

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

COUNCIL OF EUROPE



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**Comments of the Government of Switzerland on the Fourth Opinion of the
Advisory Committee on the implementation of the Framework Convention for
the Protection of National Minorities by Switzerland - received on 7 December
2018**



Schweizerische Eidgenossenschaft
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**Fourth Opinion on Switzerland of the
Council of Europe Advisory Committee on
the Framework Convention for the
Protection of National Minorities
and
Comments of the Swiss Government**

December 2018

INTRODUCTORY REMARKS

The Advisory Committee on the Framework Convention for the Protection of National Minorities (“the Framework Convention”) adopted its Fourth Opinion on Switzerland at its 62nd meeting on 31 May 2018. The Opinion was forwarded to the Permanent Representative of Switzerland to the Council of Europe on 6 July 2018. Switzerland was then invited to submit written comments by 6 November 2018. The deadline was extended with the agreement of the Framework Convention Secretariat.

The visit to Switzerland by an Advisory Committee delegation from 5 to 8 March 2018 enabled the Advisory Committee to obtain, in complete transparency, the various information it needed to carry out its assessment. The Swiss authorities once again stated the importance they attach to the constructive dialogue with the Advisory Committee. During the visit, the delegation held bilateral meetings with representatives of all the recognised national minorities, namely the national linguistic minorities, the Swiss Yenish and Sinti/Manush and members of Switzerland’s Jewish communities. It also held talks with representatives of the country’s Roma and Muslim communities and met several representatives of the federal, cantonal and local administrative authorities as well as members of the federal parliament. Additional meetings took place with NGOs and academic institutions. Added value was contributed by the Advisory Committee delegation’s visits to the cantons of Fribourg and Bern to visit a transit site used by foreign Travellers and a stopping-place occupied by Swiss Yenish and Sinti/Manush. This was also the case with the visit to Chur and to meetings with the Graubünden authorities and with representatives of the Italian-speaking and Romansh-speaking minorities. These various meetings and visits helped the delegation to form a clear and precise picture of the situation in Switzerland of people belonging to its national minorities and of other minority communities.

The Swiss authorities have noted with interest the Advisory Committee’s Fourth Opinion on Switzerland. Its detailed, in-depth findings reflect the care with which it has considered the situation of minorities in Switzerland. The balanced recommendations made to the Swiss authorities take account of the positions of the various stakeholders. The Swiss authorities welcome the opportunity they have been given to make a number of comments.

These comments are addressed to the authorities of the Council of Europe by the Swiss Federal Council, which is responsible for foreign affairs and for Switzerland’s compliance with its international obligations. However, many areas, especially spatial planning and education, are the responsibility of the cantons, whose task it is to implement the Framework Convention in this regard.

The drafting of these comments has been co-ordinated by the Directorate of International Law (DIL) of the Federal Department of Foreign Affairs (FDFA), with contributions from the relevant services of the Federal Administration, namely:

- the Federal Office of Culture (FOC);
- the Federal Service for Combating Racism (SCR);
- the Federal Statistical Office (FSO);
- the Federal Office of Justice (FOJ);
- the Federal Delegate for Multilingualism;
- the Central Language Services of the Federal Chancellery;
- the Federal Office of Communication (OFCOM);

- the State Secretariat for Economic Affairs (SECO);
- the Delegate of the National Security Network.

The Federal Commission against Racism (FCR), an independent extra-parliamentary body, also contributed to the drafting of these comments.

All the cantons, and the Conference of Cantonal Governments, the Swiss Conference of Cantonal Directors of Education and the Swiss Conference of Cantonal Directors of Public Works, Spatial Development and Environment, were invited to express their views. The cities and municipalities were also consulted, via their representative associations, as was the “A Future for Swiss Travellers” foundation.

These comments, like the Swiss Government’s Fourth Report on the implementation of the Framework Convention, have been/will be drawn up in/translated into the four official languages of the Swiss Confederation (French, German, Italian and Romansh). The Confederation has also had the Advisory Committee’s fourth Opinion, communicated to the Swiss authorities in English and French, translated into Switzerland’s four official languages. All these documents will be published on the DIL website.

To facilitate reading, these comments have been directly incorporated into the document setting out the fourth Opinion on Switzerland. They are highlighted in grey. The comments on the “Executive Summary” and on the “Key findings” of the fourth Opinion are mainly made at the appropriate points in the article-by-article findings. Similarly, the “Recommendations for immediate action” are commented on in the “Article-by-article findings” and in the final list of recommendations set out in the conclusions.

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

Fourth Opinion on Switzerland -- adopted on 31 May 2018

Summary

Switzerland's system for the protection of minority rights has been gradually refined over the years, and Switzerland remains dedicated to the protection of the rights of persons belonging to national minorities, including through implementation of the Framework Convention. The authorities at federal, cantonal and municipal levels attempt to promote genuinely an atmosphere of intercultural understanding in society, which is nevertheless affected by populism, from which Switzerland is not immune.

Persons belonging to national minorities share and express a general impression that intolerance has increased, including in political discourse and on the internet. There is a need to combat hate speech more effectively. The anti-discrimination policy and legislation have remained unchanged, despite reiterated recommendations that a comprehensive approach be adopted. Access to justice is not sufficiently facilitated for persons belonging to national minorities who are victims of hate speech or face discrimination.

The level of protection of national linguistic minorities has been further improved at federal level and the rejection of a recent popular initiative on public broadcasting services has shown the general adherence of the Swiss people to multilingualism. However efforts are still required at cantonal level to promote and protect multilingualism in the cantonal administrations of the bilingual and trilingual cantons and prevent local initiatives that call into question the teaching in and of minority languages thereby potentially undermining this broad consensus.

The Swiss authorities decided no longer to use the generic term "Swiss Travellers" to refer to "Yenish and Sinti/Manush". The shortage of stopping places, short-stay areas and transit sites for persons belonging to these minorities persists, despite efforts made by both the federal authorities and certain cantons. The development of new sites tends to be complicated by persistent stereotypes on the itinerant ways of life and the subsequent opposition of local groups.

Recommendations for immediate action:

- increase efforts of the federal authorities in raising awareness of the existing anti-discrimination legislation and reconsider the possible adoption of comprehensive federal anti-discrimination legislation; facilitate access to justice for persons belonging to national minorities who are victims of discriminatory treatment, including by recognising for NGOs a *locus standi* in the public interest and the capacity to represent the rights and interests of such victims; establish a national human rights institution in line with the Paris principles, especially relating to its institutional and financial independence, its capacity to promote as well as to protect human rights, and the broad scope of its mandate; establish ombudsperson institutions at federal and cantonal levels.

- devote adequate financial support, through accessible, fair and transparent procedures, to projects aimed at preserving and developing identities and cultures of persons with itinerant ways of life; provide the Foundation “A Future for Swiss Travellers” with sufficient financial and human resources to accomplish its mission and to reach out to the communities concerned; adopt the forthcoming Action Plan of the Confederation about the Yenish and Sinti/Manush as soon as possible and immediately implement its measures; raise general awareness about the ways of life of itinerant persons; proceed with the creation of a sufficient number of sites within the deadline agreed upon in the forthcoming Action Plan itself.

- condemn systematically and in a timely manner all instances of intolerance, be it anti-Gypsyism, anti-Semitism or Islamophobia, in particular in public discourse, as well as investigate systematically and prosecute such statements; provide persons belonging to national minorities with the possibility to defend their rights as victims of hate speech in courts, including by recognising to NGOs a *locus standi* in the public interest and the capacity to represent the rights and interests of such victims; follow-up immediately and implement at federal and cantonal levels all measures aimed at ensuring security of persons belonging to national minorities.

I. Key findings

Monitoring process

13. This fourth-cycle Opinion on the implementation of the Framework Convention for the Protection of National Minorities (hereinafter “the Framework Convention”) by Switzerland was adopted in accordance with Article 26(1) of the Framework Convention and Rule 23 of Resolution (97)10 of the Committee of Ministers. The findings are based on information contained in the fourth State report, submitted by the authorities on 15 February 2017, and other written sources, as well as information obtained by the Advisory Committee from governmental and non-governmental sources during its visit to Bern/Berne,¹ la Joux-des-Ponts and Chur/Cuira/Coira, from 5 to 8 March 2018. The Advisory Committee expresses its gratitude to the Swiss authorities for their excellent co-operation in the organisation of the visit. The Advisory Committee would like to thank all interlocutors who provided information.

14. The State report was due on 1 February 2015 and it was unfortunately received with a two-year delay. The Advisory Committee commends however the federal authorities for the extensive consultation with both governmental and non-governmental actors when drafting the State report and for having made it available on the Internet in the four national languages. On 9 December 2013, a symposium on minority languages was organised in Bern/Berne by the Federal Department of Foreign Affairs and the Federal Department of Interior. On 27 March 2015, the Federal Department of Foreign Affairs participated in a seminar held at the University of Freiburg/Fribourg to mark the publication of a German-language commentary of the Framework Convention, and presented the difficulties encountered by the Swiss Yenish and Sinti/Manush with itinerant lifestyles. On 1 December 2015, a symposium on the Jewish minority in Switzerland was organised in Bern/Berne by the Federal Department of Foreign Affairs and the Federal Department of Interior. Members of the Advisory Committee participated in these events.

General overview of the current situation

15. Switzerland’s system for the protection of minority rights has been gradually refined over the years, and Switzerland remains dedicated to the protection of the rights of persons belonging to national minorities, including through the implementation of the Framework Convention. The country is composed of 26 sovereign cantons as laid down in Article 3 of the Swiss Federal Constitution.² Cantons have adopted their own constitutions and have their own legislative, judicial, fiscal and administrative organs. Federal institutions are competent only under conditions specified in the Swiss Federal Constitution. Cantons are sub-divided into municipalities, whose competencies may differ from one canton to another as they are mostly regulated by the cantonal constitutions. Following the principle of subsidiarity enshrined in Article 5 of the Swiss Federal Constitution, the federal authorities possess a limited capacity to intervene in domains falling under the jurisdiction of the cantons or the municipalities for example in respect of culture and education.³ Cantons may also conclude

¹ The names of locations are spelled out, throughout the Opinion, in the official language(s) of the canton concerned.

² Article 3 of the Swiss Federal Constitution states that: “The cantons are sovereign except to the extent that their sovereignty is limited by the Federal Constitution. They exercise all rights that are not vested in the Confederation.”

