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Working document

Compilation of Opinions of the Advisory Committee relating to Article 3 of the Framework Convention  
for the Protection of National Minorities (4<sup>th</sup> cycle)

"Article 3

1. Every person belonging to a national minority shall have the right freely to choose to be treated or not to be treated as such and no disadvantage shall result from this choice or from the exercise of the rights which are connected to that choice.
  
2. Persons belonging to national minorities may exercise the rights and enjoy the freedoms flowing from the principles enshrined in the present framework Convention individually as well as in community with others."

Note: this document was produced as a working document only and does not contain footnotes. For publication purposes, please refer to the original opinions.

Table of contents

1. Armenia .....	3
2. Austria.....	6
3. Croatia .....	7
4. Cyprus .....	9
5. Czech Republic.....	11
6. Denmark .....	13
7. Estonia .....	15
8. Finland .....	18
9. Germany .....	20
10. Hungary .....	22
11. Italy .....	26
12. Malta.....	29
13. Moldova, Republic of.....	30
14. Norway .....	32
15. Slovak Republic.....	33
16. Spain .....	34
17. "The former Yugoslav Republic of Macedonia" .....	36
18. United Kingdom.....	38

As of 18 September 2017, the Advisory Committee on the Framework Convention for the Protection of National Minorities had adopted a total of 24 opinions, of which 18 opinions on Article 3, and 18 public opinions.

NOTE

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

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. On the contrary, 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 one stage but that need not necessarily be so in further cycles of monitoring. It may also be the case that issues that appear at one stage of the monitoring to be of relatively minor concern prove over time to have been underestimated.

Armenia

*Adopted on 26 May 2016*

## Article 3 of the Framework Convention

### Personal scope of application of the Framework Convention

The Advisory Committee notes that there have been no developments since the previous monitoring cycle in the position of the Armenian authorities concerning the scope of application of the Framework Convention. The authorities continue to demonstrate an open and inclusive approach towards all national minority groups in Armenia. In this context the Advisory Committee recalls that the term “national minority” is not defined in the legislation of the Republic of Armenia, but in practice, according to the initial state report submitted during the first cycle of monitoring, is understood to denote “the nationals of the Republic of Armenia permanently living in the Republic of Armenia who are different from the [basic] population by its ethnic origin”.

The Co-ordinating Council for National and Cultural Organisations of National Minorities is the main forum where representatives of 11 larger national minorities, namely Assyrian, Belarusian, Georgian, German, Greek, Jewish, Kurdish, Polish, Russian, Ukrainian and Yezidi can raise concerns and discuss issues affecting them with the authorities. This gives them increased visibility and better recognition than other national groups, such as the Abkhazians, Abazins, Bulgarians, Latvians, Lithuanians, Lom, Moldovans, Mordvans, Ingushetians, Ossetians, Persians, Romanians, Tatars, Udins and others, which are not represented in the co-ordinating council.

In this context, the Advisory Committee notes that in its declaration contained in the instrument of ratification of the European Charter for Regional or Minority Languages (ETS No. 148), Armenia stated that the provisions of the charter shall apply to five languages of national minorities, namely Assyrian, Greek, Kurdish, Russian and Yezidi. Furthermore, according to the draft Electoral Code the national electoral list may have a second part, wherein representatives of “the first four national minorities with the largest resident population – according to the data of the latest census preceding the elections – may be included”. This provision, if adopted and implemented, will ensure representation in the National Assembly of the Assyrian, Kurdish, Russian and Yezidi national minorities (see further comment on the representation of national minorities under Article 15).

The Advisory Committee notes that the varying approaches applied in legislative acts to different national minorities clearly demonstrate the need for very careful consideration of the scope of application of the Law on National Minorities, called for under the constitution as amended in 2015 (for details see below, paragraphs 21 and 22). The law should be adopted only after extensive consultations with all stakeholders, including those who are currently not represented in the co-ordinating council. In particular, the Advisory Committee wishes to recall on the one hand that parties have a margin of appreciation as regards the personal scope of application to be given to the Framework Convention in order to take the specific circumstances prevailing in their country into account, while 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. In particular, it is recalled that the implementation of the Framework Convention should not be a source of arbitrary or unjustified distinctions.

The Advisory Committee notes that the authorities maintain a neutral position towards the ongoing debate among some representatives of the Kurdish and the Yezidi national minorities as to whether they have distinct national identities or are rather a part of the same group with distinct religious identities.

*Recommendation*

The Advisory Committee encourages the authorities to continue to maintain an inclusive approach in the scope of application of the Framework Convention and to respect strictly the principle of free self-identification contained in Article 3 of the Framework Convention.

The draft law on national minorities

The Advisory Committee notes that the recently enacted constitutional amendment, in its Article 54, calls for the adoption of a law on national minorities which would include detailed provisions to guarantee to those belonging to national minorities the enjoyment of the right “to preserve national and ethnic identity” and “to preserve and develop traditions, religion, language, and culture”. The authorities have informed the Advisory Committee that the draft Law will be elaborated in the course of 2016 and will be made subject to wide consultation in 2017.

The Advisory Committee notes in this context that representatives of national minorities seem not to be aware of the scope, both material and personal, and the procedure to be adopted for the purpose of drafting the law. It notes furthermore that the context, in which the law will be drafted, following the revision of the constitution in 2015 and after the planned adoption of the Law on Prohibition of Discrimination, affords the opportunity to draft a comprehensive modern legislative act, compatible with and complementary to other domestic legal acts, and in compliance with the Framework Convention. Active consultation and input of representatives of national minorities and civil society are essential prerequisites for the development of a legislative act that is well tailored to the needs and ambitions of national minorities.

*Recommendations*

The Advisory Committee encourages the authorities to engage in a wide consultation process with civil society and national minority organisations prior to and during the drafting of the Law on National Minorities.

The Advisory Committee further calls on the authorities to ensure that the law is fully compatible with international standards and obligations undertaken by Armenia and to make use of available expertise in this domain.

Census and ethnicity data collection

The results of the population and housing census, which was organised in October 2011 in the Republic of Armenia, were published with considerable delay in December 2013. The Advisory Committee welcomes that the questions on ethnic affiliation and languages spoken were open ended and optional. Regrettably, and contrary to the Conference of European Statisticians Recommendation for the 2010 Censuses of Population and Housing, the respondents were not allowed to indicate more than one ethnic affiliation, although it has to be noted that the questions on languages spoken (“mother tongue” and “other language”) allowed respondents to indicate more than one language, or to not answer the question. According to the published census results, of the 3 018 854 respondents, the number of those declaring ethnicity other than Armenian was: Yezidi – 35 308; Russian – 11 911; Assyrian – 2 769; Kurdish – 2 162; Ukrainian – 1 176; Greek – 900; Georgian – 617 and Persian – 476. The figures on other nationalities were not published on account of their small numbers and the data protection rules (the total number of those who indicated another ethnic affiliation was 1 634, while another 100 people refused to answer). The Advisory Committee notes that data collected during the census, disaggregated by age, gender and geographical distribution are readily available and reportedly much used by the state agencies and civil society alike to refine their policies and assess whether the needs of people belonging to national minorities are adequately addressed.

The Advisory Committee welcomes measures taken by the authorities to train census enumerators belonging to national minorities, in particular Kurds and Yezidis, with the aim to encourage respondents belonging to different minorities to declare their ethnic affiliation. It further commends the extensive awareness-raising campaign which preceded the census.

Data collected during the census show a drop both as a proportion of the overall population and in absolute figures of the number of people declaring ethnic affiliation other than Armenian (from 2.1% in 2001 to 1.84% in 2011). The number of people belonging to the Yezidi national minority shows the most marked decrease (from 40 620 in 2001 to 35 308 in 2011). The Advisory Committee notes that the authorities and the representatives alike attribute this drop to the difficult economic situation affecting the majority and all the national minorities, and which has led to significant migration from Armenia. The higher emigration rate among the Yezidi national minority is attributed to the difficult living conditions, economic underdevelopment of the secluded mountainous areas where they live and well-established national communities in a number of other states.

The Advisory Committee notes however that many representatives of national minorities have raised concerns as regards the accuracy of the data collected and the National Statistical Service of Armenia confirms the difficulties encountered during the enumeration process. In particular, a number of national minority representatives complained of never receiving a visit from an enumerator, and questioned the reliability of the published final census results. In this context, the Advisory Committee notes that the control round of the census carried out in 10% of the housing units (85 000 dwellings) discovered 2 960 people that had not been counted. The overall lack of trust in the official census figures has to be taken into account by the authorities, in particular when devising policies that affect national minorities.

In between censuses, which are organised at 10-year intervals, the only source of data on ethnic affiliation of the population is the civil registry which collects information on ethnic affiliation of parents on voluntary basis. In addition, it is worth noting that data on life-expectancy which could be cross-tabulated with ethnic affiliation to show social conditions are not collected, depriving the authorities of a tool which could serve to adjust socio-economic policies for the most vulnerable groups.

#### *Recommendations*

The Advisory Committee encourages the authorities to improve transparency and take other necessary steps to develop adequate methods of data collection on ethnic affiliation, while fully respecting the principle of free self-identification for people belonging to national minorities.

The Advisory Committee calls on the authorities to ensure that policies affecting the enjoyment of rights under the Framework Convention are not based solely on census results, but are rather drafted in consultation with minority representatives to reflect the needs of persons belonging to national minorities.

Austria

*Adopted on 13 October 2016*

Article 3 of the Framework Convention

Personal scope of application

*Present situation*

The scope of application of the Framework Convention has not changed since the third monitoring cycle. The following groups meet the legal requirements of the 1976 National Minorities Act: the Burgenland-Croat minority, the Slovene minority, the Hungarian minority, the Czech minority, the Slovak minority and the minority of the Roma. Access to rights contained in the Framework Convention of persons belonging to these six recognised groups varies significantly, however, depending on the region. This is due to the fact that core obligations relating to the use of minority languages in official communication and in topography, and relating to education in minority languages are provided in the 1955 State Treaty of Vienna only to the Slovene minority in Carinthia and Styria and to the Croat minority in Burgenland. These obligations were translated into laws at regional level in Carinthia and Burgenland only, while persons belonging to the Slovene minority in Styria do not enjoy the rights bestowed upon them in the State Treaty (see further Articles 10, 11 and 14). The authorities argue that the low density of minority settlement in Styria does not justify any special provisions.

Overall, the distribution of competences between federal and *Länder* level in Austria is rather complex (see also Article 4). The provision that was added to the constitution in 2000 in order to guarantee the protection of national minorities at the federal level is based on a “targeted objective”, meaning that it does not directly grant rights. Persons belonging to the six recognised national minorities have requested for years that a more consistent and inclusive legislative framework at the federal level be developed that would establish access to minority rights throughout Austria, in line with the provisions of the Framework Convention. The Advisory Committee reiterates its concern that the significant variations in the level of enjoyment of minority rights in the various *Länder* run counter to the expressed “value judgment in favour of minority protection”, as mandated by the above constitutional provision. Indeed, the fact that persons belonging to the Burgenland Croat minority who move to Vienna lose access to minority rights, in particular as regards education, has resulted in notable assimilation and may thus not be compliant with Article 8(2) of the constitution. The Advisory Committee shares the concerns of persons belonging to the six recognised national minorities that such territorial application of minority rights does not adequately reflect and accommodate the needs of a modern and pluralist society, and that it negatively affects the access to rights of persons belonging to national minorities (see further Article 4). It therefore regrets the fact that the envisioned reform of the National Minorities Act in 2012 was not completed, despite an extensive consultation process that included many experts (see also Article 15).

