real chance to be acquainted with the multi-cultural character of Bosnia and Herzegovina, as proposed by the “Action Plan on the Educational Needs of Roma and Members of Other National Minorities in Bosnia and Herzegovina”.

146. The Advisory Committee *finds* that problems concerning the access of Roma children to education are reason for concern, in particular since a large majority of Roma children are unable to attend school due to their extremely poor living conditions. The Advisory Committee *considers* that the aforementioned Action Plan contains a number of proposed measures that, if properly implemented, could significantly improve the situation of the Roma in education. It also *considers* that successful implementation of this Action Plan will to a large extent depend on the degree of commitment of all the authorities concerned and that the authorities should

intensify their efforts in this sphere, in particular to monitor and support - including amongst Roma parents - the implementation of legal provisions concerning compulsory education and school attendance.

#### **In respect of Article 14**

147. The Advisory Committee *finds* that the numerical threshold (an absolute or relative majority) contained in the first part of Article 14 of the 2003 Law on the Protection of Rights of Persons Belonging to National Minorities might constitute an obstacle for receiving instruction in certain minority languages in areas inhabited by persons belonging to national minorities either traditionally or in substantial numbers, particularly at the level of local communities. The Advisory Committee *considers* that the second part of this Article, which provides for the introduction of the teaching of minority languages upon request by those concerned “regardless of the number of persons belonging to a national minority”, constitutes a significant step forward.

148. The Advisory Committee *finds* that a new Law on Primary and Secondary Education was passed in Republika Srpska on 30 April 2004, abolishing the minimum legal threshold of 20 pupils previously applicable to have a minority language taught at primary school level. The Advisory Committee *considers* that the competent authorities in the Cantons concerned should be encouraged to follow suit by speeding up the process of harmonising their legislation with both the 2003 Framework Law on Primary and Secondary Education and the 2003 Law on the Protection of Rights of Persons Belonging to National Minorities.

149. The Advisory Committee *finds* that additional classes for certain national minorities already exist both in the Federation and in the Republika Srpska and that the Czechs, the Poles, the Italians and the Ukrainians have in particular expressed an interest in consolidating and developing them further. The Advisory Committee *considers* that even when additional classes are organised by the associations of national minorities, there is a need to increase State support not least of all to pay for the teachers and their training, as well as to provide textbooks in minority languages.

150. The Advisory Committee *finds* that teaching of the Roma language is only occasionally available in certain schools in Bosnia and Herzegovina. It *considers* that the authorities should be encouraged to introduce more systematically Roma language teaching in schools attended by Roma children.

#### **In respect of Article 15**

151. The Advisory Committee *finds* that the constant attention devoted to a strictly equal representation of the three constituent peoples within the authorities, the public administration and a range of public enterprises negatively affects efforts aimed at improving participation of national minorities. It *considers* that the notion of vital national interest, which secures a very strong mechanism of protection of the constituent peoples which are already in a dominant position and which has been questioned by the Constitutional Court, often detracts the attention of the Parliament and the political forces from what is not of interest to the constituent peoples.

152. The Advisory Committee *finds* that national minorities, which are in need of specific protection mechanisms given their vulnerable position, do not benefit from this notion since the “Others” do not have the right to invoke a violation of their own vital national interest in

the Parliament, neither at the State nor Entity level. It *considers* that when this matter is addressed in the future, due regard should be given to the interests of national minorities.

153. The Advisory Committee *finds* that in the limited cases where there exists a possibility for national minorities to be represented in elected bodies through the category of “Others”, there have been cases of abuse. It *considers* that the competent authorities should review the current representation of “Others” and adopt the necessary amendments in electoral laws to ensure that persons belonging to national minorities have a real chance to be elected.

154. The Advisory Committee *finds* that recent amendments to the Election Law will for the time provide for the right for persons belonging to national minorities to elect their representatives in Municipal Councils and Municipal Assemblies - with a minimum number of seats guaranteed - and for the national minorities associations to nominate their candidates. The Advisory Committee *considers* that such a right, which is not construed by the aforementioned working group as a representation mechanism for “Others”, constitutes a significant progress in terms of participation. It also *considers* that the ongoing work to amend the Election law should in the future also address the representation of national minorities at Cantonal, Entity and State level with a view to remedying existing shortcomings in this field.