³ Article 5 of the Swiss Federal Constitution states that “The principle of subsidiarity must be observed in the allocation and performance of state tasks.” See also Article 43a - 1: “The Confederation only undertakes tasks that the Cantons are unable to perform or which require uniform regulation by the Confederation”.

inter-cantonal agreements (Article 48 of the Swiss Federal Constitution), in particular with a view to harmonising cantonal policies and co-ordinating their work at the national level. As an example, in the field of education, Article 62-4 of the Swiss Federal Constitution⁴ states that certain fundamental elements of the education system must be co-ordinated at the national level. The responsibility for this co-ordination lies primarily with the 26 cantonal ministers of education, who together form a political body, i.e. the Swiss Conference of Cantonal Ministers of Education (EDK), to carry out this work. Legally binding inter-cantonal agreements (known as concordats) form the foundation of the work of the EDK, although cantons remain free to join or not such agreements. A similar body co-ordinates the work of cantonal justice and police departments.

Correction: the subsidiarity principle is enshrined in Article 5a of the Swiss Federal Constitution.

Correction: the CDIP/EDK is the Swiss Conference of Cantonal Directors of Education.

16. Concerning language policy, although German, French, Italian and Romansh enjoy the status of national languages,⁵ only German, French and Italian are official languages of the Confederation. In addition, each canton designates its own official languages: at present, three cantons are bilingual German and French (Bern/Berne, Freiburg/Fribourg, Valais/Wallis) and one is trilingual (Graubünden/Grischun/Grigioni, with German, Romansh and Italian). Ticino is the only canton in which Italian is the only official language. Each canton is entitled to legislate on minority rights, on condition that the legislation complies with the Federal Constitution. While efforts are still required at cantonal level, the level of protection of linguistic minorities (“national linguistic minorities” as referred to in the State report) has been further improved at federal level and the rejection of a recent popular initiative on public broadcasting services has shown the general adherence of the Swiss people to multilingualism.

It should be pointed out that, pursuant to Article 70(1) of the Federal Constitution, “Romansh is also an official language of the Confederation when communicating with persons who speak Romansh”.

17. Communities formerly referred to as “Swiss Travellers” are now differentiated and listed as “Yenish and Sinti/Manush”. These terms cover persons with nomadic, semi-nomadic and sedentary ways of life. The shortage of transit and stopping sites persists, despite efforts made by the federal authorities and certain cantons. The development of new public sites, be they stopping places for winter time, short-stay areas for summer periods or transit sites, tends to be politically sensitive in particular at local level and may trigger a popular initiative (i.e. a local vote), which makes political representatives reluctant to engage fully in solving the matter (see Article 5). New amendments to the Federal law on itinerant traders may further limit the possibility of spontaneous stops on private land (see Article 5) and impede socio-economic inclusion of itinerant groups (see Article 15). In this context, expressions of intolerance toward Yenish and Sinti/Manush have increased including in political discourse and on the Internet, and demonstrations opposing the creation of sites were reported in the

⁴ Article 62.4 of the Swiss Federal Constitution states that “Where harmonisation of school education is not achieved by means of coordination in the areas of school entry age and compulsory school attendance, the duration and objectives of levels of education, and the transition for one level to another, as well as the recognition of qualifications, the Confederation shall issue regulations to achieve such harmonization”.

⁵ Article 4 of the Swiss Federal Constitution states that: “The National Languages are German, French, Italian, and Romansh.”

monitoring period. The image reflected by the media is no better, and it illustrates a minority that remains largely unknown by the majority to the point that it does not appear in discrimination data despite civil society reports to the contrary. The Advisory Committee has noted that the authorities take regular initiatives to remedy the situation (see *Assessment of measures taken to implement the further recommendations*). An Action Plan of the Confederation, prepared by the Working Group entitled “Improving conditions for the nomadic way of life and promoting the cultures of Yenish, Sinti/Manush and Roma in Switzerland” (hereinafter referred to as “the forthcoming Action Plan of the Confederation”), remains to be adopted, encompassing all aspects, including promotion of Yenish cultures and history, as well as education issues. Participation of Yenish and Sinti/Manush in public life (see Article 15) suffers from the lack of more permanent representation mechanisms at all levels (including inter-cantonal and cantonal).

The following observations may be made:

1 *The population of a canton or a municipality can call a referendum, not an initiative, to challenge a cantonal or municipal legislative act.*

2 *The Yenish, Sinti and Roma communities do indeed figure in discrimination data: the “Report on racial discrimination in Switzerland”, published every two years by the Federal Service for Combating Racism (SCR), examines the situation of the Yenish and Sinti/Manush, whether sedentary or nomadic, in Switzerland (pp. 111 ff. of the 2016 report). It also addresses the situation of Roma in Switzerland (pp. 117 ff. of the 2016 report):*

<https://www.edi.admin.ch/edi/fr/home/fachstellen/slr/rapports-et-monitorage/rapport.html>

In addition, as part of the “Living together in Switzerland” survey the “Omnibus” intermediate module, which will be carried out in 2019, will look at discrimination in Switzerland with reference to nomadic lifestyles.

3° *The Confederation’s draft “Yenish, Sinti, Roma” Action Plan calls for not only the history of the Yenish people to be taught in schools but also that of the Sinti/Manush and the Roma.*

18. The anti-discrimination policy and legislation in place has remained unchanged (see Article 4) and there is a general need to combat hate speech more effectively (see Article 6). In this regard, security issues were raised during the last monitoring period, in particular concerning the Jewish minority (see Article 6). Preventive measures are being designed to remedy the situation. Media freedom and pluralism are adequately safeguarded, with public media broadcasted in all four national languages. The rejection of the recent “No Billag” initiative (see Article 9) showed a large support of the population for multilingualism. In the federal administration, the proportionate representation of linguistic minorities as planned in the Federal law on Languages is about to be reached (see Article 10). Efforts with a view to promoting proportionate representation of linguistic minorities are to be pursued at cantonal level, in particular in the Canton of Graubünden/Grischun/Grigioni.

Assessment of measures taken to implement the recommendations for immediate action

19. Despite the efforts of the federal authorities, and of some of the cantons, the overall number of sites for persons with itinerant ways of life has been decreasing. There is consensus between the authorities, at all levels, and the representatives of the Yenish and Sinti/Manush with itinerant ways of life about the need to take action in order to enhance the number of

sites. However, a combination of factors prevents the situation evolving, including persistent prejudice toward persons belonging to Yenish and Sinti/Manush minorities, particularly those who choose the itinerant ways of life.

20. There is still a noticeable discrepancy between the courts statistics related to hate speech and discrimination cases and data collected by relevant NGOs. Hostile attitudes continue to impact the Yenish and Sinti/Manush as well as Jews and Muslims. Worryingly, physical attacks on persons belonging to these minorities have been reported.⁶ Furthermore, public hostility towards persons belonging to minority communities has increased particularly in social media,⁷ including by political actors, and immediate and public condemnation is not systematic. Some preventive actions, in particular of the Federal Commission against Racism, such as the campaign for tolerance and intercultural dialogue, are to be welcomed. However, access to justice for hate speech victims is too complex and NGOs have no recognised locus standi (legal standing) in the public interest in this domain and no capacity to represent the rights and interests of such victims.

21. Important efforts have been made at the federal level to reinforce the linguistic rights of persons belonging to national minorities. The right to use one's own language in the federal administration is promoted and is effective in practice. A continuous effort is required to reach a proportionate representation of all linguistic minorities in the federal administration, in particular Italian and Romansh speakers. The independence and powers of the "Federal Delegate for Plurilingualism" have been reinforced.

Assessment of measures taken to implement the further recommendations

22. Clear efforts have been made to raise awareness amongst the general public of the existing remedies to combat discrimination, such as the publication of a legal guide for victims of discrimination and the development of the cantonal integration programmes. However, the authorities have no intention of adopting comprehensive anti-discrimination legislation and abandoning their so-called "sectoral" approach.⁸ At the same time, this "sectoral" anti-discrimination policy, which mainly consists of adopting specific laws for each sector and mainstreaming their respective needs (e.g. Federal law on gender equality, Federal law on equality of persons with disabilities)," requires further work to ensure that legal solutions to the remedies to combat discrimination are well-known among the Swiss population and easily accessible to all.

23. The decision to increase financial support to the Yenish and Sinti/Manush has been taken and is reflected in the programmatic and policy document adopted by the Parliament entitled "Message for the Promotion of Culture for 2016-2020" (hereinafter "Message on Culture") and in the forthcoming Action Plan of the Confederation.⁹ These measures are yet to be implemented, however, and their concrete effects are still awaited. Mechanisms for

⁶ Fédération Suisse des Communautés Israélites et Fondation contre le racisme et l'antisémitisme, Analysis of the Antisemitism Report 2017, available at: <http://www.antisemitisme.ch/vorfaelle/Physische%20%C3%9Cberggriffe/2015> and http://www.antisemitismus.ch/sites/www.antisemitismus.ch/files/downloads/Analyse%20Antisemitismusbericht%202017_English.pdf.

⁷ Federal Commission against Racism, Press release, 20 March 2018, available at: <https://www.admin.ch/gov/fr/accueil/documentation/communiqués.msg-id-70147.html>.

⁸ State report, para. 74; see also, Swiss Centre of Expertise in Human Rights, "Accès à la justice en cas de discrimination", Bern/Berne, July 2015.

⁹ The draft Action Plan, December 2016, available at: <https://www.bak.admin.ch/bak/fr/home/sprachen-und-gesellschaft/les-yeniches-et-les-manouches-sont-une-minorite-nationale/plan-d-action.html>.

effective consultations of Yenish and Sinti/Manush at inter-cantonal level are yet to be created (see Article 15).

Several practical measures have already been taken to implement the Message on Culture. These form part of the Confederation's "Yenish, Sinti, Roma" Action Plan: the reorganisation of the "A Future for Swiss Travellers" foundation; support for cultural projects and awareness raising/mediation projects; the establishment of a working group of the Confederation and the cantons on the subject of transit sites for Travellers, etc.