Persons belonging to the Polish community continue to seek recognition as a national minority with the Federal Chancellery, despite the fact that their initiative was previously rejected. The Advisory Committee notes the reasoning for this rejection provided in the State Report, i.e. that the Polish community in Vienna has the “socio-graphic characteristics of a migrant group”. It was informed by the authorities during its monitoring visit that the situation could be reviewed in 20-30 years when there will be continued settlement over three generations. While the presence of a Polish community in Vienna in the late 19th century is undisputed, the State Report questions the continuity of settlement. It coins the

term of a “rolling minority”, referring to a situation where “there are new inflows time and again, while the earlier arrivals either become assimilated or return or move on”. The Advisory Committee considers that the fact that a community has assimilated owing to the lack of adequate support for the preservation of its distinct features or worse, due to evident hostility towards the particular community as experienced by the Polish community from 1938–1945, should not be used as a valid argument against continuity of settlement, especially as this thwarts the very effort of the group to reverse assimilation. According to the officials met by the Advisory Committee during its visit, other communities, such as the Turkish or Serb community, may be considered a national minority in 40-60 years. While always welcoming an inclusive approach to the scope of application, the Advisory Committee has repeatedly underlined that the length of residency in the country should not be considered a determining factor for the applicability of the Framework Convention as a whole.

#### *Recommendations*

The Advisory Committee reiterates its urgent call on the authorities to engage in a comprehensive and genuine effort to review the legislative framework for the protection of national minorities with a view to ensuring the consistent application of the Framework Convention throughout Austria to all persons belonging to national minorities in line with the constitutional provision and based on an individual rights approach.

It further calls on the authorities to engage in a constructive dialogue with representatives of the Polish community with a view to establishing the application of the Framework Convention to persons belonging to this group on an article-by-article basis.

Croatia

*Adopted on 18 November 2015*

Article 3 of the Framework Convention

Personal scope of application

#### *Present situation*

The Constitution of the Republic of Croatia was amended in July 2010 to the effect that its Preamble now lists all 22 national minorities. This development was welcomed by representatives of national minorities as it promotes a sense of equality among them. According to Articles 4 and 5 of the Constitutional Act on the Rights of National Minorities, only citizens are entitled to enjoy the rights of national minorities. The Advisory Committee wishes to reiterate its viewpoint that such a general restriction should be avoided as it may have a discriminatory effect on persons belonging to national minorities, in particular given that statelessness among some national minority communities in Croatia is still a serious concern. The authorities should rather pursue an inclusive approach, reflecting for each right separately whether there are legitimate grounds to differentiate access based on citizenship.

#### *Recommendation*

The Advisory Committee calls on the authorities to apply a flexible case-by-case approach to requests for the enjoyment of minority rights by non-citizens belonging to national minorities.

Census

*Present situation*

A population and housing census was conducted in April 2011. The Advisory Committee is pleased to note that questionnaires were translated into the main languages spoken by national minorities. It further welcomes that information on the importance of the principle of free self-identification was distributed through public meetings prior to the census and that enumerators were instructed not to exert any pressure during the interview process. The Advisory Committee notes with concern, however, estimates from representatives of various national minorities that their actual numbers are significantly higher than suggested by the census results. According to the interlocutors of the Advisory Committee, no specific information on the importance of the census enumeration for the enjoyment of some minority rights (see also Article 10) was provided to persons belonging to national minorities, and most of them were under the impression that they could only choose one ethnic affiliation. Indeed, a number of minority representatives suggested that the census results would have been different had individuals been made aware of the possibility to indicate multiple affiliations.

The Advisory Committee was assured by government representatives that there were no limits and that “anything” could be inserted in the census questionnaire, “including ‘Martian’ or hyphenated identities indicating two ethnicities”. Given the frequency of multiple identities in Croatia’s diverse society, the Advisory Committee considers it unhelpful that no specific explanation was provided to the public regarding the possibility of indicating multiple affiliations. It considers further that the formulation of questions 18 to 21 of the questionnaire, relating to citizenship, ethnicity, religion and language, suggested a certain preference for indicating “Croatian” or “Croat” or “Catholic” as only those responses (besides “not declared” or “atheist” in the case of religion) were spelled out and could be marked with a simple cross. In addition, an empty space was provided to specify “other”. The Advisory Committee finds that an open list containing the most common minority affiliations and languages, or a possibility to mark “multiple” and then specify, could have encouraged more individuals to freely indicate their affiliation, including by simply crossing various boxes. It notes with interest in this regard that over 27,000 individuals indicated a regional identity such as “Dalmatian” or “Istrian” as ethnic affiliation.

The Advisory Committee further notes with concern reports about irregularities in the actual census enumeration process that appear to have particularly affected persons belonging to the Serb and Roma minorities. Suggestions were reportedly made by some enumerators not to indicate a minority affiliation, and in some areas questionnaires in minority languages were not available in sufficient numbers. While it is pleased to note that the Bureau of Statistics appears to have reacted promptly and adequately to rectify such shortcomings, the Advisory Committee remains concerned by the impression shared by a number of national minority representatives that many individuals feared negative repercussions and therefore refrained from indicating their ethnic affiliation. In other cases, ethnic or religious affiliations were reportedly marked by the enumerator based on assumptions and without inquiring from the respondent. It further notes that representatives of local authorities raised reservations towards the accuracy of the census given the seasonal variations in the population experienced in some parts of Croatia.

*Recommendations*

The Advisory Committee calls on the authorities to ensure that the rights to free self-identification, including as regards multiple affiliations, is firmly anchored and its application encouraged and monitored in all data collection exercises.

It further calls on them to closely engage with national minority representatives when analysing the results of the 2011 census, in particular where the enjoyment of minority rights is dependent on census-based thresholds.

Cyprus

*Adopted on 18 March 2015*

Article 3 of the Framework Convention

Personal scope of application

*Present situation*

There has been no change with regard to the personal scope of application of the Framework Convention. As specified in the State Report, its protection extends to citizens of the Republic of Cyprus belonging to the Armenian, Latin and Maronite minorities as well as to Roma. Constitutionally, the Armenians, Latins and Maronites continue to be considered as members of “religious groups” who form part of the Greek Cypriot majority community, given that they opted in 1960 to affiliate with the Greek Cypriot community (see further below). The Advisory Committee notes, however, that the terminology used does not at present appear to pose a serious cause for concern to the representatives themselves, who are – in common language – quite regularly referred to as “minorities”. In addition, Roma are considered a minority group to whom the protection of the Framework Convention applies. The Advisory Committee is not aware of any other group of persons wishing to be protected under the Framework Convention. While the practical impact of limiting the scope of application to citizens may be small, the Advisory Committee reiterates its general viewpoint that such restriction may have a discriminatory effect and should therefore be avoided in favour of an inclusive approach that reflects for each right separately whether there is a legitimate ground to differentiate access based on citizenship.

The Framework Convention was conceived as a flexible instrument to be applicable in diverse social, cultural and economic contexts, and in evolving situations. Its application to a specific group therefore does not require the latter’s formal recognition as a “national minority”, nor a specific legal status for such a group of persons. Consequently, the Advisory Committee considers access to minority rights more important than questions related to the status of a group as a “religious group” or “national minority”, and welcomes the overall pragmatic approach applied by the authorities which on the whole facilitates access to rights contained in the Framework Convention of persons belonging to the various minorities living in Cyprus.

*Recommendation*

The Advisory Committee encourages the authorities to maintain their pragmatic approach to ensure access to rights contained in the Framework Convention to the recognised minority groups, while pursuing flexibility and openness towards any possible other groups, including non-citizens where appropriate, that may wish to claim protection under the Framework Convention in the future.

Right to free self-identification

*Present situation*

The 1960 Constitution of the Republic of Cyprus is based on a bi-communal system, carefully elaborated to distribute political powers among the Greek Cypriot and Turkish Cypriot communities. As a result, all citizens of Cyprus must belong to either of the two communities in order to exercise their civil duties and enjoy their political rights, such as the right to vote. While representatives of the Maronite, Latin and Armenian minorities opted in 1960 to affiliate with the Greek Cypriot community (see above comments), the Advisory Committee is not aware that persons belonging to the Roma minority were presented with a choice. They have generally been considered as Turkish Cypriots, as most of them are Turkish-speaking and considered to be Muslims. Until today, all new citizens have to opt to belong to one of the two communities within three months upon acquisition of Cypriot nationality.

The Advisory Committee acknowledges the very complex constitutional set-up which resonates into all spheres of the Cypriot legal order. It reiterates its concern, however, that the strict division of Cypriot society along ethnic lines continues to interfere with the right of individuals to freely self-identify, one of the main principles of minority protection contained in Article 3 of the Framework Convention. The questionnaire used in the context of the 2011 population and housing census, for instance, contained a question to Cypriot citizens related to “ethnic/religious group” where the head of household had to choose from a closed list of five possible responses, Greek Cypriot, Armenian, Maronite, Latin, or Turkish Cypriot. The Advisory Committee deeply regrets that there was no possibility to indicate affiliation as Roma, nor was it possible to respond “other” or “do not wish to respond”, or to opt for multiple affiliations despite the fact that these are very commonly found in contemporary society as a result of mixed marriages, for instance. According to international standards, questions on ethnic origin should be non-mandatory (i.e. questions should include the possibility for respondents to answer “none”) and possibilities for the indication of multiple affiliations should be included. The possibility to indicate multiple responses to questions related to languages used in daily communications should equally be provided.

The Advisory Committee finds that the continued fixation on classifying citizens into either Greek Cypriots or Turkish Cypriots in all spheres of life, even when not related to the exercise of political rights and when not strictly called for by the Constitution, contradicts the existing diversity in Cypriot society and, moreover, appears to create practical difficulties. Given the closed list of possible affiliations offered to citizens in the census and, according to government officials also in the course of other regular statistical surveys, the Advisory Committee is concerned that the small amount of existing data related to Roma is gathered based on attributed identification rather than personal choice, and emphasises that the association of persons with a specific group based on visible or linguistic characteristics or on presumption is not compatible with the Framework Convention. This is in particular so as the classification of Roma as Turkish Cypriots has practical implications on the ability to access and enjoy a number of rights (see comments on Articles 4, 12, and 15).

While reiterating its acknowledgment of the specific constitutional set-up of the Republic of Cyprus, the Advisory Committee further notes that the Constitution appears not always to be applied consistently. It refers in particular to the range of provisions concerning the communal rights of Turkish Cypriots that were suspended following the formulation of the “doctrine of necessity” in a 1964 Supreme Court case. The Advisory Committee fears that the continued division of society along ethnic lines may encourage ethno-centric sentiments that are not conducive to the formation of a cohesive society in line with the principles and values of the Framework Convention (see further comments on Article 6). Given the high level of heterogeneity in Cypriot society, both traditionally and owing to immigration in recent decades, the Advisory Committee considers that respect for the right to free self-identification of all members of Cypriot society, with their diverse ethnic, linguistic, religious and other backgrounds and including

multiple affiliations, may not only allow for a more fact-based assessment of the make-up of society in statistical data collection exercises. It may also constitute a positive step in the formation of a common civic identity which is shared by all citizens of the Republic of Cyprus irrespective of their background.

*Recommendation*

The Advisory Committee urges the authorities to ensure that the right to free self-identification is respected in all data collection exercises and to ensure that relevant state officials and minority representatives themselves are made aware of this right, particularly where the identification is used as basis for the application of some minority rights.

Czech Republic

*Adopted on 16 November 2015*

Article 3 of the Framework Convention

Personal scope of application of the Framework Convention

*Present situation*

The Advisory Committee notes that in the Czech Republic the legislation containing the definition of the concept “national minority” has not changed since the last monitoring cycle. Although under Article 2 of the Act on the Rights of Members of National Minorities of 10 July 2001 citizenship still continues to be a requirement for persons belonging to minorities to access the protection offered by the law, the authorities adopted an inclusive and open approach in applying the Framework Convention to all persons, irrespective of citizenship. In this context, the Advisory Committee wishes to remind the authorities that persons belonging to national minorities should be able to enjoy certain rights guaranteed in the legislation on national minorities, including those related to education and the use of minority languages, irrespective of their citizenship.