155. The Advisory Committee *finds* that the Council of National Minorities, which should have been established no later than 14 November 2003 as a special advisory body of the Parliamentary Assembly of Bosnia and Herzegovina gathering representatives of national minorities, has still not been set up. The Advisory Committee *considers* that such a body would be instrumental to enhance the participation of persons belonging to national minorities in view of the many obstacles hampering their direct access to a number of elected bodies.

156. The Advisory Committee *finds* that similar Councils of National Minorities have to date not been established in the Federation and in the Republika Srpska. The Advisory Committee *considers* that inaction in this field by the Parliaments of both Bosnia and Herzegovina and the Entities is a further example of the insufficient interest from the authorities for the situation of the non-constituent peoples. It *considers* that the authorities should set up the said bodies as a matter of priority and ensure adequate funding contributing to their independence.

157. The Advisory Committee *finds* that as concerns the participation of Roma, the situation is particularly alarming given that they are represented only in very isolated cases at the municipal level even though they constitute the largest minority and the most vulnerable group. The Advisory Committee *finds* it positive that the Advisory Board for Roma includes Roma representatives and that it should regularly be consulted on relevant issues. The Advisory Committee *considers* that the authorities should examine ways and means to strengthen the work of this body, including by relying more systematically on the Board’s expertise and improving co-operation from the competent ministries.

## V. CONCLUDING REMARKS

158. The Advisory Committee considers that the concluding remarks below reflect the main thrust of the present opinion and that they could therefore serve as the basis for the corresponding conclusions and recommendations to be adopted by the Committee of Ministers.

159. The Advisory Committee notes with satisfaction that national minorities' issues have recently received some attention by the authorities, as evidenced by the adoption of a Law on the Protection of Rights of Persons Belonging to National Minorities and amendments to the Election Law. Furthermore, the harmonisation of legislation by the Entities has, *inter alia*, allowed for further development of minority language education.

160. The Advisory Committee considers that the implementation of relevant norms in practice remains a major problem. This is particularly so in relation to the Law on the Protection of Rights of Persons Belonging to National Minorities. The provisions on teaching minority languages, on media broadcasting for national minorities and on proportional representation in public authorities and in the civil service have not prompted substantial changes in practice. New consultation structures for national minorities, such as the proposed Council of National Minorities and corresponding bodies at the level of the Entities, have not been set up despite concrete legal obligations. These shortcomings need to be addressed as a matter of priority by the authorities both at the State and Entity levels.

161. As regards access to political posts, rigid rules are still in force at the State level but progress has recently been made at Entity level in terms of widening access to certain authorities. Further consideration should therefore be given by the authorities to finding ways and means of addressing the exclusion of, *inter alia*, persons belonging to national minorities from certain posts at State and Entity levels. Consideration should also be given to developing specific parliamentary mechanisms to better protect the interests of national minorities. Greater attention should be paid to tackling discrimination in practice, notably in access to employment, a problem affecting all those not belonging to the constituent people in a numerical majority in the area concerned.

162. Despite progress in the reconciliation process, there remains a lack of trust among ethnic groups and hostility related to the return of refugees and displaced persons. Efforts are needed to promote interethnic dialogue and to encourage wider acceptance of those currently referred to as "Others" as part of the society of Bosnia and Herzegovina.

163. Given the needs and the demands in this matter, the possibility to give greater support for initiatives coming from national minorities to promote their languages and cultures should be considered.

164. Serious problems remain in the application of the Framework Convention with regard to the Roma. Full and effective equality has not been secured for Roma, who continue to be exposed to discrimination and face particular difficulties in fields such as housing, health care, employment and education. A comprehensive national strategy is needed to improve their situation, drawing on the experience gained in the recent elaboration of an Action Plan on their educational needs. In this context, particular attention should be paid to ensuring improved participation of Roma in public affairs.