24. Several Yenish and Sinti/Manush cultural events received financial and political support but more systematic efforts are warranted to remedy the lack of awareness among the general public with regard to the itinerant ways of life. A number of pilot-projects were initiated with the objective of improving access to education for travelling Yenish and Sinti/Manush children. The Confederation has, through the Working Group entitled "Improving conditions for the nomadic way of life and promoting the cultures of Yenish, Sinti/Manush and Roma in Switzerland" both called for and opened the door to dialogue between the cantons, the municipalities, schools and families. However, the results so far are mixed. Media in minority languages received strong support through the rejection of the "No Billag" initiative (see Article 9). However, the obligations imposed on the public broadcaster to produce programmes in minority languages are not always respected, which highlights the need to reinforce the licence agreements in this respect.

The following observations may be made: the Swiss Broadcasting Corporation (SRG-SSR) provides a public service without being organised as a public operator. Its obligations are laid down in a concession and not in "licence agreements".

II. Article-by-article findings

Article 3 of the Framework Convention

Personal and territorial scope of application

25. According to the interpretative declaration¹⁰ made by Switzerland upon ratification of the Framework Convention, Switzerland recognises as national minorities persons belonging to the French, Italian and Romansh-speaking minorities, but also German-speakers in cantons or municipalities where they are respectively in a minority,¹¹ the “Swiss Travellers” and members of Switzerland’s Jewish communities. In this context, following a request from several representative organisations, the Swiss authorities decided in 2016 to no longer use the generic term “travellers”, and confirmed that “Yenish and Sinti/Manush”, both itinerant and settled, are to be considered as national minorities.¹² The Advisory Committee welcomes this change in terminology, thereby respecting the right to free self-identification.

26. The Advisory Committee commends the Swiss authorities, which, as part of the consultations for the preparation of the fourth cycle State report, asked the cantons and the municipalities about any additional linguistic, cultural or religious group that should be recognised as a national minority. It is understood that the cantons had not identified any group meeting all the criteria set out in the interpretative declaration, although the Canton of Neuchâtel expressed the view that “communities with migrant backgrounds” could be considered when “the length of time for which they had had ties with Switzerland” will have been established.¹³ As for the interpretative declaration itself, while recognising that State parties have a margin of appreciation in determining the personal scope of application of the Framework Convention, the Advisory Committee reiterates, however, that it is part of its duty to assess whether the approach taken to the scope of application does not constitute a source of arbitrary or unjustified distinctions among communities with regard to access to rights.¹⁴

27. In April 2015, two organisations (“Rroma Foundation” and “Romano Dialog”) submitted to the Federal Department of Foreign Affairs a request for Roma to be recognised as a national minority. Subsequently, an inter-ministerial working group has been created, composed of representatives of the Federal Office of Culture, the Federal Office of Justice, the Federal Service for Combating Racism, and the Federal Department for Foreign Affairs. A meeting of this working group with the organisations who requested that the Roma be recognised a national minority took place in June 2015. Further exchanges between the working group and the two Roma organisations took place in writing.

By decision of 1 June 2018, the Federal Council ruled on the application by Swiss Roma to be recognised as a national minority under the Framework Convention. It held that the criteria for such recognition, according to the interpretative declaration made by Switzerland, were not met. While the criteria of Swiss nationality and the desire to preserve together the

¹⁰ Declaration made by Switzerland upon ratification, as contained in the instrument of ratification deposited on 21 October 1998 (original in French): “Switzerland declares that in Switzerland national minorities in the sense of the framework Convention are groups of individuals numerically inferior to the rest of the population of the country or of a canton, whose members are Swiss nationals, have long-standing, firm and lasting ties with Switzerland and are guided by the will to safeguard together what constitutes their common identity, in particular their culture, their traditions, their religion or their language.”

¹¹ First Advisory Committee Opinion on Switzerland, adopted on 20 February 2003, paras. 20-21.

¹² State report, paras. 59-62.

¹³ Fourth State report on Switzerland (hereinafter “State report”), para. 64, available at:

<http://rm.coe.int/doc/090000168070c2ee>.

¹⁴ ACFE Thematic Commentary No. 4 “The Framework Convention: a key tool to managing diversity through minority rights”, para. 26.

common identity were not sufficiently established, the criterion of long-standing links with Switzerland was not at all satisfied. However, the Federal Council pointed out that the Roma were an integral part of Swiss society and emphasised the importance of protecting them from racism and discrimination.

28. A legal opinion of the Swiss Centre of Expertise in Human Rights, issued in January 2016,¹⁵ concluded on the necessity for the organisations seeking recognition to respect the criteria laid down in the declaration made by Switzerland upon ratification of the FCNM. While considering that the first two criteria (“being a group of individuals numerically inferior to the rest of the population of the country or of a canton” and “whose members are Swiss nationals”) would not raise difficulties, the opinion further stated that the organisations, in order to have a “good chance”¹⁶ of being recognised, should establish both the presence of Roma in Switzerland until at least the end of the 19th century and the number of persons in the Swiss Roma community. It also indicated that their request should be supported by “possibly all”¹⁷ the existing Roma organisations in Switzerland and that it should be proven that the cultural traditions of the community are still actively practiced. In September and November 2016, the organisations who requested that the Roma be recognised as a national minority submitted additional documentation.

29. The Swiss federal authorities consulted all 26 cantons on this request. They found that out of the 15 cantons having expressed an opinion, one was against and one strongly supported it. The other 13 cantons expressed support providing that the cumulative criteria of the interpretative declaration were met. Several cantons mentioned the benefits of recognition in the combat against prejudice and stigmatisation. Concerning the long-term residence and citizenship criteria,¹⁸ the Advisory Committee considers that a strict application of the interpretative declaration risks limiting the scope of the protection to Swiss Roma only. The Advisory Committee recalls in this regard that, while always welcoming the inclusive approach to the scope of application, the length of residency in a country should not be considered a determining factor for the applicability of the Framework Convention as a whole.¹⁹ Further noting that groups of non-Swiss Roma travelling through Switzerland, mostly coming from other countries such as France, Germany or Spain during summertime, are prohibited from using certain stopping or transit sites reserved to Swiss nationals with itinerant ways of life (see Article 4), the Advisory Committee reiterates its established viewpoint that limiting the protection of the Framework Convention to citizens only may have a discriminatory effect²⁰ and should therefore be avoided in favour of an inclusive approach that reflects on an article-by-article basis whether there are legitimate grounds on which to differentiate access based on citizenship. At the same time, the Advisory Committee

¹⁵ Legal Opinion “Anerkennung der Roma als Minderheit, Kurzgutachten zur Beurteilung einer Anerkennung von Roma als Minderheit in der Schweiz”, Prof.em. Walter Kälin, Lic. iur. Reto Locher, Bern/Berne, 27. January 2016 (in German, available at: http://www.skmr.ch/cms/upload/pdf/160317_Kurzgutachten_Roma_Minderheit.pdf).

¹⁶ Legal Opinion “Anerkennung der Roma als Minderheit, Kurzgutachten zur Beurteilung einer Anerkennung von Roma als Minderheit in der Schweiz”, Prof.em. Walter Kälin, Lic. iur. Reto Locher, Bern/Berne, 27 January 2016 (in German, p. 13).

¹⁷ Legal Opinion “Anerkennung der Roma als Minderheit, Kurzgutachten zur Beurteilung einer Anerkennung von Roma als Minderheit in der Schweiz”, Prof.em. Walter Kälin, Lic. iur. Reto Locher, Bern/Berne, 27 January 2016 (in German, p. 13. In the original version in German: “Unterstützung eines Gesuchs durch möglichst alle in der Schweiz existierenden Organisationen der Roma”).

¹⁸ See, *inter alia*, Venice Commission, Report on non-citizens and minority rights, CDL-AD(2007)001 and Compilation of Venice Commission opinions and reports concerning the protection of national minorities, CDL(2011)018.

¹⁹ See ACFC Fourth Thematic Commentary on the scope of application of the Framework Convention, May 2016, para. 31, pointing out that it follows by implication from Articles 10.2, 11.3, and 14.2 of the Framework Convention that the length of residency is of relevance only to those provisions but not to the application of the Framework Convention as a whole.

²⁰ ACFC Thematic Commentary No. 4 “The Framework Convention: a key tool to managing diversity through minority rights”, para. 29.

welcomes that, in practice, and despite the explicit entrenchment of the citizenship criterion in the interpretative declaration made by Switzerland upon ratification of the Framework Convention, the authorities continue to follow an inclusive approach towards non-Swiss Roma, for example taking into account their needs when planning to create new sites (see Article 5).

Although the Roma of foreign nationality who transit through Switzerland during the summer season cannot be recognised as belonging to a Swiss national minority, they do benefit from several measures taken in their favour by the federal and cantonal authorities. For example, the national plan to deal with the lack of large transit sites (see below in respect of paragraph 51), stopover sites along major roads maintained by some cantons, such as Fribourg or Bern, or the offer of mediation with the local population with financial support from the Federal Office of Culture (FOC), the Federal Service for Combating Racism (SCR) and the Canton of Bern/Berne. In this connection, the assessment made at the end of the 2018 summer season by the associations involved in this mediation project and by the cantons that have trialled it is very favourable: it was possible to both avoid the conflicts of previous years and negative press reports on this subject. The Canton of Bern/Berne particularly welcomes this project, which has helped to ease the tensions that have arisen there in the past, especially in Wileroltigen. For example, the transit site temporarily maintained by Brügg/Bern has been found entirely satisfactory by its users and was occupied throughout the season without any disruption. The Canton of Graubünden is also very interested in the continuation of this project. The Confederation will continue to provide financial support until 2019, or even beyond if need be.

On the subject of the distinctions that may be made between stopping sites for foreign or Swiss Travellers, reference is made to the remarks in respect of paragraph 74 below.

As far as Swiss Roma are concerned, as pointed out in the letter sent to them after the Federal Council's decision of 1 June 2018 not to recognise them as a national minority, they enjoy the same rights as other Swiss citizens, in particular the right to preserve their culture and use their own language and the right to be protected from all forms of discrimination. Moreover, they were informed that, in accordance with the practice of the Advisory Committee, certain rights provided for by the Framework Convention can be implemented irrespective of recognition as a national minority.

30. As a follow-up to its Third Opinion on Switzerland,²¹ the Advisory Committee notes that no request was made by interlocutors from the Muslim communities to be recognised as a national minority at the federal level. When asked by the Advisory Committee about this possibility, they explained that there is a general pragmatic relationship with the authorities and expressed a fear that a request to be recognised as a national minority could have a counter-productive effect and may possibly further stigmatise Muslims.