The Advisory Committee notes that, in the Czech Republic, rights of persons belonging to national minorities are protected only in respect of those who belong to groups represented on the Government Council for National Minorities, a permanent government advisory body. Membership in the Government Council is determined by the authorities acting upon the proposal from the Government Council itself. It has been extended to the representatives of Belarusians, Bulgarians, Croats, Hungarians, Germans, Poles, Roma, Ruthenians, Russians, Greeks, Slovaks, Serbs, Ukrainians and Vietnamese. The authorities’ decision in 2013 to invite the representatives of Belarusians and Vietnamese to join the Council is welcomed and demonstrates their goodwill and openness. The Advisory Committee notes, however, in this regard, that the process of inviting representatives of a particular minority to be represented at the Government Council is not clearly defined in law and is not transparently handled in practice.

Moreover, the Advisory Committee notes that the Act on the Rights of Members of National Minorities reserves certain rights, such as the right to display topographical signs in a minority language (Article 8 of the Act), the right to use minority languages in dealings with administrative authorities (Article 9), the right to education in a minority language (Article 11), the right of access to the media (Article 13) “to members of national minorities living traditionally and for a long time on the territory of the Czech Republic”. While acknowledging that the enjoyment of some rights under the Framework Convention might be legitimately restricted to areas inhabited traditionally by persons belonging to national

minorities, the Advisory Committee recalls that other rights, as for instance the rights to education and of access to media in a minority language are to be enjoyed by all persons belonging to national minorities.

The Advisory Committee notes that a new Act on the state citizenship of the Czech Republic, which entered into force on 1 January 2014 allows holding dual or multiple citizenship, whereas the repealed legislation provided for automatic withdrawal of Czech citizenship from persons who obtained foreign citizenship. The Advisory Committee welcomes this change as it is likely to encourage foreign citizens to apply for Czech citizenship, thus formally including them in the scope of application of domestic legislation on national minorities and the Framework Convention.

#### *Recommendations*

The Advisory Committee encourages the authorities to continue to pursue an open and inclusive approach to the Framework Convention's personal scope of application, ensuring that no arbitrary distinction exists in the enjoyment of rights protected under the Framework Convention.

The Advisory Committee also urges them to review regularly the impact of the application of the citizenship criterion as regards access to minority rights, in order to ensure that it does not have the effect of excluding people from the scope of application of this Convention in an unjustified and arbitrary, i.e. discriminatory manner.

#### Data collection

##### *Present situation*

The results of the Population and Housing Census which was organised in the Czech Republic in 2011 were published in 2013. The Advisory Committee welcomes that the respondents were allowed to indicate more than one ethnic affiliation (*národnost*) or more than one language, or not to answer the question. According to the census results, of the 10,436,560 respondents, the number of persons declaring belonging to one of the recognised national minorities exclusively (or in conjunction with another ethnic affiliation) was: Slovaks – 147,152 (167,930), Ukrainians – 53,253 (54,507), Poles – 39,096 (42,463), Vietnamese – 29,660 (29,840), Germans – 18,658 (25,431), Russians – 17,872 (18,774), Hungarians – 8,920 (10,513), Roma – 5,135 (12,953), Bulgarians – 4,999 (5,260), Greeks – 2,043 (2,576), Belarusians – 2,013 (2,072), Serbs – 1,717 (1,936), Croats – 1,125 (1,436), Ruthenians – 739 (973). Altogether, 163,648 persons indicated affiliation with two ethnic groups in a multitude of combinations.

The Advisory Committee, while fully recognising the right of each person to remain silent on the question of ethnic affiliation notes that 2,742,669 persons, constituting about 26% of the residents of the Czech Republic chose not to indicate any national affiliation. The Advisory Committee emphasizes that, as it results from the principles set out in Article 3 of the Framework Convention, the decision on whether or not to reply to the question on ethnic origin is one to be considered solely by the persons being questioned. This being said, it wishes to emphasise that reliable information about the ethnic composition of the population is an essential condition for implementing effective policies and measures to protect minorities and for helping to preserve and assert their identity. However, the census cannot be considered as the only indicator of their number when implementing these policies and measures. This is especially the case in a context such as that of the Czech Republic, where a number of rights are dependent on the census-based thresholds (see also under Article 15).

The Advisory Committee notes, however, that according to some representatives of national minorities, the significance and meaning of census questions was not sufficiently clear, in particular as regards the difference between citizenship and nationality. In this context, given that a number of rights protected

under the Framework Convention and secured in the domestic legislation (such as the right to establish committees of national minorities and the right to display topographical signs in a minority language, the right to set up minority language schools) are conditional on the number of persons belonging to national minorities residing in a given municipality, the Advisory Committee notes with concern that the census results may not adequately reflect the ethnic composition of the Czech society.

The number of Roma who declared their ethnic identity in the census is many times smaller than the estimates of 150,000-200,000 Roma living in the Czech Republic made by the Roma themselves and international organisations. In this context, the Advisory Committee welcomes the information provided by the municipal authorities in Brno, concerning a survey to plan the municipal social expenditure.

The Advisory Committee considers that it is essential that an awareness-raising campaign be organised ahead of the next census to prepare the population properly and to inform people of the implications and methodology of the census, so that the maximum number of persons give an informed and free reply to the questions relating to their national and ethnic origin and knowledge and/or use of languages. The Advisory Committee reiterates that population statistics should be collected regularly, and should be complemented with information gathered through independent research. They should be carefully analysed in consultation with minority representatives, in particular when using statistics as basis for the applicability of minority rights (see also comments under Articles 10, 11 and 15).

#### *Recommendation*

The Advisory Committee invites the authorities to consider additional means of collecting information on the situation of national minorities outside the census, while fully respecting international standards in the field of personal data protection, notably those related to the protection of personal data, as laid down in the Committee of Ministers Recommendation (97)18 concerning the protection of personal data.

Denmark

*Adopted on 20 May 2014*

#### Article 3 of the Framework Convention

##### Personal scope of application of the Framework Convention

The Advisory Committee notes that the Danish authorities stated in the Declaration made at the time of deposit of the instrument of ratification in 1997 that the Framework Convention for the Protection of National Minorities “shall apply to the German minority in South Jutland of the Kingdom of Denmark”. This position has been repeatedly laid out in the successive State Reports and comments submitted by the authorities. Against this background, the Advisory Committee has consistently invited the authorities to pursue a dialogue-based approach in their relations with the individuals and groups that might be interested in being given the protection provided for by the Framework Convention and to retain the possibility for these persons to come under the protection of the Convention.

The Advisory Committee notes that the Faroe Islands and Greenland enjoy a high degree of autonomy within the Danish Kingdom and that Home Rule Acts, adopted originally in 1948 and 1979 introduced extensive self-government there. In 2009, Greenland’s autonomy was expanded under the Act on Greenland Self-Government. It further notes that the ILO Convention. No.169 concerning Indigenous and Tribal Peoples in Independent Countries applies in Greenland.

While being fully aware of the fact that the concept of “national minority” is not defined in the Danish Constitution or in any other statute, the Advisory Committee reiterates that the application of the Framework Convention with respect to a group of persons does not necessarily require the latter’s formal recognition as a national minority, a definition of national minority or the provision of a specific legal status for such groups of persons. The Framework Convention was conceived as a pragmatic instrument, to be implemented in very diverse social, cultural and economic contexts and to adapt to evolving situations, on a case-by-case and on an article-by-article basis. Therefore, the Advisory Committee welcomes the fact that the authorities continue to take into account specific needs of Faroese and Greenlandic language speakers by providing, under the existing legislation, teaching of these languages on the mainland territory, provided that a required minimum number of children apply for such tuition (see further comments below with respect to Article 14). This is a commendable example of flexibility, which the Advisory Committee would like to encourage also in respect of other groups.

The Advisory Committee has, as in the previous cycles of monitoring, been approached by the Roma expressing an interest for the protection of the Framework Convention. It notes the authorities’ claim that the Roma living in Denmark today “have no historical or long-term and unbroken association with Denmark”, but consist partly of immigrants and partly of refugees. The Advisory Committee reminds the authorities nonetheless of the long-term presence of Roma in Denmark. The Advisory Committee considers further that extending the provisions of the Framework Convention to Roma in areas such as promotion of culture (Article 5), language teaching (Article 14), fostering knowledge of Roma culture and history among the majority population (Article 12), and effective participation in public life (Article 15) would contribute to the successful integration of persons belonging to the Roma community into the majority Danish society. The Advisory Committee considers that it would also contribute to the better understanding of diversity in society and increase its cohesion.

A similar approach extended to the Faroese and Greenlanders living in mainland Denmark would also, in the opinion of the Advisory Committee, improve the integration of persons belonging to these groups. In particular, the vulnerability of Greenlanders requires taking specific measures.

The representatives of the Jewish community met by the Advisory Committee during the visit, have not expressed particular interest in being included in the scope of application of the Framework Convention. Nonetheless they have expressed a growing awareness among persons belonging to this group of their distinct identity, in particular in the context of the debate on ritual animal slaughter and circumcision of boys. These two issues constitute essential and - for many - sine qua non elements of their identity as Jews. The Advisory Committee considers that the implementation of the relevant provisions of the Framework Convention could improve the situation in the areas such as freedom of religion, preservation of culture and traditions, etc.

### *Recommendation*

The Advisory Committee strongly recommends that the authorities intensify their dialogue with the individuals and groups that express interest or might benefit from the protection provided for by the Framework Convention and to consider applying provisions of the Framework Convention to interested groups irrespective of a formal recognition as a national minority.

Estonia

*Adopted on 19 March 2015*

## Article 3 of the Framework Convention

### Personal scope of application of the Framework Convention

#### Present situation

The Advisory Committee notes that within the domestic legal order, the term “national minority” applies to Estonian citizens, who reside within its territory, have longstanding, firm and lasting ties with the country, differ from the majority population by their ethnic belonging, cultural characteristics, religion or language and who are led by their wish to collectively maintain their cultural traditions, religion or language which are the basis for their common identity. The declaration deposited at the moment of ratification of the Framework Convention repeats this definition. The Advisory Committee notes with satisfaction that, in spite of the limitations stemming from these definitions the Estonian authorities have continued to maintain their *de facto* inclusive approach as regards the personal scope of application of the Framework Convention. However, the Advisory Committee would like to reiterate again that this formal exclusion of non-citizens from the personal scope of application of the Framework Convention, retains a strong symbolic importance among persons belonging to national minorities.

The Advisory Committee welcomes the fact that in practice citizens and non-citizens enjoy virtually equal access to rights, apart from the right to establish or to join a political party, stand in elections or vote in parliamentary elections, which is only held by citizens. Efforts undertaken recently by the Estonian authorities to reduce the number of persons without citizenship residing in Estonia on a permanent basis are welcome. In particular, the Committee notes with satisfaction that the changes introduced to the Citizenship Act on 21 January 2015 abolished the principle of *jus sanguinis* (as regards newly born children) and retrospectively granted citizenship to stateless children under 15 years of age born in Estonia, whose parents have not petitioned the authorities in the prescribed time at birth. The amendments abolished the written language exam for persons who are older than 65 years of age, and allowed for double citizenship of minors, who henceforth will be obliged to choose one country of citizenship within three years after reaching the age of 18 years. These commendable changes to the Citizenship Act follow broadly the Advisory Committee’s recommendations made in its Third Opinion.

While welcoming the authorities’ efforts to reduce statelessness and to facilitate access to citizenship, the Advisory Committee acknowledges the fact that the motivation and resolve to acquire citizenship of Estonia may be weakened by the necessity for the applicants to pass the Estonian language exam on the one hand, and by particular advantages enjoyed by stateless persons with the so-called ‘grey passports’, who may travel visa-free not only to the European Union but also to the Russian Federation, on the other. The Advisory Committee notes however that the retention of the oral State language exam for applicants over 65 years of age and the reported insufficient availability and non-affordability of language training opportunities in certain localities, combined with the lack of confidence in their language proficiency, are likely to have a significantly negative influence on the number of persons seeking naturalisation.

Finally, the Advisory Committee wishes to reiterate in this context its position that the inclusion of a citizenship requirement in the declaration contained in the instrument of ratification may cause arbitrary and unjustified distinctions and can thus have discriminatory effects. Moreover, this formal exclusion of non-citizens belonging to national minorities in Estonia from the personal scope of application of the Framework Convention acts still as a strong symbolic disincentive among persons belonging to national minorities and further decreases their motivation to apply for citizenship even if they meet the criteria.

### *Recommendations*

The Advisory Committee encourages the authorities to continue to pursue an open and inclusive approach to the Framework Convention's personal scope of application and reiterates its call to consider also extending formally the legal definition of the term national minority to long-term residents without Estonian citizenship.

The Advisory Committee calls on the authorities to continue with their efforts to reduce the number of stateless long-term residents in Estonia. In particular, the Advisory Committee strongly encourages the authorities seriously to consider the introduction of free-of-charge language classes that will be helpful not only for passing the citizenship examination but also in general to promote the integration of society.

### Data collection

#### *Present situation*

A Population and Housing Census was organised in Estonia on 31 December 2011. The Advisory Committee notes that the personal questionnaire used during the census was translated into Russian and English and contained a question on ethnic origin as well as questions on mother tongue and other languages spoken. The Advisory Committee notes that the Census was conducted using a variety of techniques, including the internet and classical census interviews. It is important to note however, that most of the data was collected during the census from the electronic official registers without any direct input from the respondents.

The Advisory Committee further notes that the number of enumerated permanent residents in possession of Estonian citizenship has risen from 80% in 2000 to 85.1% in 2011, and of those in possession of a foreign citizenship from 6.9% to 8.1%. Compared to the previous Population and Housing Census, the share of persons with undetermined citizenship has thus decreased from 12.4% to 6.5%, and stands at about 85,000 persons.

The number of persons declaring themselves as Russian, Ukrainian, Belarusian, Finnish, Tatar, Latvian, Polish, Jewish, Lithuanian, German and Armenian has decreased in comparison with the figures collected through the 2000 census, showing a continuation of the trend already observed in the last two decades. In contrast, Georgians, Azerbaijanis and Swedes showed somewhat increased numbers.

The Advisory Committee deeply regrets to note that the answer to the question on ethnic origin, unlike the one on religious affiliation, was mandatory and that there was no possibility for indication of multiple ethnic identities. This is highly surprising given the extent of detail on native-born and foreign-born population, for whom sub-categories of first, second and third generation foreign origin were

collected. Furthermore, the instruction for census enumerators clearly indicated that “in households where father and mother belong to different ethnicities and have difficulties deciding the ethnicity of children, the ethnicity of the mother should be preferred. Such an approach is contrary to the Conference of European Statisticians Recommendations for the 2010 Censuses of Population and Housing, it shows arbitrary disregard for gender equality and it infringes on the right to free self-identification of persons belonging to national minorities as provided by Article 3 of the Framework Convention. Moreover, this arbitrariness could have been avoided by allowing for declaration of multiple ethnic affiliations. Given these shortcomings, the Advisory Committee considers that population statistics should be complemented with information gathered through independent research, and should be carefully analysed in consultation with minority representatives, in particular when using statistics as the basis for application of minority rights, as stemming from the Framework Convention.

### *Recommendations*

The Advisory Committee calls on the authorities to gather population statistics regularly and to engage with minority representatives in analysing the results, particularly where they are used for the application of minority rights.

The Advisory Committee further calls on the authorities to ensure that in all data collection exercises the right to free self-identification is ensured and calls on the authorities to allow also for a declaration of more than one ethnic affiliation or a combination of ethnic affiliations in future exercises and to present them as such.

Finland

*Adopted on 24 February 2016*

Article 3 of the Framework Convention

Personal scope of application

### *Present situation*

Finland continues to follow a flexible and open approach to the application of the Framework Convention to persons belonging to groups such as Sámi, Roma, Tatars, Jews, Russian- and Karelian-speaking population, as well as Swedish speakers, who are considered a *de facto* linguistic minority. The Advisory Committee welcomes the inclusion of Karelian speakers among the minorities addressed in the State Report, as well as the interaction between group representatives and the authorities, and the positive steps accomplished so far in support of education, press and the media in Karelian (see Article 9 and 14). Nonetheless, the Advisory Committee was also informed during its visit to Finland of concerns by Karelian representatives that their expectations with respect to enhanced legal guarantees for the enjoyment of their minority rights, as well as financial support for the revitalisation of their language and culture, have not yet materialised (see also Article 5).

The Advisory Committee notes also an increasing number of Estonians present in Finland. During its visit it was informed by Estonian organisations that, similarly to other linguistic minority groups, individuals encounter challenges as regards protecting their language and culture. In their view, although the

government is becoming aware of these challenges, no steps have been taken so far to provide them with some form of access to minority rights and support. In this perspective, the Advisory Committee recalls the right to free self-identification guaranteed by Article 3.1 of the Framework Convention as well to the general openness and flexibility of this instrument which entails that the applicability of minority rights needs to reflect the evolution of modern societies.

The Swedish Assembly of Finland (hereinafter called *Folktinget*) reiterated that, even if Swedish-speakers are not a national minority under the Constitution, they can only benefit from a flexible application of the relevant provisions of the Framework Convention because of the perceived worsening situation of the Swedish language within Finnish society. Finally, the Åland authorities confirmed their commitment to guarantee Finnish speakers linguistic rights in education and in other contexts, under the 2013 Autonomy Act. The Advisory Committee had no echo of any specific concern regarding difficulties in access to those rights expressed by Finnish speakers themselves.

#### *Recommendation*

The Advisory Committee encourages the authorities to advance their engagement with Karelian speakers and to address their requests as regards the enjoyment of minority rights, as well as to continue their flexible and inclusive approach and engage in dialogue with minority linguistic groups, including Estonian speakers, to the extent to which they express their interest to be protected under the Framework Convention.

#### The Sámi

##### *Present situation*

The Advisory Committee notes that a Government Bill (HE 167/2014) amending the Act on the Sámi Parliament (974/1995) and aimed to strengthen Sámi institutional and cultural autonomy was withdrawn in spring 2015. This Bill also dealt with the criteria defining who belongs to the Sámi people for the purpose of registration in the voters' list. The draft provision on these criteria provoked a heated debate in Parliament and contributed to the withdrawal of the draft law in its entirety. These criteria should have been amended with the agreement of the Sámi Parliament, to put an emphasis on the acquisition by individuals of the Sámi culture in the community and its maintenance. In connection with the October 2015 elections of the Sámi Parliament, the Supreme Administrative Court was called to intervene on the issue of the criteria in respect of registration in the voters' list. The Sámi Parliament reacted strongly to this decision which was held to infringe the right to self-determination of the Sámi people and the enjoyment of their rights and, in their view, carried the risk of opening up the Sámi community to individuals who did not fulfil the criteria for belonging to the Sámi. The Sámi Parliament Board hence decided to accept the demands to rectify the decision to confirm the election results and to rerun the elections according to Article 40 of the Sámi Parliament Act but its decision was appealed against before the Supreme Administrative Court and rejected by the latter as unlawful.

The Advisory Committee recalls in this context that the right to self-identification contained in Article 3 is a cornerstone provision of the Framework Convention and that the Advisory Committee has always refrained from interpreting objective criteria provided by legislation or other means. The Advisory Committee is primarily concerned with access to and enjoyment of minority rights by persons who identify with a minority. While member states have a margin of appreciation in determining how to approach the question of right holders in compliance with national and international obligations, they

shall seek flexible solutions that are not arbitrary and can accommodate all segments of a minority and prevent unjustified exclusion of persons belonging to the minority.

*Recommendation*

The Advisory Committee urges the authorities to engage in a constructive and high-level dialogue with all segments of the Sámi people who wish to benefit from protection under the Framework Convention, possibly in a government-led platform, to ensure that the interests of all parties are adequately addressed and that the rights contained in the Framework Convention are not arbitrarily withheld from individuals who should benefit from them.

Census

*Present situation*

The Advisory Committee welcomes the fact that, according to 2013 national legislation, the different Sámi languages can be registered as mother tongue in the Population Information System, i.e. South Sámi, Inari Sámi, Kildin Sámi, Skolt Sámi, Lule Sámi or North Sámi. However, it also notes with concern that the population registry continues to allow only for one entry with regard to a person's mother tongue. At the same time as parents register the name of their new-born child, they must also indicate the child's mother tongue. That language is retained in the system unless it is changed upon a separate application. This single choice, according to the government, is historically justified by the need of municipalities to be able to plan services in both official languages (Finnish and Swedish). The Advisory Committee understands that, while the government acknowledges the increasing linguistic pluralism of Finnish society, no change is likely to occur in the near future. The Advisory Committee recalls that any question relating to ethnic and linguistic background should be optional and open-ended in line with relevant international recommendations relating to population registries and census exercises. In particular, multiple entries for language affiliations should be allowed.

*Recommendation*

The Advisory Committee calls on the authorities to ensure the principle of free self-identification as laid down in Article 3 of the Framework Convention, by facilitating the expression of multiple identity and language affiliations into population registries in order to reflect better each individual's choice.

Germany

*Adopted on 19 March 2015*

Article 3 of the Framework Convention

Scope of application of the Framework Convention

*Present situation*

The Advisory Committee notes that there have been no developments since the previous monitoring cycle in the position of the German authorities concerning the scope of application of the Framework Convention or the issue of data collection (see below, Article 4, on the latter point).

As noted in the Advisory Committee's previous opinion, persons with links to Polish culture or language now live in Germany as a result of various waves of migration during the last two centuries, especially the 19th century. The Advisory Committee also observes that persons of Polish origin used to have national minority status in the past.

The Advisory Committee notes that in the view of the federal authorities, the wording of the 1991 Treaty on Good Neighbourly Relations and Friendly Co-operation between Poland and Germany demonstrates that both states consider that while a German national minority is recognised in Poland, no such status has been accorded to Poles in Germany. The federal authorities moreover deem that citizens of Polish origin in Germany do not fulfil the criteria for recognition as a national minority in Germany, as they are not traditionally resident in Germany and do not live in traditional settlement areas. The authorities point out that persons of Polish descent with German nationality living in Germany have the same rights as persons belonging to the German minority in Poland as regards freely expressing, preserving and developing their ethnic, cultural, linguistic and religious identities. However, they cannot invoke the additional rights pertaining to national minorities. The authorities nonetheless set aside some €300 000 every year to support the Polish language and culture.

The Advisory Committee also takes note that some representatives of the Polish community contest the authorities' interpretation of the above Treaty and consider that there are no legal obstacles to recognising, as was the case in the past, the existence of a Polish minority in Germany. It further notes that the situation of persons of Polish descent in Germany has been the subject of several discussions in the federal parliament in recent years and understands that the question of recognition as a national minority may, amongst other issues, be examined at a future Round Table on the implementation of the above-mentioned Treaty. In the meantime, one Polish association has brought legal proceedings for the recognition of Poles as a national minority, which are now pending before the German courts.