Recommendation

31. The Advisory Committee encourages the federal authorities to maintain an inclusive approach to the scope of application of the Framework Convention but also invites them to review the criteria of long-term residence and citizenship, so as to enable persons belonging to

²¹ Third Advisory Committee Opinion on Switzerland, adopted on 5 March 2013, paras. 26-28.

national minorities to access rights on an article-by-article basis, and calls on the authorities to address requests for recognition as a national minority within a reasonable timeframe.

The Swiss authorities understand and accept this recommendation as an invitation to continue with their inclusive approach to the scope of the Framework Convention, especially its article-by-article application where this is relevant.

Census methodology

32. The Advisory Committee notes that the last federal census was carried out in 2000.²² Since then, an annual structural survey (or “spot-check”) approach²³ has been applied on a sample of 200 000 people, consisting of phone interviews, followed by a written inquiry, on paper or online, targeting permanent residents who are at least 15 years old. Addressees may answer in German, French or Italian. Representatives of the Romansh-speaking minorities raised concerns about the methodology, questioning its capacity to identify smaller groups of persons belonging to national minorities. Some of the interlocutors of the Advisory Committee argued that the methodology might artificially lower the number of persons belonging to national minorities living outside areas of traditional settlement, in particular Italian and Romansh-speaking persons. From an exchange with a representative of the Federal Office of Statistics, the Advisory Committee understood that the methodology in use indeed has its shortcomings – the smaller the group, the more likely the methodology will fail to identify it through this type of survey. Statisticians working for the Office are looking into refining the methodology.

The following clarifications should be noted:

Since 2010, a population census has been carried out and processed annually in the form of a register compilation supplemented by structural and thematic surveys.

The structural survey, which is part of the census system, is an annual survey based on a sample of at least 200,000 people aged 15 and over living in a private household. Individuals are questioned in writing and provide information on themselves and on the household in which they are living. This is a compulsory survey and may be carried out either via the internet with an online questionnaire or in writing with a paper questionnaire. Persons questioned may reply in any of the four national languages, i.e. French, German, Italian or Romansh, or in English (only in the case of the online questionnaire). In addition, there is a translation aid for users of the five most common foreign languages (Albanian, Serbo-Croat, Spanish, Portuguese and Turkish).

The present census form has many advantages, but the smaller the group is the more risks there are that the method used will be unable to identify it sufficiently precisely. This is not the case with the Italian-speaking minority outside its language region, which is surveyed with some accuracy. The components of the system are continually reviewed and adapted by the Federal Statistical Office (FSO).

²² See, *inter alia*, “Pratiques linguistiques en Suisse, Premiers résultats de l’enquête sur la langue, la religion et la culture 2014”, Federal Department of Interior, Federal Office of Statistics, Neuchâtel, 2016.

²³ See Office Federal of Statistics, Data collection programme of the Federal Census, 2008, available at: <https://www.bfs.admin.ch/bfs/en/home/basics/census.assetdetail.319569.html>.

Compared with the exhaustive surveys carried out until the year 2000, some of the information gathered is no longer available at the level of the small municipalities and neighbourhoods. The data collected in the structural survey enable results relating to one year to be provided for Switzerland as a whole and for the large regions, the cantons and the municipalities with at least 15,000 inhabitants. However, adding together the results for three to five years enables the data to be used at a more detailed geographical aggregation level. For example, aggregating the data over five years is equivalent to a sample of nearly one million people and provides detailed statistical information for groups of about 3,000. In order to obtain results that are more accurate and geographically more focused for their territory, the cantons and towns can enlarge the sample, and several of them do this.

Depending on the sources used (registers or structural surveys), the new method makes it possible to study small populations such as linguistic or other minorities. In addition to register surveys and structural surveys, there are also thematic surveys, especially the Language, Religion and Culture Survey (LRCS, which, within the limits imposed by a sample, make it possible to distinguish between categories of sub-populations. This new census system provides information that is considerably more up to date and thematically much more varied. It has been accepted by the Federal Council and the parliament and is the subject of an assessment report establishing that it fully meets the defined objectives and enables the information available on the population to be considerably improved (cf. FSO, 2017, report of the Federal Council, Bern, entitled “Assessment report of the new population census system”:

<https://www.bfs.admin.ch/bfs/fr/home/actualites/quoi-de-neuf.assetdetail.3922062.html>).

(Available in French, German and Italian).

Recommendation

33. The Advisory Committee recommends the federal authorities to further refine the census methodology and considers that population statistics be complemented with information gathered through independent research, and be carefully analysed in consultation with minority representatives, in particular when using statistics as the basis for the application of minority rights, in order to obtain a more complete overview of where persons belonging to national minorities reside.

The measures advocated by this recommendation are already being implemented. The following observations can therefore be made in relation to this recommendation.

Improvement in the census method: the system components are being constantly improved but there is no plan to make any major changes as far as gathering information by means of sampling is concerned. Compared to other countries, the FSO already has very detailed up-to-date language survey data produced by the structural survey and the LRCS thematic survey.

Statistics from independent research bodies: the FSO produces and analyses its own statistics and takes account, in order to disseminate those statistics, of the latest developments in the various areas concerned. It maintains contacts with its clients and with other producers of statistics in Switzerland and abroad. The partners or stakeholders are involved in the decision-making processes in a timely fashion. The research bodies can incorporate their own data to supplement their research projects. The system provides for and encourages this form of collaboration.

Consulting with representatives of minorities: the FSO is at users’ disposal for analytical requirements and to reply to questions. If the statistics are incomplete or there are gaps in their coverage, improvements are made through research programmes.

Furthermore, it needs to be pointed out that the Federal Service for Combating Racism (SCR) is currently studying with the FSO the present data collection practice and the possibilities of, or limits to, supplementing it with data on membership of more specific population groups. A report on this subject will be issued in 2019.

Article 4 of the Framework Convention

Anti-discrimination legislation and its implementation

34. The Swiss federal legal framework to combat discrimination has not evolved since the third monitoring cycle. The Swiss Federal Constitution, in Article 8.2, states that “No person may be discriminated against, in particular on grounds of origin, race, gender, age, language, social position, way of life, religious, ideological, or political convictions, or because of a physical, mental or psychological disability”. This provision may be invoked before any court. Further, Article 261bis of the Criminal Code as well as other relevant federal legislation (*inter alia*, the Federal law on gender equality and the Federal law on equality of persons with disabilities) contain anti-discrimination clauses, which only refer to race, ethnicity and religion as prohibited grounds of discrimination.

It should be reiterated that combating discrimination is making progress in those cantons that are endeavouring through their Cantonal Integration Programmes (CIPs), to continue to develop measures. For example, in its CIP II (2018-2021) the Canton of Geneva provides that the prevention of discrimination and racism must now also target specific groups, such as members of the Jewish communities, the Yenish and Sinti/Manush and the Roma. Mention might also be made of the Canton of Neuchâtel, which created a roadmap in 2018 for providing an egalitarian administration open to diversity in order to ensure that account is taken of the needs of people with a migrant background and minorities, not only as users of the cantonal administration and in recruitment matters but also with regard to their representation on cantonal bodies and in the authorities’ public discourse.

35. The Advisory Committee took note of a study of the Swiss Centre of Expertise on Human Rights about access to justice in case of discrimination.²⁴ The study, while reporting on the advantages of the “sectoral” approach chosen by the Swiss authorities, points out a number of obstacles to the enjoyment of rights by victims of discriminations, in particular with regard to access to justice. The study mentions *inter alia* the absence of automatic *locus standi* for NGOs on discrimination matters – the Advisory Committee notes that it has already been introduced in the Swiss legislation, for example under environmental law –, the lack of mechanisms lightening the burden of proof of victims and the average costs of procedures as constituting obstacles to access to justice for victims of discrimination. For its part, the Advisory Committee observes that, as such, the “sectoral” approach, while mainstreaming the needs of each sector, may result in the multiplication of substantive provisions,²⁵ creating a growing number of provisions drafted with different wordings, and possibly subject to different case-law and procedures. As an example, any alleged victim of multiple cases of

²⁴ Swiss Centre of Expertise in Human Rights, *Accès à la justice en cas de discrimination*, Bern/Berne, July 2015; although the study itself did not cover specifically the case of persons belonging to national minorities.

²⁵ Referring to the provisions listed in the 2016 report of the Service for Combating Racism, one could for example quote Article 49.3 of the new law on hospital care of the Canton of Bern/Berne; Article 18 of the Ordinance on the law on social care of the Canton of Zürich; Article 10 of the law on training of the Canton of Obwalden; Article 25.1 b) of the law on the “droit de cité” of the Canton of Basel-Stadt; Article 15.2 of the Staff Regulation of the Zürich University Hospital; Article 5 of Staff Regulations of the University of Basel; or Article 25 of the Ordinance on the Centre of enforcement measures for young adults of the Canton of Basel-Landschaft.

Correction: This relates to Article 25.1b) not of the law on the “droit de cité” of the Canton of Basel-Stadt, but the law on “droit de cité” of the Canton of St. Gallen (Gesetz über das St. Galler Bürgerrecht (BRG)).

discrimination may have to lodge several complaints, which may be based on substantive provisions with a different scope, themselves potentially regulated by different procedural rules. Therefore, from the Advisory Committee's opinion, a "sectoral" approach should go hand-in-hand with a stronger effort to raise awareness amongst the general public about the anti-discrimination provisions concerned, sector by sector. The Advisory Committee welcomes in this regard the continuous efforts of the Service for Combating Racism (SCR) to raise public awareness on the existing federal and cantonal anti-discrimination legislation, in particular the publication and updating of the legal guide about racial discrimination – although it does not cover as such persons belonging to national minorities – and the in-service training to cantonal and municipal authorities, mediation services, integration offices, trade union federations and civil society organisations.

The SCR intends to continue to support projects to raise awareness of anti-discrimination legislation and to organise events on this subject. Its "Legal guide on racial discrimination" is constantly updated and is now available online in addition to being widely disseminated. It will continue to be the subject of further training courses.

36. As regards the number of anti-discrimination cases, the Advisory Committee observes a discrepancy between official court statistics and data collected by NGOs. This discrepancy suggests that potential victims of discrimination are not sufficiently aware of the legal remedies available. In the understanding that a direct comparison of statistics is not possible as such, given the delays in dealing with court cases as well as the possible differing definitions, the Advisory Committee notes, for example, that the number of cases related to "manifest and recorded" discrimination on the grounds of religion dealt with by Swiss courts in 2016, is much lower than the number of discrimination cases shown by public surveys on discrimination or collected by specialised NGOs in the same year.²⁶ While the Registry of legal cases refers to 22 cases,²⁷ all religious beliefs included, the main Jewish organisation monitoring solely the French-speaking part of the country registered 153 cases²⁸ concerning Jewish persons only.

37. Not a single "manifest and registered" case was registered concerning discrimination against persons with itinerant ways of life in 2016, while all relevant interlocutors of the Advisory Committee raised discrimination issues in this area. Representatives of the Yenish and Sinti/Manush organisations have in particular all raised concerns about a possible profiling of persons with itinerant ways of life and repeated identity checks. During an exchange with the Advisory Committee, a representative of the Federal Department of Interior denied however the existence of such a profiling policy.

38. The Advisory Committee recalls that, in 2011, a pilot-project of the Confederation established the Swiss Centre for Expertise in Human Rights (SCHR) as a *de facto* national human rights institution, with the possibility for the Confederation to look for advice from the SCHR on issues that fall under its competence. The SCHR was only paid upon delivery of services, on the basis of a service contract with the Confederation. It could also deliver similar services to cantons, NGOs or private actors, on a contractual basis. In June 2016, the Federal

²⁶ See respectively, Federal Office of Statistics, Survey on diversity and coexistence in Switzerland, 2016; CICAD, Antisémitisme en Suisse romanche, Report 2017; and Nermina Ademović-Omerčić: Islamophobia in Switzerland: National Report 2017, in: Enes Bayraklı & Farid Hafez, European Islamophobia Report 2017, Istanbul, SETA, 2018.

²⁷ Service for Combating Racism (SLR), Biennial report 2016, Section 5.3.1.

²⁸ Service for Combating Racism (SLR), Biennial report 2016, Section 5.3.1; see also, CICAD, "Antisémitisme en Suisse romande, rapport 2017", p. 16.

Council decided to establish a national human rights institution (NHRI),²⁹ thus building upon the pilot-project initiated in 2011. The bill “on funding for a national human rights institution” was issued for consultation in June 2017. The bill plans for a baseline financing of CHF 1 million per year³⁰ and broadens the scope of the NHRI to all human rights issues. The Advisory Committee notes also that only six out of 26 cantons have established ombudsperson institutions,³¹ as well as six municipalities,³² and that there is none at the federal level. The Advisory Committee concurs with the explanatory report to the bill³³ that a Federal Human Rights institution could ensure a more harmonised human rights approach throughout the Confederation, provided it is set up in line with the Paris principles,³⁴ in particular with regard to its institutional and financial independence, its capacity to promote as well as to protect human rights and the scope of its mandate. The lack of ombudsperson institutions at federal and cantonal levels also limits access to justice for persons belonging to national minorities victims of discrimination.

The federal administration is currently engaged in establishing the basis for setting up a national human rights institution. This work is ongoing.

It should also be pointed out that more cantons than those mentioned above have set up bodies comparable to mediation institutions. For example, the Canton of Geneva, which has an administrative mediation office, and the Canton of Aargau, where the Integration and Advice Centre (Anlaufstelle Integration und Beratung, AIA) is a body independent of the cantonal administration that functions as an ombudsman’s office. However, some small cantons, such as Uri, argue that the establishment of a specific ombudsman’s office would be difficult for them given the very limited number of cases it would deal with. Other cantonal bodies could, however, carry out this function.

Recommendations

39. The Advisory Committee recommends federal authorities to increase efforts in raising awareness of the existing anti-discrimination legislation and reiterates its recommendation to the federal authorities to reconsider their position concerning the adoption of comprehensive anti-discrimination legislation. The Advisory Committee calls on the authorities to facilitate access to justice for persons belonging to national minorities who are victims of discriminatory treatment, including by recognising to NGOs a *locus standi* in the public interest and the capacity to represent the rights and interests of such victims.

A reservation needs to be made concerning the recommendation to the federal authorities “to reconsider their position concerning the adoption of comprehensive anti-discrimination legislation”. As already explained in the 4th report of the Swiss Government on the implementation of the Framework Convention (paragraph 74) and confirmed in the third Universal Periodic Review (UPR), which Switzerland underwent between November 2017 and February 2018, the lack of comprehensive anti-discrimination legislation is a reflection of Switzerland’s monistic tradition and its federalist system. The Federal Council and the

²⁹ State report, paras. 79-80.

³⁰ The exchange rate EUR to CHF, as published by the National Bank of Switzerland on 2 May 2018, is 1.1944

³¹ Basel-Landschaft, Basel-Stadt, Freiburg/Fribourg, Vaud, Zug, Zürich.

³² Bern/Berne, Luzern, Rapperswil-Jona, St. Gallen, Winterthur, Zürich.

³³ Explanatory report, Draft bill on the support to the National Human Rights Institution, 28 June 2017.

³⁴ Principles relating to the Status of National Institutions (The Paris Principles), adopted by the General Assembly resolution 48/134 of 20 December 1993, available at:

<http://www.ohchr.org/EN/ProfessionalInterest/Pages/StatusOfNationalInstitutions.aspx>

parliament consider that the existing legal instruments provide effective protection against discrimination. However, the Federal Council accepts that it is necessary to improve the awareness of these legal remedies and to take steps to further facilitate access to justice.

With regard to the question of granting locus standi to non-governmental organisations in cases of racial discrimination, reference is made to the remarks on this subject in paragraph 67 below.

40. The Advisory Committee recommends that the federal authorities establish as soon as possible the national human rights institution in line with the Paris principles, especially with regard to its institutional and financial independence, its capacity to promote as well as to protect human rights and the scope of its mandate. The Advisory Committee also calls on the federal and cantonal authorities, which have not yet done so, to establish ombudsperson institutions at their respective levels.

On the establishment of a national human rights institution, see the update provided in paragraph 38 above.

On the establishment of ombudsman institutions, see the remarks above in respect of paragraph 38.

Article 5 of the Framework Convention

Support for the preservation and development of the identities and cultures of national minorities

41. As governed by the Federal law for the promotion of culture, the Strategic orientations of the Federal Council in the domain of culture are presented in a programmatic and policy document, adopted by the Parliament, and entitled “Message for the Promotion of Culture for 2016-2020” (hereinafter “Message on Culture”). In accordance with Article 17 of the abovementioned law,³⁵ between 2016 and 2020, the Confederation plans to allocate CHF 3.8 million³⁶ to organisations representing persons belonging to the Yenish and Sinti/Manush communities. These funds will primarily be used for creating sites and supporting cultural projects, to be specified in the forthcoming Action Plan of the Confederation as prepared by the Working Group entitled “Improving conditions for the nomadic way of life and promoting the cultures of Yenish, Sinti/Manush and Roma in Switzerland”. The Advisory Committee was pleased to observe that the Working Group takes also into account the interests of itinerant non-Swiss Roma, when planning new sites.

42. The Message on Culture further insists on the reinforcement of the Foundation “A future for Swiss Travellers” (hereinafter “the Foundation”)³⁷ in order to both foster general knowledge amongst the authorities and general public about the itinerant ways of life and

³⁵ Article 17 of the law provides that “the Confederation may adopt measures to enable Travellers to conduct the way of life which corresponds to their culture”.

³⁶ Message on Culture 2016-2020, Section 2.2.7

³⁷ The Foundation “A future for Swiss Travellers” has been created in 1997 by the Federal law concerning the foundation “A future for Swiss travellers” [449.1]. Its Governing Board is composed of 2 representatives of the Confederation, 2 representatives of the Cantons, 2 representatives of the Municipalities and 6 representatives of the Travellers (see Article 15). It serves as a Forum where representatives of all relevant stakeholders work together to address topical issues, such as the shortage of stopping/transit places, itinerant trade authorisations, schooling, or transit of non-Swiss persons with itinerant ways of life.

encourage teaching of the Yenish language and cultures (see Article 12). In addition to the annual grant of the Confederation amounting to CHF 150 000 and covering its operational costs, the Foundation has been granted CHF 50 000 additional funding since 2016 by the Federal Office of Culture to support cultural projects. The Foundation continues however to be staffed by a single part-time employee (working 40%, and 80% as of 1 April 2018). Concerning project support, the website of the Foundation neither indicates nor explains that such funding is available and how organisations or individuals can apply for it. The Advisory Committee has received complaints about the way in which the funds are awarded by the Foundation's Board. Several of the Advisory Committee's interlocutors wished to see increased transparency in this regard.

The following clarifications should be made:

- *The Message on Culture does not seek to “encourage” the teaching of the Yenish language and culture but to support initiatives on this subject.*
- *The cultural fund of CHF 50,000 available to the “A future for Swiss Travellers” foundation was set up right at the end of 2016 and has consequently only been able to support projects from 2017. Before that, the foundation already supported cultural projects.*
- *The working hours of the foundation's executive secretary were increased in May 2018.*

In addition, the remarks on the way in which the foundation awards funding must be tempered by taking the following aspects into consideration:

The criteria for awarding funding have been agreed with the Federal Office of Culture (FOC) and are notified to applicants. In connection with the redesign of the foundation's website, to be completed by the end of 2018, it is planned to publish online information on making funding applications and on the criteria applicable. In its objective and impartial examination of whether these criteria are met, the foundation has some room for manoeuvre. The fund of CHF 50,000 available is granted to new applications for support on a priority basis. Reasons are given for all the foundation's decisions on this subject. It would appear that there has been greater publicity to the negative decisions on the award of funding than to the positive decisions. Since 2017 and the setting up of the cultural fund, the foundation has published in its annual activity report a list of the project it finances. It is currently considering the possibility of publishing this list on its new website.

43. At the time of the adoption of this Opinion, the Action Plan of the Confederation is still under preparation by a Working Group entitled “Improving conditions for the nomadic way of life and promoting the culture of Yenish, Sinti/Manush and Roma in Switzerland” (on the Working Group's composition, see Article 15). The Advisory Committee notes with satisfaction that this Working Group's discussions include in particular a possibility of adding the Yenish and Sinti nomadic cultures to the “Inventory of Living Traditions in Switzerland”³⁸ and that this proposal has been implemented in the update of the inventory as published by the Federal Office of Culture in October 2017, thus recognising that it constitutes an integral part of the Swiss cultural heritage. The Advisory Committee also notes the entry into force on 1 April 2017 of the Federal law on compulsory social measures and

³⁸ The Inventory of Living Traditions in Switzerland has been drawn up following the ratification by Switzerland in 2008 of the UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage.

placements prior to 1981, which may apply to Yenish victims of the human rights violations perpetrated by among others *Pro Juventute*.³⁹ This law is in line with the viewpoint expressed by the Advisory Committee in its first opinion on Switzerland that this scandal should be borne in mind when new measures are drawn up, which may have an impact on persons belonging to Yenish and Sinti/Manush minorities,⁴⁰ irrespective of their itinerant or settled way of life.