As regards East Frisians, the Advisory Committee notes that the situation has not changed since its previous opinion. East Frisians are not in principle excluded from the scope of application of the Framework Convention, which applies to the Frisian ethnic group without further specification. However, they are not considered as having a language of their own and receive no particular support for the preservation of their culture and history. The Advisory Committee again draws attention to the shared perception expressed by East Frisians of belonging to a group that is different from the majority population by virtue of its culture and history, with a need to preserve that culture and history by specific provisions (see also below, Article 5).

The Advisory Committee further notes that large numbers of persons living in Germany have different ethnic origins, a fact that Germany has recognised and sought to take on board through initiatives such as integration programmes as well as the publication of an annual migration report. In the light of the growing cultural diversity of German society, the Advisory Committee observes that protection under the Framework Convention might in the future usefully be extended to certain groups, including Roma without German citizenship, that do not currently enjoy such protection. In particular, the established criteria, such as the citizenship criterion, should not have the effect of arbitrarily excluding certain groups or persons from the benefits of the provisions of the Framework Convention. In this context, the Advisory Committee is of the view that the German authorities should consider extending the protection of specific articles of the Framework Convention to groups that express an interest in such protection, in order to facilitate access to the rights that this instrument enshrines. The Advisory Committee underlines in this respect that the Framework Convention was conceived as a flexible instrument to be applicable in highly diverse social, cultural and economic contexts, and in evolving situations. The application of certain of its provisions to specific groups does not therefore require the latter's formal recognition as a "national minority", nor imply a specific legal status for such groups of persons.

*Recommendation*

The Advisory Committee encourages the authorities to pursue an active, open and dialogue-based approach in their relations with persons and groups having expressed an interest in benefiting from the protection of the Framework Convention, such as persons of Polish origin, language or culture and persons identifying with the East Frisian group. In addition, it invites the authorities to review the impact in practice of the application of the citizenship criterion as regards access to minority rights.

Self-identification of Sinti and Roma

*Present situation*

Differing views exist amongst Sinti and Roma as to whether the recognition by Germany, when ratifying the Framework Convention, of a single minority of German Sinti and Roma adequately corresponds to the manner in which persons belonging to this minority identify themselves. The Advisory Committee regrets that as a result of these fundamental and unresolved questions about self-identification, progress on realising the minority rights of the persons concerned has been slowed down. It hopes that the establishment in 2015 of a federal Consultative Committee on Issues concerning German Sinti and Roma, involving both of the national umbrella organisations of Sinti and Roma, will provide an opportunity for constructive dialogue on the implementation in Germany of the rights of Sinti and Roma under the Framework Convention (see further below, Article 15).

*Recommendation*

The Advisory Committee encourages the authorities to pursue constructive dialogue with Sinti and Roma on the protection of their rights under the Framework Convention, while fully respecting the right to free self-identification.

Hungary

*Adopted on 25 February 2016*

Article 3 of the Framework Convention

Personal scope of application of the Framework Convention

*Present situation*

The Advisory Committee notes that with the adoption of the new Fundamental Law and the Act on Nationalities, the terminology used within the domestic legal order in Hungary departed from the commonly established terminology of “national minority” as used in the Framework Convention. The definition in Article 1(1) of the Act specifies that “all ethnic groups resident in Hungary for at least one century are nationalities which are in numerical minority amongst the population of the State, are distinguished from the rest of the population by their own language, culture and traditions and manifest a sense of cohesion that is aimed at the preservation of these and at the expression and protection of the interests of their historically established communities”. The Act also states in its Preamble that “every citizen forming part of one nationality or another has the right to freely declare and preserve their identity [...]”. Furthermore, Article 170(1) of the Act explicitly provides that “[t]he effect of this Act shall extend to Hungarian citizens residing in Hungary and belonging to a nationality as well as to the communities of these individuals”.

The Advisory Committee notes that the application of the Act is clearly restricted to Hungarian citizens. The Advisory Committee shares the Venice Commission's assessment that the restriction of enjoyment of minority rights to citizens only departs from recent practice of minority protection in international law and recalls that in its Report on non-citizens and minority rights the Venice Commission observed that "[c]itizenship should therefore not be regarded as an element of the definition of the term "minority", but it is more appropriate for the States to regard it as a condition of access to certain minority rights", and it found it appropriate to "encourage those States which have adopted constitutional provisions and/or entered a formal declaration under the FCNM restricting the scope of protection for minorities to their citizens only, to consider, where necessary, the possibility of extending on an article-by-article basis, the scope of protection of the rights and facilities concerned to non-citizens".

Furthermore, the Advisory Committee regrets the application by Hungary of the criterion of citizenship for access to the protection afforded by domestic legislation, and by extension to the Framework Convention, and considers that such a step is not in line with the current efforts aimed at developing a more nuanced approach to the use of the citizenship criterion in the protection of national minorities. The Advisory Committee indeed considers that, while citizenship may be a legitimate requirement in fields such as representation in parliament, general application of this criterion nevertheless remains problematic in relation to the guarantees associated with other important fields covered by the Framework Convention, such as non-discrimination and equality, as well as certain cultural and linguistic rights.

With respect to persons belonging to groups other than the 13 recognised national minorities, the Act on Nationalities replicates the conditions and the procedure for recognition as an ethnic group in Hungary existing under earlier legislation.

In this context, the Advisory Committee notes that persons belonging to the Bunjevci community have repeatedly sought recognition as a separate ethnic group, and not as a part of the Croatian national minority with which they are amalgamated. An initiative launched in 2006 was rejected following an opinion given by the Hungarian Academy of Sciences, principally on the ground that the Bunjevci are a part of the Croatian minority with which they share a linguistic affinity. The representatives of the Bunjevci, for their part, emphasise their shared perception of belonging to a group which is different from the Croat population by virtue of its culture and history, and the need to preserve that culture and history. The latest petition of the Bunjevci gathered the required 1,000 signatures and was submitted in 2011 to the National Assembly, only to be rejected again.

The Advisory Committee considers that it is not its role to make pronouncements on recognition or otherwise of any particular group, given the lack of definition of the term "national minority" in the Framework Convention itself, and provided that domestic criteria are applied in a non-discriminatory manner. It notes however that the complex situation, with linguistic proximity not coinciding with a clearly held ethnic identity, calls for an open and flexible approach to the scope of application of the Framework Convention. The Advisory Committee wishes to reiterate its view that the application of the provisions of the Framework Convention with respect to a group of persons does not necessarily require its formal recognition as a national minority or the existence of specific legal status as a group.

*Recommendations*

The Advisory Committee considers that the authorities should favour a flexible and open approach concerning the scope of application of the Framework Convention. It invites the authorities to examine, in consultation with those concerned, the possibility of including persons belonging to groups currently not afforded the protection offered by the Act on the Rights of Nationalities, including non-citizens where appropriate, in the application of the Framework Convention, in particular as regards their linguistic and cultural rights.

The Advisory Committee reiterates its call on the authorities to pursue an open, dialogue-based approach in relations with persons and groups having expressed an interest in the protection provided by the Framework Convention, and encourages them to take due account of the principle of free self-identification laid down in Article 3 of the Framework Convention.

Register of nationality voters

*Present situation*

The Advisory Committee recalls that elections to national minority self-governments have been a distinctive feature of the protection and promotion of minority rights in Hungary for almost twenty years. Already in 2005, amendments were adopted to address problems relating to the election procedure of minority self-governments and “registers of minority voters” were created.

Following changes to the electoral system, particularly the adoption of the Act L of 2010 on the Election of Local Government Representatives and Mayors, the Act CCIII of 2011 on the Election of Members of Parliament and the Act XXXVI of 2013 on Electoral Procedure, voters can register as “a nationality voter” which entitles them to vote for the list of their nationality in parliamentary elections or for national minority self-governments elected at the municipal and regional levels simultaneously with the municipal and regional councils. Representatives of national minorities have pointed out to the Advisory Committee that registration as “a nationality voter” for parliamentary elections did not extend automatically to local elections held later in the same year, which might have confused some voters who might not have registered separately for the latter, thus depriving themselves of the right to choose nationality self-governments. The Advisory Committee welcomes the fact that a recommendation made by the Venice Commission and the OSCE/ODIHR, in their Joint Opinion on the Act on the Elections of Members of Parliament of Hungary, was duly taken into account and the deadlines for requests for an inscription in the register of nationality voters were extended until the day before the day of voting. In this context, the Advisory Committee recalls the importance of the right to self-identification and of international standards on personal data protection when establishing and using the registers of nationality voters.

The Advisory Committee welcomes the information gathered from the representatives of national minorities during its visit that no major problems in connection with the registers of nationality voters were reported during the voting in the parliamentary elections of April 2014 and the local elections of October 2014.

*Recommendation*

The Advisory Committee encourages the authorities to continue to ensure that principles of self-identification and respect for international standards on personal data protection are adhered to during

future elections. The authorities should also ensure that all citizens are informed in due time about the procedures and deadlines for registration as a national minority voter.

#### Data collection

##### *Present situation*

The results of the Population Census which was organised in Hungary in October 2011 were published in March 2013. The Advisory Committee welcomes that the respondents were allowed to indicate more than one ethnic affiliation or more than one language, or choose not to answer some or any of the questions. The census questionnaires contained, in addition to Hungarian and the ethnicities and languages of officially recognised national minorities, options of answers for Arabic, Chinese, Russian and Vietnamese as well as boxes for “other”, with space left for inscription by the respondent. The Advisory Committee notes that national minority self-governments were consulted on the specific wording of these questions and that census forms and explanatory notes were translated into the languages of all national minorities, as well as to English and French. Respondents who filled in the census questionnaire online could choose from an open-ended scroll-down menu of national minorities or to inscribe their own answer. The inclusion of two questions on ethnicity and two questions on language made the possibility of indicating multiple ethnic affiliations and multiple languages more obvious than in the previous census where single questions were used. This change is welcome.

According to the census results, of the 9,937,628 respondents, the number of persons who declared to belong to one of the recognised nationalities exclusively or in conjunction with another ethnic affiliation was: Armenians - 3,571, Bulgarians - 6,272, Croats - 26,774, Germans - 185,696, Greeks - 4,642, Poles - 7,001, Romanians - 35,641, Roma - 315,583, Ruthenians - 3,882, Serbians - 10,038, Slovaks - 35,208, Slovenians - 2,820 and Ukrainians - 7,396. Altogether, according to the census data of 2011, nearly 6% of the population of Hungary (644,524 persons in total) identify with one or more recognised national minority (nationality).

The Advisory Committee, while fully recognising the right of each person to remain silent on the question of ethnic affiliation, notes that nearly 1.4 million persons, constituting about 14.1% of the residents of Hungary, chose not to indicate any national affiliation. The Advisory Committee emphasises that, as it results from the principles set out in Article 3 of the Framework Convention, the decision on whether or not to reply to the question on ethnic origin is one to be appreciated solely by the persons being questioned. That being said, it wishes to emphasise that reliable information about the ethnic composition of the population is an essential condition for implementing effective policies and measures to protect minorities and for helping to preserve and promote their identity. However, the census cannot be considered as the only indicator of their number when implementing policies and measures protecting minorities. This is especially the case in a context such as that of Hungary where a number of rights, in particular to set up national minority self-governments, are dependent on the census-based data.

The Advisory Committee notes that, in accordance with the Nationality Act, census data was used as a precondition for the organisation in 2014 of national minority self-government elections at the municipal level. In accordance with Section 56 (1) of the Act such elections were organised “if the number of individuals forming part of the given nationality in the locality reaches thirty according to the data [...] provided in response to the questions of the latest census regarding nationality affiliation.” According to representatives of national minorities this connection was not made sufficiently clear prior

to the census, and some respondents were not aware of the consequence of remaining silent on the question of ethnic affiliation.