The “Nomadic tradition of the Yenish and Manush” documentation in the “Inventory of Living Traditions in Switzerland” is now available online in French, German and Italian, with a presentation sheet also translated into Romansh and English:
<http://www.lebendigetraditionen.ch/traditionen/00324/index.html?lang=en>

44. The preservation and development of the identities and cultures of persons with an itinerant way of life also extends to the way in which the Yenish and Sinti/Manush with an itinerant way of life meet the needs of their families. A very important number of the Yenish and Sinti/Manush with an itinerant way of life are independent workers, in trades or craftsmanship. Under the current wording of the Federal law on itinerant traders,⁴¹ a special authorisation, to be requested 20 days at the latest before the activity starts,⁴² is required for them to work as an itinerant trader. Any practice without such authorisation is subject to a fine of a maximum of CHF 20 000.⁴³ The authorisation may be withdrawn if the legal conditions to request it are no longer respected or if the conformity of the trade activity with the applicable rules is no longer guaranteed.⁴⁴

45. The Confederation allocates annually CHF 13 million under the Federal law on languages to a series of thematic areas including “promotion of understanding and exchanges among the linguistic communities”, “support to multilingual cantons” and “safeguarding and promotion of the Italian and Romansh languages and cultures”. According to the Message on Culture 2016-2020,⁴⁵ school exchanges (through direct support to projects) and support to Italian language and cultures outside Italian-speaking parts of Switzerland will be promoted as a priority, with the aim of improving general conditions of teaching in Italian, developing bilingual training sessions and promoting the status of the Italian language by supporting cultural events.

The aim of the Message on Culture is not to develop “bilingual training sessions” but federal university entrance qualifications in two languages, including Italian.

On the subject of school language exchanges, it should be noted that the federal and cantonal institutions responsible for promoting them have decided to adopt a common strategy to address the current challenges. The “Exchanges and Mobility” strategy has been developed by the Confederation and cantons and was adopted in autumn 2017 by the Heads of the Federal Department of the Interior (FDI) and the Federal Department of Economic Affairs,

³⁹ From 1926 to 1973, the Swiss children-oriented *Pro Juventute* foundation implemented a semi-official policy of institutionalising Yenish parents and having their children adopted by more “normal” Swiss citizens. About 600 children were taken from their parents. See, *inter alia*, website of the Foundation “A Future for Swiss Travellers”: <http://www.fondation-gensduvoyage.ch/autrefois-nosjours/fr/action-enfants-de-la-grand-route>.

⁴⁰ First Advisory Committee Opinion on Switzerland, adopted on 20 February 2003, para. 33.

⁴¹ Federal law on itinerant traders, Article 2. Available in German, French or Italian, available at <https://www.admin.ch/opc/fr/classified-compilation/20000837/index.html>.

⁴² Ordinance on itinerant traders, Article 6.2.

⁴³ Federal law on itinerant traders, Article 14.1.

⁴⁴ Federal law on itinerant traders, Article 10.

⁴⁵ Message on Culture 2016-2020, Section 2.2.6.

Education and Research (FDER), and by the CDIP/EDK. The Confederation and cantons now have a shared vision for the first time, their aims being to make quantitative and qualitative improvements to exchanges and mobility and achieve higher participation rates.

Recommendations

46. The Advisory Committee calls on the federal authorities to devote adequate financial support, through accessible, fair and transparent procedures, to projects aimed at preserving and developing identities and cultures of persons with an itinerant way of life, including by providing the Foundation “A Future for Swiss Travellers” with the sufficient financial and human resources to accomplish its mission and to reach out to the communities concerned.

47. The Advisory Committee recommends that the federal authorities include the promotion of the Yenish language and cultures in the forthcoming Action Plan of the Confederation and to closely monitor its implementation.

Public stopping places, short-stay areas and transit sites

48. The Advisory Committee recalls that the itinerant or semi-itinerant way of life of the Yenish and Sinti/Manush constitutes one of the essential elements of their identities.⁴⁶ A distinction is made by the Swiss authorities between “stopping places”, i.e. places used during the winter months, “short-stay areas” to be used for short stays, mainly in summer, and “transit sites”, i.e. large areas near major roads, used mainly by non-Swiss persons with an itinerant way of life. Based on the latest available documents,⁴⁷ the number of stopping places remained stable between 2013 and 2016 (14 in 2013, 15 in 2016) while the number of short-stay areas kept decreasing (42 in 2013, 32 in 2016, of which 15 could be used only part of the year).

49. Despite the efforts of the Confederation including through support to the Foundation (see Article 5) and despite initiatives from a number of cantons aimed at revising their cantonal Master Plan with a view to including new sites (Jura), or at setting up working groups to identify solutions (Solothurn, Neuchâtel, Thurgau, Ticino) or even at actually creating new sites (Basel-Stadt, Bern/Berne, Aargau, Freiburg/Fribourg), the Advisory Committee can only but regret that the number of places remains inadequate and that the overall condition, in particular of short-stay areas, has deteriorated since the third monitoring cycle. The insufficient provision of suitable sites continues to be a chronic and serious concern for persons belonging to those minorities, which in turn affects their capacity to meet the needs of their families or their children’s access to education (see Article 12).

The shortage of stopping places for Travellers has no direct impact on their children’s access to the education system.

50. Demonstrations of persons belonging to the Yenish minority against the shortage of sites took place in Bern/Berne and Biel/Bienne in April 2014. These demonstrations led to the occupation of the Allmend site in Bern/Berne. After two weeks, the site was cleared by Bern/Berne police as it was reserved for visitors to the spring fair due to begin a few days

⁴⁶ Second ACFC Opinion on Switzerland, adopted on 29 February 2008, para. 64.

⁴⁷ See, *inter alia*, the State report, para. 29 and Foundation “A future for Swiss travellers”, Annual report for 2016, available at: http://www.fondation-gensduvoyage.ch/sites/stiftung-fahrende.ch/files/jahresbericht_2016.pdf.

later. The Advisory Committee was informed that several organisations and families had complained about the police's intervention, which they considered inappropriate and violent.⁴⁸

51. The Advisory Committee notes that the creation of sites is the primary responsibility of the cantons⁴⁹ but considers that the Confederation could play a prominent role in putting an end to this deadlock and ensuring that Switzerland's international human rights obligations are effectively respected by the cantons and the municipalities. Although the objective of 40 stopping places and 80 short-stay areas seems to be agreed among the different stakeholders,⁵⁰ and despite the fact that the forthcoming Action Plan of the Confederation, in its latest drafting, plans their establishment within the coming five years,⁵¹ the Advisory Committee observes that the measures taken to reach this objective are, in practice, still insufficient.

The following development should be noted: the Confederation and the cantons have agreed to work together to deal with the shortage of transit sites. A national plan is to be drawn up by a working group, whose inaugural meeting took place in September 2018.

It is also important to mention that the Association of Swiss Municipalities and the "A Future for Swiss Travellers" foundation established by the Confederation held a seminar in Bern in January 2018 on the shortage of stopping places for Yenish, Sinti/Manush and Roma. The aim was to promote better co-operation between everyone involved and to present good practices adopted in certain cantons.

52. The Advisory Committee was surprised that the management, including the maintenance, of certain sites was sometimes delegated to the police, which may – even incorrectly – be perceived as imposing a constant public control over those minorities, in particular when such management requires systematically proceeding with identity checks. Civil servants with no law enforcement role, such as employees of municipalities, would be more appropriate. In general, several of the interlocutors of the Advisory Committee mentioned the difficulties encountered by persons with itinerant ways of life in trying to identify the competent department or person in every canton they travel to, including as regards social services. They also mentioned that administrative procedures and social support functions are often not adapted and may omit to take into account their ways of life.

It should be pointed out that, as noted by the Advisory Committee delegation during its visit in March 2018 and in its discussions with Travellers at that time, the Joux-des-Ponts transit site in the Canton of Fribourg is managed by the local police to its users' complete satisfaction.

53. A mainstream and combined effort of the Confederation, the cantons and the municipalities is needed in order to raise awareness about the ways of life of itinerant persons

⁴⁸ RTS Info, *Colère des Yéniches: "Vous n'avez plus de nom, vous avez un numéro"*, 25 April 2014, available at: <https://www.rts.ch/info/regions/berne/5800519-colere-des-yeniches-vous-n-avez-plus-de-nom-vous-avez-un-numero-.html>; Der Bund, *"Die stärkste Form von Repression seit der Verfolgung durch Pro Juventute"*, 26 April 2014, available at: <https://www.derbund.ch/bern/kanton/Die-staerkste-Form-von-Repression-seit-der-Verfolgung-durch-Pro-Juventute/story/29461055>; Blick, *Fahrende klagen Berner Polizei an «Sie waren wie die Gestapo»*, 25 April 2014, available at: <https://www.blick.ch/news/schweiz/bern/fahrende-klagen-berner-polizei-an-sie-waren-wie-die-gestapo-id2816137.html>.

⁴⁹ See also, Third ACFC opinion on Switzerland, adopted on 5 March 2013, para. 53.

⁵⁰ Foundation "A future for Swiss Travellers", Annual Report for 2016, available at: http://www.fondation-gensduvoyage.ch/sites/stiftung-fahrende.ch/files/jahresbericht_2016.pdf.

⁵¹ Working Group "Improving conditions for the nomadic way of life and promoting the culture of Yenish, Sinti/Manouches and Roma in Switzerland", Report and Action plan, Sections 3.3.1 and 3.3.2, 21 December 2016.

thus promoting and protecting their rights, irrespective of their citizenship (see Articles 4 and 6). Generating the conditions conducive to the development and the acceptance of the necessary sites by the majority is instrumental to maintain and develop the cultures of those minorities.

Recommendation

54. The Advisory Committee calls on the federal authorities to adopt the forthcoming Action Plan of the Confederation as soon as possible and immediately implement the measures it provides for, and to raise general awareness about the ways of life of itinerant persons. The Advisory Committee urges the authorities to proceed with the creation of a sufficient number of sites within the deadline agreed upon in the forthcoming Action Plan itself.

The work on the implementation of the “Yenish, Sinti, Roma” Action Plan is continuing. In December 2018, a progress report was submitted to the Federal Council by the Federal Department of the Interior (FDI).

“Spontaneous stops” on privately owned land

55. Pending the creation of a sufficient number of public sites, the forthcoming Action Plan of the Confederation describes spontaneous stops on privately owned land as an important means to temporarily compensate for the shortage of public sites.⁵² Yenish and Sinti/Manush representatives also view “spontaneous stops” as a traditional way to find a place to spend a few days, for example in the absence of dedicated public sites. A spontaneous stop mostly consists of agreeing directly with the owner of a private land, usually a farmer, and to settle on the basis of orally agreed terms.

Clarification: a “spontaneous stop” may also take place on public land.

In September 2018 the “A Future for Swiss Travellers” foundation tasked the Swiss Centre of Expertise in Human Rights (SCHR) with drawing up a legal opinion on the State’s obligations concerning spontaneous stops by Travellers in order to establish whether these obligations derive from constitutional law, international law or other legal provisions. This legal opinion is expected to be released in mid-2019.

Some cantons have examples of good practices in relation to spontaneous stops. For example, cantonal legislation in Schwyz authorises private individuals to rent out their land to itinerant persons by the week.

56. The Federal law on itinerant traders and its subsequent Ordinance have been amended respectively in December 2016 and December 2017, for an entry into force on 1 July 2018. According to these amendments, any new request to be authorised as an itinerant trader will have to be accompanied by a written agreement of the owner(s) of the land(s) on which the applicant intends to stop over. The new amendments also extend the possibility to withdraw such authorisation in cases amounting to a serious breach of public order, and that in such cases, the authorisation cannot be reissued within two years. The explanatory report of the

⁵²Draft Action Plan, December 2016, Section 3.3.3.

amended Ordinance⁵³ indicates that the withdrawal of the authorisation will be applied on a case-by-case basis, in line with the principle of proportionality and only if the damage done is linked to the commercial activity at stake.

57. Interlocutors of the Advisory Committee, including cantonal officials and representatives of the Foundation, describe “spontaneous stops” as based on a “handshake” agreement with the owner concerned, often a farmer, constituting thus a win-win agreement for both, the travellers in search of a place to stay and the farmer in search of extra revenue. According to representatives of organisations of the Yenish and Sinti/Manush, the practical impossibility to respect the requirements of the new law, i.e. to submit the written agreement of the land owner, combined with the remaining obligation to submit it 20 days before the activity starts, would considerably prevent the perpetuation of such practice and represent a serious obstacle to the itinerant ways of life, as traders would not be able to earn their living while travelling.

58. The Advisory Committee shares the common view of Yenish and Sinti/Manush with itinerant ways of life that, depending on how they are interpreted, these legislative changes may impose on them disproportionate formalities and sanctions. The Advisory Committee welcomes that, pending the entry into force of the new legal provisions, a working group including cantons and municipalities, headed by the State Secretary for the Economy, is looking for pragmatic solutions in order to apply the new legal provisions while preserving itinerant ways of life of Yenish and Sinti/Manush.

The federal authorities are aware that the new provisions of the law on itinerant traders and the subsequent Ordinance raise certain legal and practical issues. Following their entry in force in July 2018, the State Secretariat for Economic Affairs (SECO), which is responsible for this matter, received no spontaneous responses from either the relevant cantonal authorities or the Travellers concerned. On 28 November 2018, on the initiative of and led by SECO, the first meeting was held of a working group representing the cantons, with the participation of the Federal Office of Culture. This was an opportunity to discuss the initial experience of the new legislation. SECO is committed to a pragmatic interpretation and application of the new legal provisions to ensure that Travellers are not impeded in their way of life and in their ability to make spontaneous stops. The Canton of Bern/Berne shares this view.

Furthermore, it is planned to hold talks on these matters by the end of 2018 between the “A Future for Swiss Travellers” foundation and SECO, which is also willing to meet Travellers’ representatives.

Recommendation

59. The Advisory Committee calls on the federal and cantonal authorities, when adopting new legislative texts including with a view to guaranteeing public order, to pay attention to the preservation of identities and cultures of persons with itinerant ways of life and to continue to support the right of persons belonging to national minorities to practice traditions. The Advisory Committee calls on the federal authorities to ensure that the interpretation and

⁵³ State Secretary for Economy, Explanatory report concerning the amendment of the Ordinance on itinerant traders (RS 943.11), 25 October 2017, available at:

https://www.seco.admin.ch/dam/seco/fr/dokumente/Werbe_Geschaeftsmethoden/Reisendengewerbe/Erl%C3%A4uterungen%2025.10.2017.download.2017/211217%20Rapport%20explicatif.pdf.2017.

application given to the amended Federal law on itinerant traders and its subsequent Ordinance remain proportionate to the objectives pursued.

Article 6 of the Framework Convention

Tolerance and intercultural dialogue

60. The authorities at federal, cantonal and municipal levels genuinely promote an atmosphere of intercultural understanding through a variety of measures and programmes, including cantonal integration programmes, and support to civil society projects. The Advisory Committee welcomes the general climate of tolerance towards linguistic minorities. The rejection of a recent popular initiative on public broadcasting services (see Article 9) has demonstrated again a broad degree of adherence to multilingualism within the Swiss society and the importance of promoting it, including through public media in minority languages. Recent citizens' initiatives are however trying to limit the number of compulsory languages learned in primary school, such as the "Only one foreign language in primary school" initiative in the Canton of Graubünden/Grischun/Grigioni (see Article 14).

The "Only one foreign language in primary school" initiative was rejected by the citizens of the Canton of Graubünden on 23 September 2018 (cf. comment below in respect of paragraph 105).

61. Quota requirements and staff training efforts promote multilingualism within the federal administration (see Articles 10 and 15) and exchanges among persons belonging to linguistic minorities are continuously supported (see Article 5). Further efforts are however needed to promote the practice of multilingualism in order to make it sustainable in the cantonal administrations of the bilingual and trilingual cantons (see Articles 10, 11 and 14).

This is not a matter of "quotas" but of target figures mentioned in the Federal Language Ordinance (Article 7) on the subject of the representation of the linguistic communities in the federal administration.

62. The authorities recognise that the majority of the population is still largely unaware of the ways of life and cultures of the persons belonging to the Yenish and Sinti/Manush. The State report⁵⁴ emphasises that projects creating new sites should go hand in hand with measures aimed at promoting acceptance of the minority by the majority so as to create a climate of trust. In this regard, initiatives are now regularly taken at federal and cantonal levels in order to promote the itinerant ways of life. In September 2016, the Federal Councillor Alain Berset participated in "Feckerchilbi", the Swiss Yenish and Sinti/Manush's traditional festival, which was held in Bern for the first time in the hope of generating more publicity. The event was financially supported by the Federal Office of Culture. Financial support was also given to 11 projects related to anti-Gypsyism, through the Service for Combating Racism, since 2013.

The theme of the "Omnibus 2019" intermediate module of the "Living together in Switzerland" survey will be the itinerant/non-sedentary way of life and the Yenish and Sinti/Manush (Roma). The aim of this survey will be to ascertain the population's attitudes and perceptions concerning this way of life and to raise their awareness of this culture. The

⁵⁴ State report, para. 86.

questionnaire has been drawn up in collaboration with the Yenish, Sinti and Roma organisations. The situations mentioned in the questionnaire are based on the experiences of the persons concerned.

Some cantons have also developed good practices to raise the population's awareness of the nomadic lifestyle. For example, in the Canton of Vaud, a Yenish festival has been held two years in a row at Vidy/Lausanne, round tables for Travellers have been organised by the ombudsman and flyers have been produced and distributed by the cantonal authorities to describe the Traveller communities and to try to combat prejudices. The Canton of Graubünden supports the awareness-raising activities held at the Rania campsite, which is rented as a transit or stopover site by the association "Radgenossenschaft der Landstrasse" (cf. 4th report no. 29 pp. 18-19). In addition, in Fribourg in August 2018, with the support of the cantonal and municipal authorities and the Federal Office of Culture (FOC), this year's Yenish "Feckerchilbi" traditional festival was held with the Sinti/Manush.

63. Despite the efforts made, stereotypes targeting the Yenish and Sinti/Manush (see Section *Hate Speech* below) have not yet been overcome. A number of demonstrations by local groups opposing the creation of new sites have been reported. In this regard, in a 2013 study⁵⁵ on the manner in which news concerning the Yenish and the Roma was presented in the main media in Switzerland between 2005 and 2012, researchers from the University of Zürich highlighted substantial shortcomings in the news provided and showed that half of the contributions analysed made generalisations, which are often associated with negative stereotypes. As a response, the Federal Commission against Racism called on the media to exercise more restraint in the way news concerning the Yenish and the Roma is presented and invite them to temper remarks, avoid sweeping generalisations, urging the media to ensure a variety of angles and viewpoints are represented.

Recommendation

64. The Advisory Committee calls on the federal authorities to further step up efforts to support awareness-raising projects aiming at combating prejudice against itinerant ways of life of the Yenish and Sinti/Manush, including projects targeting media or journalists.

Hate speech

65. Article 261bis of the Swiss Criminal Code criminalises incitement to hatred as well as discrimination on the ground of racial, ethnic or religious belonging (see Article 4). The Advisory Committee notes that the persistence of prejudices against the Yenish and Sinti/Manush may instigate hostile attitudes towards their ways of life and regrets in particular a number of protests and demonstrations from local groups against the creation of sites in their neighbourhood, accompanied by posters describing "travellers" in very offensive language and images. The Advisory Committee also deeply regrets the recurrences of violent acts against members of the Jewish communities⁵⁶ and an increasing amount of public hostility, with a particular increase in social media. The Advisory Committee notes an equivalent trend towards the Muslim communities, including acts of vandalism on burial

⁵⁵ University of Zürich, Study on the quality of the information on Roma in the main media of Switzerland, available at: <http://www.ekr.admin.ch/dokumentation/f107/1120.html>.

⁵⁶ CICAD, *Antisémitisme en Suisse Romande*, Report 2017.

grounds and graffiti expressing hatred toward Muslims on mosques,⁵⁷ together with a number of reported instances of hate speech, with again a particular emphasis on social media.