In spite of these shortcomings, the Advisory Committee notes that the number of persons declaring affiliation with an ethnic group (or groups) rose significantly from 442,739 in the 2001 census to 644,524 in 2011. The most significant rise has been registered with regard to Roma (from 205,720 in 2001 to 315,583 in 2011), which is attributed to active involvement of Roma enumerators and an awareness campaign “Colourful Hungary” that preceded the census. These initiatives are very commendable. It has to be noted, however, that according to widely shared estimates, the number of Roma living in Hungary is much higher, probably oscillating around 700,000, as acknowledged also by the State Report.

Persons declaring the Bunjevci ethnic identity were entitled to do so, in line with the possibility afforded to everyone to inscribe any ethnicity. However, it is to be noted that declarations of the Bunjevci ethnicity were aggregated with declarations of the Croatian ethnicity. The Advisory Committee considers that such methodology applied to interpret the data collected during the census is not in conformity with the principle of free self-identification, as provided in Article 3 of the Framework Convention.

#### *Recommendations*

The authorities should undertake awareness-raising activities among persons belonging to national minorities well in advance of the next census, in co-operation with minority representatives so that the maximum number of persons give an informed and free reply to the questions relating to their national and ethnic identity and knowledge and/or use of languages. These awareness-raising activities should relate to the importance and usefulness of the collection of information about the ethnic composition of the population, as well as about national safeguards and international standards on the protection of personal data.

While processing and interpreting data on ethnic affiliation the authorities are asked to take due account of the principle of free self-identification and the possibility of multiple identification as laid down in Article 3 of the Framework Convention. The Advisory Committee invites the authorities to complement data collected in the census with information gathered through independent research, in particular when statistics are used as a basis for the applicability of minority rights.

Italy

*Adopted on 19 November 2015*

Article 3 of the Framework Convention

Personal scope of application of the Framework Convention

#### *Present situation*

The Advisory Committee notes that Law No.°482/1999 of 15 December 1999 ‘establishing a legal framework for protection of historical linguistic minorities’ and Law No.°38/2001 of 23 February 2001 on the protection of the Slovene linguistic minority of the Friuli Venezia Giulia region together with the special statutes of the autonomous regions and some regional laws remain the legal and political cornerstones of Italy’s policy towards persons belonging to national minorities. Both Laws

Nos.°482/1999 and 38/2001 apply only in the geographical areas (municipalities) inhabited by a substantial number of persons belonging to one of the recognised “linguistic minorities”.

In this context the Advisory Committee is pleased to note that the process of delimitation of municipalities covered by the above legislation has largely been completed. In total, Law No. 482/1999 applies in 1,076 municipalities (i.e. in around 13% of the 8,101 municipalities in Italy) inhabited by around four million inhabitants (7% of the country’s population). The Advisory Committee notes with satisfaction that delimitation of areas inhabited by the German-speaking minority in Trentino- Alto-Adige/Südtirol, Valle d’Aosta/Vallée d’Aoste and Friuli Venezia Giulia, the Slovenian-speaking minority in the Friuli Venezia Giulia region, Friulian and the Ladin-speaking minorities in Friuli Venezia Giulia and the Veneto-, French-, Franco-Provençal- and Occitan-speaking minority in Valle d’Aosta/Vallée d’Aoste, and Sardinian-language speakers in Sardinia have been achieved for some time now. It is welcome that the areas in the south of the country (including the Mediterranean islands) inhabited by numerically smaller minorities (such as those inhabited by speakers of Albanian, Catalan, Croatian, Franco-Provençal, Greek and Occitan) have now also been identified and delimited.

Some inhabitants of the Resia, Natisone and Torre valleys in the province of Udine continue to seek recognition as a separate linguistic minority, distinct from the Slovene minority. According to their representatives they are unjustifiably assimilated with Slovenes. Conversely, representatives of Slovenian speakers maintain that inhabitants of the Resia, Natisone and Torre valleys speak an antiquated dialect of Slovenian which has evolved due to the geographical isolation and lack of teaching of Slovenian in these municipalities. According to these representatives, all controversies surrounding this issue are exploited by the media and some political figures to tarnish the image of the concerned groups and lead to a decrease in protection for all linguistic minorities.

The Advisory Committee wishes to reiterate its view that the application of the provisions of the Framework Convention with respect to a group of persons does not necessarily require its formal recognition as a national minority or the existence of a specific legal status for such groups of persons. It further notes that the complex linguistic situation calls for an open and flexible approach to the scope of application of the Framework Convention. Such flexibility is required in particular in municipalities inhabited by persons with very dearly held identities which are not uniformly recognised either within the minority community in question, or by the majority and other minorities. Similarly, as regards persons belonging to national minorities living outside regions of traditional settlement, arrangements may be needed to allow for effective enjoyment of some rights, based on an article-by-article approach. The Advisory Committee believes that ratification of the European Charter for Regional or Minority Languages, which Italy signed in 2000, should in principle, given its *à la carte* approach, help to establish a road map for the protection of languages suited to local situations and needs.

#### *Recommendations*

The authorities should maintain a flexible approach when delimiting the municipalities where the Law N° 482/1999 for the protection of historical linguistic minorities applies, so as to extend the protection afforded by the Law to all persons belonging to these minorities.

The Advisory Committee reiterates its call on the authorities to pursue an open, dialogue-based approach in relations with persons and groups having expressed an interest in the protection provided by the Framework Convention and encourages them to take due account of the principle of free self-identification enshrined in Article 3 of the Framework Convention.

## Status of Roma, Sinti and Caminanti

### *Present situation*

Estimates on the number Roma, Sinti and Caminanti living in Italy vary, but most sources seem to concur that there are between 110,000 and 170,000 persons belonging to these groups living in Italy, thus constituting less than 0.25% of the total population. According to a report by the Emilia-Romagna Regional Centre against Discrimination published in January 2015, 61% of Roma, Sinti and Caminanti living in Italy have Italian citizenship, while the rest are for most part either Roma who came to Italy as war refugees in the 1990s from the former Yugoslavia or citizens of Romania and Bulgaria.

The Advisory Committee notes with deep regret that all legislative initiatives in the Parliament to adopt a specific legislative framework for the protection of Roma, Sinti and Caminanti or to extend the protection afforded by Law No. 482/1999 have so far not achieved a satisfactory outcome. Furthermore, some regional laws enacted in the 1980s and 1990s aiming to protect the rights of these communities have been repealed since (e.g. in the Veneto Region), thus further limiting the legal protection and recognition of this minority. The outdated, inaccurate and discriminatory concept according to which Roma, Sinti and Caminanti are referred to by some officials, political figures and in parts of the media as “nomads” is used as an excuse not to extend the protection afforded by Law N° 482/1999 to these groups, which is territory-based. The Advisory Committee wishes to point out that the vast majority of the Roma, Sinti and Caminanti have lived for decades if not generations in established, albeit very materially deprived communities. In fact it is estimated that between 60% and 80% of Roma live in fixed abodes, and around 40,000 of them live in camps commonly referred to as “nomad camps”, while only 3% of Roma in Italy lead an itinerant lifestyle.

The Advisory Committee considers that, given the deep-rooted prejudice and discrimination against Roma, Sinti and Caminanti in all walks of life, adoption of specific non-discrimination legislation to protect persons belonging to these groups containing clear and specific legal guarantees for the implementation of their fundamental rights and of the principle of full and effective equality would be beneficial to all concerned, including the authorities, to whom it would provide a coherent legal basis for dedicated policy measures and a clear division of responsibilities. The Advisory Committee wishes to stress in this context that the application of the Framework Convention with respect to a group of persons does not necessarily require the latter’s formal recognition as a national minority. It notes, however, that such recognition would greatly facilitate the enjoyment of rights protected by the Framework Convention.

### *Recommendation*

The Advisory Committee reiterates its call on the authorities to take urgent steps to elaborate and adopt without delay a specific legislative framework, at national level, for the recognition and protection of Roma, Sinti and Caminanti with due consultation of representatives of these communities at all stages of the process.

## Data collection

### *Present situation*

The Advisory Committee notes that there have been no significant developments as regards data collection in Italy in recent years. The rules governing the population census do not provide for the collection of data on language and religious beliefs which can reveal the racial or ethnic origin of the respondent. Any collection of sensitive data, such as ethnicity or race requires the written consent of the person concerned and authorisation of the independent authority for data protection, the

“Guarantor of Privacy”. It has to be recalled however, that statistical information on the number of persons belonging to linguistic minorities is collected under special legislation in two provinces: the Autonomous Provinces of Bolzano/Bozen (a mandatory question relating to the Italian, German and Ladin linguistic groups) and Trento (an optional question relating to persons belonging to minorities speaking the Mocheno, Cimbrian and Ladin languages).

The Advisory Committee notes in this context information provided in the State Report on the collection of data collected anonymously from respondents in the Autonomous Province of Bolzano/Bozen during the 2011 general population census, relating to the size and proportion within the local population of the Italian, German and Ladin linguistic groups. Information collected during the census confirmed that the numerical size of the linguistic groups remains overall stable (German-language speakers – 69.41%, Italian-language speakers – 26.06%, and Ladin-language speakers – 4.53%). The Advisory Committee notes that this data will be used until the next census in the composition of local institutional bodies, in the assignment of funds provided by the province, in employment in the civil service and in other cases envisaged by law in accordance with the so-called “ethnic proportion” principle. The Advisory Committee welcomes the recent adoption of legislative decree N° 75/2015. While not resolving the issue of the mandatory affiliation to one of the three recognized linguistic groups, and in particular the negative consequences for those who do not declare such affiliation or who wish to express multiple affiliations, the new legislation enables EU citizens and third country nationals with long-term residence to declare their affiliation to one linguistic group. This not only resolves some practical problems of possible exclusion of these persons from the benefits resulting from their declaration, such as access to public service, but also represents a positive step towards the full implementation of the principle of self-identification in line with Article 3 of the Framework Convention.

The lack of reliable data on the Roma, Sinti and Caminanti populations is seriously undermining the ability of the state bodies to develop and calibrate sector policies and measures designed to improve the situation of these groups. In this context the Advisory Committee notes that information gathered in the course of a special sectoral survey on the situation of Roma, Sinti and Caminanti communities carried out in 2011 by the Special Commission of the Senate on the Protection and Promotion of Human Rights served as a basis for the development of the National Strategy for the Inclusion of Roma, Sinti and Caminanti communities 2012-2020. Drawing on this experience UNAR commissioned ISTAT (National Institute of Statistics) in co-operation with the National Association of Italian Municipalities (ANCI) in July 2013 the development of the necessary tools for mapping out available statistical sources and their contents which could offer information about Roma. Furthermore, UNAR asked that a survey of accommodation modalities in all Roma, Sinti and Caminanti settlements, irrespective of their status in the south of Italy (Calabria, Campania, Sicily and Puglia) be carried out. The Advisory Committee welcomes these steps which demonstrate the authorities’ resolve to collect disaggregated statistical data necessary for designing policies, setting targets and identifying necessary instruments to guarantee full and effective equality vis-à-vis such persons.

#### *Recommendation*

The Advisory Committee encourages the authorities to continue to gather reliable statistical data on the numbers and situation of persons belonging to linguistic minorities, as well as on the Roma, Sinti and Caminanti communities with the view to developing targeted minority protection policies in all sectors, including in employment, social and health services. Care should be taken to ensure that the collection, processing and dissemination of data, which should be as comprehensive as possible, respect at all times the safeguards contained in Recommendation No. R (97) 18 of the Committee of Ministers to members states concerning the protection of personal data collected and processed for statistical purposes.

## Fourth cycle – Art 3

Malta

*Adopted on 14 October 2016*

### Article 3 of the Framework Convention

#### Application of the Framework Convention

The authorities' position on the scope of application of the Framework Convention has remained constant since the first monitoring cycle. According to the declaration submitted by Malta when ratifying the Framework Convention, "no national minorities in the sense of the Framework Convention exist in the territory of the Government of Malta".

In the absence of a full state report and a visit to Malta, and based on limited information obtained from other sources, the Advisory Committee is not in a position to assess the accuracy of this statement.

The Advisory Committee recalls that the Preamble of the Convention calls for the creation of a climate of tolerance and dialogue, and that it has consistently asked Malta to adopt a dialogue-based approach in their relations with persons and groups interested in access to rights contained in the Framework Convention. It reiterates the position voiced already in its first Opinion that "concerning persons belonging to an ethnic, linguistic or religious group other than the dominant one, it would be possible to consider inclusion in the application of the Framework Convention on an article-by-article basis. It is of the opinion that the Maltese authorities should consider this issue in consultation with the persons concerned".

#### *Recommendation*

The Advisory Committee renews its call on the authorities to adopt a dialogue-based approach in their relations with persons and groups who may be interested in access to rights contained in the Framework Convention.

Moldova, Republic of

*Adopted on 25 May 2016*

### Article 3 of the Framework Convention

#### Personal scope of application

#### *Present situation*

There has been no change in the legislative framework regarding the scope of application of the Framework Convention since the third cycle of monitoring. Its protection, according to the Law on the Rights of Persons Belonging to National Minorities, formally still extends only to citizens of the Republic of Moldova. In practice, however, this limitation continues to be disregarded, as no proof of citizenship is required in daily life when accessing minority rights. A number of non-citizen associations continue to form part of the Co-ordinating Council of Ethnocultural Organisations, set up under the Bureau for Interethnic Relations in line with Article 25 of the above law (see also Article 15). While welcoming this inclusive approach, the Advisory Committee notes that statelessness continues to affect persons

belonging to national minorities in particular (see Article 4), and reiterates its established position that the formal use of exclusive criteria for the enjoyment of minority rights may have a discriminatory effect. Instead, whether there is a legitimate ground to differentiate access based on citizenship must be determined for each right separately.

#### *Recommendation*

The Advisory Committee encourages the authorities to pursue a flexible case-by-case approach to any requests for the enjoyment of minority rights by non-citizens belonging to national minorities.

### Census

#### *Present situation*

A comprehensive population and housing census was conducted in May 2014. While preliminary results were presented in December 2014, the publication of the complete data is still outstanding. According to the preliminary results, 2.9 million questionnaires were filled out manually by enumerators who visited households throughout the country, with the exception of the Transnistrian region. This number includes some 330 000 persons who were abroad at the time. Over 26 000 households refused to take part in the census, the majority of which were in *Chisinau*. The Advisory Committee further learned that the actual data entry and processing, supplemented by basic information held by the administrative population registries, would only begin in April 2016, following the recruitment and training of a substantial number of temporary staff. The comprehensive results of the census are therefore expected to be available in spring 2017. The Advisory Committee regrets this significant delay as the availability of updated information with respect to the make-up of the population, including on employment and educational levels, plays a significant role in the design of targeted equality promotion policies and measures (see Article 4). At the same time, it wishes to underline that population statistics cannot be exclusively relied upon. While they should be collected regularly, they should be complemented with information gathered through independent research and should be carefully analysed in consultation with minority representatives, in particular when using statistics as a basis for the application of minority rights (see also Article 10).

The Advisory Committee notes significant concerns among civil society and minority representatives regarding the process and methodology used for the census. According to their reports, a third of the population was not enumerated at all and there are doubts as to how the information was gathered. While questionnaires had in principle been prepared in various minority languages, the forms were not always available in the appropriate language where needed, and many of the enumerators were reportedly unable to provide further information when required. It is to be welcomed that questions on ethnic affiliation and religion were non-obligatory and that blank space was left for entering information. While respondents were free to self-identify as they wished, including with respect to multiple affiliations, many respondents appear not to have been informed adequately of that right. According to the interlocutors of the Advisory Committee, however, while respondents were free to self-identify, they were not informed about the possibility of indicating multiple affiliations on the census form, and as a result few individuals did so. In addition, there were reportedly incidents where enumerators filled out the forms by themselves, based on their own assumptions about the respondent's name or appearance. These irregularities, as well as the significant delay in the publication of the results, have triggered a considerable level of distrust amongst the population in the census process in general.

*Recommendation*

The Advisory Committee calls on the authorities to engage in an open dialogue with civil society and minority representatives regarding the methodology applied with respect to the 2014 census in the gathering and processing of data, which is ongoing. The comprehensive results should be published as soon as possible and analysed in close co-ordination with minority representatives, particularly where they are used as the basis for the enjoyment of minority rights.

Norway

*Adopted on 33 October 2016*

Article 3 of the Framework Convention

Personal scope of application and census

*Present situation*

Norway continues to apply the Framework Convention for the Protection of National Minorities to members of the groups recognised as national minorities present on its territory: Kvens/Norwegian Finns, Jews, Tater/Romani, Norwegian Roma, and *Skogfinner* (Forest Finns). The Advisory Committee notes that the authorities followed the recommendation to engage in a dialogue with the organisations representing the Kven minority as regards their designation. Although there is no final agreement among them, the authorities opted for 'Kven/Norwegian Finns' as the designation in official state documents, while acknowledging the freedom of local and other bodies as well as individuals to express their identities in different ways according to the principle of free self-identification. It also takes note of the fact that the State Report clarifies that the so-called 'newly arrived Roma', that is Roma staying currently in Norway under the European Economic Area (EEA) Treaty and not having a long-standing connection to Norway, do not benefit from the protection of the Framework Convention. The Advisory Committee recalls that it has consistently encouraged the authorities to adopt an inclusive approach towards groups – especially vulnerable groups – who are not formally recognised as national minorities and that Article 6 of the Framework Convention applies to "all persons" living in the territory of state parties.

In 2011, the first register-based population and housing census was organised. Instead of using questionnaires, data collected by other authorities in the public registers (Central Population Register, Cadastre) was used. The Advisory Committee observes that the census does not provide information about ethnicity as this is prohibited by law. Similarly, the census does not provide information on housing conditions for residents who do not live in conventional dwellings, e.g. those who live on boats or in caravans. Finally, statistics on immigrants are compiled on the basis of the country of birth of parents' criterion, while the Sami Parliament maintains its own registry.

The Advisory Committee observes that, as on previous occasions, the government did not report on the situation as regards the Sami people, in keeping with the wish of the Sami Parliament. In line with previous practice, the authorities referred to their reporting under the International Labour Organisation (ILO) Convention No. 169 on Indigenous and Tribal Peoples. In this respect, the Framework Convention is primarily concerned with access to and enjoyment of individual rights by persons belonging to national minorities, rather than with the status of a particular group. It is the established opinion of the Advisory Committee that protection offered by the Framework Convention may also

extend to persons belonging to indigenous peoples, without this having an effect on their status as members of indigenous peoples. The Advisory Committee considers that both protection schemes, the Framework Convention and the ILO No. 169 Convention, are not mutually exclusive and may provide parallel and complementary benefits to individuals affiliated with the group.

In this context, the Advisory Committee notes that the authorities, when reporting on the Sami Language Act, already took into consideration certain provisions of the Framework Convention relating to the use of the Sami languages. It also understands that individuals living outside the Sami administrative area are also interested in maintaining and developing their cultural identity and provisions exist to achieve this goal. The Advisory Committee welcomes these measures and recalls that state parties should constantly assess on an article-by-article basis which rights should be made available to whom to allow individuals to benefit the most from the Framework Convention.

#### *Recommendation*

The Advisory Committee encourages the authorities to engage in a dialogue with the Sami Parliament and other Sami representatives on an article-by-article application of the Framework Convention, in particular in relation to the additional protection the Convention may provide in terms of substantive rights, for instance linguistic rights, including for those living outside the Sami administrative area so as to enable them to maintain and develop their cultural identities.

Slovak Republic

*Adopted on 3 December 2014*

#### Article 3 of the Framework Convention

##### Personal scope of application

#### *Present situation*

The number of groups officially recognised as national minorities in Slovakia has been extended from twelve to 13 since the third cycle of monitoring, with the addition of the Serbian minority in February 2010. Article 34 of the Constitution and Article 1 of the Law on the Use of National Minority Languages (hereinafter Minority Language Act) expressly recognize the right to be treated as national minority only for citizens. While the practical impact of this limitation on the rights enjoyed by persons belonging to national minorities is very small, given that most of them are citizens, the Advisory Committee reiterates its viewpoint that such a general restriction may have a discriminatory effect and should therefore be avoided. The authorities should rather pursue an inclusive approach, reflecting for each right separately whether there is a legitimate ground to differentiate access based on citizenship. It should be borne in mind in this context that amendments to the Citizenship Act in July 2010 abolished the possibility of dual citizenship for citizens who voluntarily acquire a foreign nationality. By July 2014, 855 persons were reported to have lost their Slovak citizenship as a result, the majority of whom in favor of Czech citizenship. The Ministry of Interior is reportedly engaged in the preparation of amendments to the Citizenship Act.

*Recommendation*

The Advisory Committee encourages the authorities to apply a flexible case-by-case approach to any possible requests for the enjoyment of minority rights by non-citizens belonging to national minorities.

Census

*Present situation*

A Population and Housing Census was organised in 2011, containing for the first time questions related to the most frequently used languages in public and in private. The Advisory Committee welcomes that forms were made available in the four most frequently used minority languages (Hungarian, Romani, Ukrainian and Ruthenian), and that respondents were reportedly informed explicitly of their right to free self-identification. The number of persons declaring themselves as Jewish, Croatian, Serbian, Polish or Moravian, for instance, has significantly increased which is welcomed by representatives as sign that former assimilation trends have been halted. The census results further show a continuation of some trends already observed in the 2001 census, in that the number of persons declaring Roma and Ruthenian ethnicity have significantly increased, while the number of persons declaring Hungarian, Czech, or Ukrainian ethnicity has considerably decreased. The Advisory Committee reiterates that population statistics should be collected regularly, should be complemented with information gathered through independent research, and should be carefully analysed in consultation with minority representatives, in particular when using statistics as basis for the applicability of minority rights (see also comments under Article 10 below).

*Recommendation*

The Advisory Committee calls on the authorities to gather population statistics regularly and to engage with minority representatives in analysing the results, particularly where they are used as basis for the application of some minority rights.

Spain

*Adopted on 3 December 2014*

Article 3 of the Framework Convention

Scope of application of the Framework Convention

The Advisory Committee acknowledges that the notion of “national minority” in the sense of the Framework Convention does not exist in the Spanish legal order. However, it underlines that the Framework Convention was conceived as a pragmatic instrument, to be implemented in very diverse social, cultural and economic contexts and to adapt to evolving situations, and that its application with respect to a group of persons does not necessarily require the latter’s formal recognition as a national minority, a definition of this term or the existence of a specific legal status for such groups of persons. The Advisory Committee therefore again welcomes the pragmatic approach taken by the Spanish authorities in considering Roma as a specific minority that may benefit from the protection of the Framework Convention. It also underlines as particularly positive the fact that the authorities do not distinguish between Spanish and foreign Roma in implementing certain programmes designed to promote the full and effective equality of Roma (see further below, comments under Articles 4 and 15).

The Advisory Committee has again been approached by persons belonging to organisations representing the Basque, Catalan and Galician cultures and languages, who have expressed interest in the protection offered by the Framework Convention, while at the same time observing that awareness of the Framework Convention in Spain is generally very low. Oliventine Portuguese-speakers living close to the Portuguese border have also expressed interest in benefiting from the Framework Convention's provisions.

As the Advisory Committee has previously noted, persons having cultures and languages different from those of the majority population and living in the Autonomous Communities where their language has co-official or protected status benefit from specific recognition and are protected under the Spanish Constitution and the statutory laws of the relevant Autonomous Communities as well as the European Charter for Regional or Minority Languages. Regular monitoring of the implementation of the Charter is accordingly carried out by its Committee of Experts. In this context, the authorities have reiterated their view that the current level of protection makes it unnecessary for persons belonging to these groups to benefit from the protection offered by the Framework Convention.

The Advisory Committee underlines, however, that the standards that are currently applicable in Spain do not in themselves make the protection of the Framework Convention superfluous. Moreover, persons belonging to the above-mentioned groups and who live outside the areas where their language has co-official or protected status – for example, Basque-speakers living in southern Navarre, Catalan-speakers living in Murcia and Galician-speakers living in Asturias or Castile and León – receive considerably less support for the protection of their languages and cultures, and it may therefore be especially beneficial for them to enjoy additional protection under the Framework Convention. The Advisory Committee emphasises in this context the importance of the enjoyment of minority rights in practice, whether or not the persons concerned are officially recognised in the Spanish legal system as belonging to national minorities.

The Advisory Committee considers it important that the authorities engage in consultations with these groups, in order to ascertain whether the positions conveyed to it during the monitoring process are shared by other representatives of the Basque, Catalan and Galician languages and cultures. Similar consultations with representatives of other groups that may be interested in benefiting from the provisions of the Framework Convention, such as speakers of Aranese, Oliventine Portuguese and Tamazight, would also be useful. In this respect, the Advisory Committee was particularly struck during its visit by the fact that no government department or body currently appears to have responsibility for addressing such concerns. It notes that in this situation, it is unsurprising that no consultations have been held in response to the recommendations to this effect contained in its Third Opinion. It also observes that the fact that no data is currently collected regarding ethnic diversity in Spain (see also below, comments under Article 4) does not mean there is no such diversity in reality, nor does it absolve the authorities from addressing the concerns of persons belonging to minority ethnic groups.

#### *Recommendation*

The Advisory Committee again recommends that the authorities actively raise awareness among groups other than the Roma of the protection offered by the Framework Convention. It recommends that the authorities undertake consultations with representatives of such groups in order to ascertain whether they are interested in such protection and that the authorities rapidly designate a structure or body with clear competences in this field.

“The former Yugoslav Republic of Macedonia”  
*Adopted on 24 February 2016*

## Article 3 of the Framework Convention

### Personal scope of application

#### *Present situation*

Access to rights under the Framework Convention continues to be regulated in line with the authorities' declaration deposited in 2004, which defines national minorities as citizens belonging to the six groups mentioned explicitly in the Preamble of the Constitution. Despite the fact that the Preamble also mentions “others”, the legislative framework pertaining to the protection of national minorities accords rights to members of the six listed groups only. While welcoming the assurance given by the authorities that requests for protection under the Framework Convention by representatives of other ethnic groups would be considered on an article-by-article basis, the Advisory Committee notes with regret that efforts made by the representatives of the “others”, including numerically smaller groups such as the Egyptian and Croat minorities, as well as possibly larger groups such as the Torbesh community, to be accorded rights based on the same legal grounds as other minority groups, have been rejected with vague references to the Constitution and the legislative framework in place under which they are not accorded a protected status.

The Advisory Committee observes that the existing legislative framework, by creating categories of pre-defined groups with varying levels of rights conferred to them (see Article 4), effectively serves to exclude persons belonging to national minorities from the protection under the Framework Convention, which may lead to arbitrary deprivation of persons belonging to national minorities from accessing their rights. It reiterates its standing position that access to rights should be granted on the basis of a flexible approach that is principally open to all persons belonging to national minorities and does not limit access to rights to persons belonging to particular national minorities alone.

#### *Recommendation*

The Advisory Committee calls on the authorities to develop and apply a flexible case-by-case approach to all requests for the enjoyment of minority rights under the Framework Convention, based on a firm understanding of minority rights as individual human rights.

### Census

#### *Present situation*

The organisation of a comprehensive population and housing census was repeatedly postponed and finally cancelled just prior to its scheduled completion in October 2011. As a result of continued disagreements among the main political parties over the surveying methodology, the State Census Commission resigned and asked all surveyors to suspend their activities. Consequently, all data related to the size of the population and its various groups is drawn from the results of the last census, conducted in November 2002. The Advisory Committee notes with concern that the reliability of these results is widely viewed as doubtful for a variety of reasons. In addition to the fact that the overall population is considered to have substantially decreased in recent years owing to large-scale emigration,

representatives of the numerically smaller groups estimate that their size is in fact much larger than reflected in the results of the 2002 census.

The Advisory Committee notes concerns from a number of representatives that their right to free self-identification was curtailed in the enumeration process by the fact that they were unaware of its significance in order to gain access to minority rights. Respondents were further not informed of the possibility to indicate multiple affiliations. National minority representatives share the view that persons belonging to numerically smaller groups during the census enumeration process often felt encouraged to declare their affiliation with one of the larger groups, despite the fact that the census questionnaire allowed for the possibility to specify “other”. In the case of the so-called “Macedonian Muslims”, for instance, who mainly consider themselves as Torbesh, the majority reportedly self-declared either as members of the Macedonian people or, due to their Muslim belief, as members of the Albanian, Turkish or Bosniak communities. It is noteworthy in this context that the Annual Reports of the Ombudsman provide figures and data relating to the “Macedonian Muslims” as an ethnic group, which seems to suggest some level of recognition of existence, despite the fact that persons belonging to that group neither enjoy a protected status nor are guaranteed access to rights within the legislative framework.

The Advisory Committee considers that any future census exercise, which is highly significant for the adequate design of public services for the population as well as the development of targeted equality promotion policies (see Article 4), must be strictly based on the right to free self-identification and relevant personal data protection standards in the collection, processing and storage of data. In the meantime, it considers that flexibility must be applied in the analysis of the 2002 census data. In addition, it has consistently considered that statistical information regarding the size of the population at central and local levels must be interpreted in close consultation with representatives of the various groups themselves, and cannot be exclusively relied upon. The results must therefore be complemented with regularly updated information that is collected through alternative means, such as independent surveys and research, particularly as the enjoyment of minority rights in the country firmly depends on identification and size of the various groups (see Articles 10, 14 and 15).

#### *Recommendations*

The Advisory Committee calls on the authorities to flexibly analyse the results of the 2002 census and regularly complement the information with recent data in close consultation with national minority representatives, in particular when using statistical data as the basis for the application of minority rights.

It further calls on them to ensure that the principle of free self-identification, including as regards multiple affiliations, is firmly anchored and its application encouraged and monitored in all ongoing and future data collection, processing and storage.

United Kingdom  
*Adopted on 25 May 2016*

Article 3 of the Framework Convention

Personal scope of application

*Present situation*

The United Kingdom continues to apply a flexible and inclusive approach to the scope of application of the Framework Convention, which covers in practice a wide range of national and ethnic minority groups. Although the term ‘national minority’ is not legally defined within the United Kingdom, authorities refer to the broad ‘conventional’ definition of ‘racial group’ as set out in the Equality Act 2010. In the case of certain national minorities, such recognition has been accepted by the courts on the basis of national origin (Scots, Irish, Welsh) or ethnic origin (Roma, Gypsies, Irish Travellers, Sikhs, Jews). The Advisory Committee welcomes the 2014 decision to recognise the Cornish as a national minority in England, by virtue of their unique identity, and to afford them the same status under the Framework Convention as the UK’s other Celtic peoples, that is the Scots, the Welsh and the Irish. This is an important political step, building on the previous recognition of Cornish as a minority language and paving the way to enhanced protection and access to rights for persons belonging to that minority. At the end of 2015 a Cornwall Devolution Deal was signed; the UK Government devolved to Cornwall a “range of powers and responsibilities”, which however are only loosely connected with recognition of the Cornish as a minority.

Representatives of the Cornish minority believed that the steps taken so far at the level of central government and local authorities have not been sufficiently meaningful to substantiate recognition of the Cornish as a national minority. In particular, they expressed concern that local authorities would not show ownership of the recognition process but rather act in compliance with it, while the UK Government would not provide the means required to implement recognition. Local authorities emphasised the limited decision-making power due to the constitutional set-up and the current territorial arrangement, whereby Cornwall is grouped together with Devon and other counties in the Southwest region, as elements preventing further progress (see also Article 16).

The Advisory Committee also notes that there is often a conflation between policies addressing Gypsies and Travellers, on one hand, and Roma, on the other hand. While the Committee acknowledges that this follows from the use of the notion of racial group to define minorities and from the link between Gypsies and Roma, such an approach does not always allow targeting of the specific needs of each group. The Advisory Committee clarifies that the use, in this Opinion, of the term “Gypsies and Travellers”, instead of the more inclusive term “Roma”, is motivated by the specificity of the presence of these autochthonous groups in the UK, but it is not the terminology the Advisory Committee generally applies.

The Advisory Committee notes that self-identification along community lines is still predominant in Northern Ireland and has a thorough impact on many aspects of daily life, such as education and housing, for both the two main communities and other ethnic minorities. In the past ten years, Northern Ireland’s population has changed substantially, with sharply increased immigration from other EU countries as a consequence of EU enlargement, the Polish being today the largest such group.

The Advisory Committee reiterates its view that, although the scope of application defined by the UK authorities is wide, continued over-reliance on the ‘racial group’ criterion may result in a priori exclusion from the scope of application of the Framework Convention of groups that have legitimate claims.

Muslim communities, for instance, raised this point in relation to the fact that Jews and Sikhs have been given minority status on the basis of judicial decisions. Therefore, authorities should seek to engage in dialogue with persons identifying with groups currently not covered by the Framework Convention to evaluate their claims, bearing in mind the right to free self-identification guaranteed by Article 3.1 of the Framework Convention.

#### *Recommendations*

The Advisory Committee calls on the authorities to take all the legal, policy, and financial steps necessary to ensure access to the rights provided by the Framework Convention to persons belonging to the Cornish minority, irrespective of any constitutional set-up.

Authorities should also pay attention to the specificities of Gypsies, Travellers and Roma as distinct groups to reconfigure statistics and effectively tailor policy making to their needs and in consultation with their representatives.

The Advisory Committee encourages the authorities to give due consideration to the claims for recognition under the Framework Convention of groups expressing their interest, such as Muslims or other groups, and to engage in a dialogue with them.

### Census

#### *Present situation*

The Advisory Committee acknowledges the thoroughness of data gathering on the basis of ethnicity in the United Kingdom and welcomes the fact that these data in the 2011 census were fine-tuned to facilitate the expression of multiple identity and language affiliations. It notes that the presence of Poles has grown exponentially across the country and they are often the biggest minority group. It also understands that the progressively improved data collection is widely analysed with a view to informing the ensuing policy-making process and targeting public services. In 2011, Gypsies and Travellers could indicate their identity for the first time in a tick-box, while Roma had only a 'write-in' option. This is particularly relevant if policies targeted at these groups are to be better informed. However, regarding access to health services, the Advisory Committee was informed that there is a discrepancy between data gathered by the National Health Service and the outcomes of the latest census for national and ethnic minorities, including Gypsies and Travellers, and the authorities are making efforts to match them together to ensure dedicated policy making.

The Advisory Committee also understands that, in 2011, data on Cornish identity were gathered for the first time, thanks to the write-in facility. In England and Wales, 83 000 people (0.1% of the population) identified as Cornish, on its own or combined with other identities, but in Cornwall 13.8% of the population declared themselves to be Cornish. Representatives of the Cornish minority believed that the introduction of a dedicated 'tick box' represented a more appropriate way to record persons belonging to a national minority.

#### *Recommendation*

The Advisory Committee calls on the authorities to take the necessary measures to include the possibility to self-identify as Cornish, through a 'tick-box' in the next census, and to facilitate the expression of self-identification of any other group because data collection is relevant to the application of minority rights.