66. The Advisory Committee considers that these repeated instances of public hostility towards the Yenish and Sinti/Manush, as well as towards Jewish or Muslim communities, manifestly amount to “hate speech” within the meaning of Recommendation No. Rec (97) 20 of the Committee of Ministers to the member states. Observing that some of those cases of hate speech originate from politicians, the Advisory Committee reiterates that the impact of such statements in the public debate is critical, given their particular influence as public figures and the immediate amplification of their actions and speeches in the media. As was also raised about discrimination cases, the available data makes it difficult to define trends on hate speech, however interlocutors from the concerned groups share the common impression that hate speech is on the rise, in particular through online media.

67. The Advisory Committee has been informed by non-governmental interlocutors that their attempts to bring hate speech cases before the courts usually fail due to a lack of recognised *locus standi* for their organisations, which is particularly problematic when these organisations act against a public statement targeting an entire minority group for which an individual, or even a group of individuals, is likely to be considered as launching an *actio popularis* and is therefore equally unlikely to be recognised *a locus standi* in the public interest. The Advisory Committee has, however, been informed by the authorities that they plan to recognise *locus standi* for NGOs in civil procedures in this particular domain.

In the field of application of the antiracist criminal provision (Article 261bis of the Criminal Code), criminal procedure does not provide for organisations to have locus standi. As it pointed out in its Message on the unification of criminal procedure law, the Federal Council is not in favour of this for fear of increasing the complexity of criminal procedure and because it falls to the Public Prosecutor’s Office alone to exercise, ex officio, the state’s monopoly on criminal justice.

Racial discrimination is an offence prosecuted ex officio (Article 261bis of the Criminal Code). In cases in which the criminal prosecution authorities do not institute proceedings of their own accord, there is nothing to prevent any individual or association of individuals that has identified an offence of this nature from lodging a criminal complaint. For example, the Swiss Federation of Jewish Communities, the Foundation against Racism and Anti-Semitism and the Intercommunity Co-ordination against Anti-Semitism and Defamation frequently lodge complaints about breaches of the antiracist criminal provision. The Society for Threatened Peoples and the Yenish, Sinti/Manush and Roma associations also regularly report racist remarks against people belonging to these groups (on this subject, see paragraph 44 of the 4th report).

68. In the light of the number of cases of hate speech it was informed of, the Advisory Committee regrets that there appears to be no comprehensive response mechanism to ensure that all hate speech cases, including in political discourse, are immediately and

⁵⁷ Nermina Ademović-Omerčić: Islamophobia in Switzerland: National Report 2017, in: Enes Bayraklı & Farid Hafez, European Islamophobia Report 2017; See among others, ARCInfo, *Lausanne: le carré musulman du cimetière du Bois de Vaux saccagé dans la nuit de vendredi à samedi*, 14 October 2017, available at: <https://www.arcinfo.ch/articles/suisse/lausanne-le-carre-musulman-du-cimetiere-du-bois-de-vaux-saccage-dans-la-nuit-de-vendredi-a-samedi-708379>, or Grenchner Tagblatt, *Illegaler flüchtet von der Moschee-Baustelle – Polizist stürzt bei Verfolgung in die Tiefe*, 13 December 2017, available at: <https://www.grenchnertagblatt.ch/solothurn/grenchen/illegaler-fluechtet-von-der-moschee-baustelle-polizist-stuerzt-bei-verfolgung-in-die-tiefe-131993734>.

unambiguously condemned and countered at the highest level. It also regrets that hate speech is neither systematically monitored nor expressly prohibited. According to long-standing case-law of the European Court of Human Rights, there can be no doubt that hate speech does not enjoy protection from Article 10 of the European Convention on Human Rights, guaranteeing freedom of expression.⁵⁸ The Advisory Committee invites the authorities to reflect on the possibility to investigate systematically and to prosecute such statements, as may be necessary, and, in parallel, to enhance the ability for individuals as well as groups targeted by such statements to bring complaints before the courts.

The following clarifications and additions should be made:

- *Although Swiss criminal law does not recognise hate crime as a specific offence, racist motivation is regularly taken into account when determining the sentence imposed (when determining the offender's guilt under Article 47(2) of the Criminal Code (or Article 49 in the case of multiple offences), especially in the case of an offence against life and limb (Articles 111 ff.), an offence against personal honour (Articles 173 ff.) or racial discrimination (Article 261bis). Accordingly, no change in the law is necessary to take appropriate account of racist motivations when determining the sentence to be imposed.*

- *The Federal Commission against Racism (FCR) regularly issues public condemnations of racist remarks and incidents. For example, during the elections to the Bern Cantonal parliament in early 2018 it condemned a poster that opposed the provision of transit sites by systematically disparaging Travellers (see <https://www.derbund.ch/bern/kanton/junge-svp-sorgt-mit-zigeunermotiv-fuer-rote-koepfe/story/30351060>).*

It should also be noted that the FCR is currently considering as a matter of priority ways of taking action on internet hate speech. It has also focused on the question of racist remarks against Muslims by organising a public symposium in September 2017 at the University of Fribourg entitled "Hostility towards Muslims: society, media, policy", in partnership with the Swiss Centre for Islam and Society of the University of Fribourg and the University of Lucerne Centre for Research on Religions. Through various field studies and observations, speakers highlighted the development of hate speech in the public debate and the current perception of Muslims in Switzerland.

- *The Public Prosecutor's Office of the Canton of Vaud also reports that two convictions for racial discrimination in relation to remarks made against persons of African origin have been handed down in 2018. Two other convictions have also been imposed for revisionism. In addition, proceedings are currently pending in response to a criminal complaint lodged by an association against a female politician who made anti-Gypsy remarks. In addition, in the Canton of Valais/Wallis in October 2018 a revisionist was convicted for opinions expressed on his internet site casting doubt on the existence of the Nazi gas chambers.*

- *Some cantons have pointed out that the proposal for a comprehensive and immediate response mechanism at the highest level against all hate speech cases could be tantamount to interventionism contrary to the principle of the separation of powers.*

⁵⁸ ECtHR, *Jersild v. Denmark*, 23 September 1994, Series A No. 298, para. 35; see also, *Pavel Ivanov v. Russia*, 35222/04, decision of 20 February 2007; *M'Bala M'Bala v. France*, 25239/13, decision of 20 October 2015, para. 40.

Recommendations

69. The Advisory Committee calls on the federal and cantonal authorities, at all levels, to condemn systematically and in a timely manner all instances of intolerance, be it anti-Gypsyism, anti-Semitism or Islamophobia, in particular in public discourse, in the spirit of Recommendation (97) 20 of the Committee of Ministers to the Member States on “Hate Speech”, as well as to investigate systematically and prosecute such statements.

70. The Advisory Committee calls on the federal authorities to provide persons belonging to national minorities with the possibility to defend their rights as victims of hate speech in courts, including by recognising for NGOs a *locus standi* in the public interest and the capacity to represent the rights and interests of such victims.

On the subject of the locus standi of non-governmental organisations, see the above remarks in respect of paragraph 67.

Combating hate crime

71. There were 189 anti-Semitic incidents⁵⁹ in 2017 including six physical attacks reported, including for example banners over motorway bridges calling for Jews to be killed. Interlocutors of the Advisory Committee also referred to the physical attack of a man wearing a skullcap by a neo-Nazi in the streets of Zürich in July 2015. The aggressor was sentenced in March 2018 to two years of imprisonment.⁶⁰ Representatives of Jewish communities also regretted sales of unannotated versions of Mein Kampf, which in their view, contributes to the further spreading of anti-Semitism. While the Advisory Committee understands feelings and reasons to object to the dissemination of this publication,⁶¹ it regrets that such practice is not further regulated according to Swiss law. A parliamentary motion was presented to the Upper Chamber of the Federal Parliament (*Ständerat, Conseil des Etats, Consiglio degli Stati, Cussegl dals Stadis*) in December 2016,⁶² calling for a better protection by the Confederation and the cantons of religious communities threatened by terrorism and extremist violence, in particular the Jewish community. As a response, the federal authorities have set up working groups in order to discuss measures to be taken, including their funding. These working groups include representatives of the Jewish and Muslim communities as well as the cantons, which have primary competence over security issues. This consultation process led to a two-component solution. On the one hand, the Federal Council will issue an Ordinance on the basis of Article 386 of the Penal Code,⁶³ allowing an immediate financial support to measures funded so far by the minorities, including awareness-raising and training measures.

⁵⁹ In the German-speaking part of Switzerland, 39 cases were registered by FSCI: see, FSCI, Annual Report for 2017, available at: www.antisemitisme.ch; in the French-speaking part of Switzerland, 150 cases were registered by CICAD. See CICAD, Annual Report for 2017, available at:

http://www.cicad.ch/sites/default/files/basic_page/pdf/Rapport%20Antise%CC%81mitisme%20en%20Suisse%20romande%202017.pdf.

⁶⁰ Le Matin, Un néonazi en prison pour avoir craché sur un juif, publié le 13 mars 2018 2018, available at: <https://www.lematin.ch/suisse/neonazi-retour-prison-crache-juif/story/15028996>.

⁶¹ The copyright owned by the Free State of Bavaria expired at the end of 2015.

⁶² Motion 16.3945, “Protéger les communautés religieuses contre le terrorisme et la violence extrémiste”, available at: <https://www.parlament.ch/en/ratsbetrieb/suche-curia-vista/geschaefft?AffairId=20163945>.

⁶³ Article 386 of the Swiss Criminal Code states that: “1. The Confederation may employ investigative, educational and further measures aimed at preventing specific offences and crime in general. 2. It may support projects that have the aim mentioned in paragraph 1. 3. It may participate in organisations that carry out measures mentioned in paragraph 1 or establish and support such organisations. 4. The Federal Council regulates the nature, aims and form of the preventive measures.”

Clarification: the federal authorities have set up just one working group to discuss a plan to ensure the security of minorities with particular protection needs.

The cantonal authorities are also working to ensure the security of persons belonging to the Jewish community. For example, in the Canton of Vaud, as part of the “Vigipol” operation, particular attention is paid to the interests of the Jewish community, especially the synagogue and the Jewish school. At the Jewish community’s request, the cantonal police have carried out an analysis of the security of the Jewish school in Lausanne. Similarly, the Canton of Basel-Stadt is currently looking at the possibility of supporting measures to protect the Jewish community. The State Council (the executive) has proposed a support plan involving a heightened police presence to the Cantonal Parliament, which has yet to accept it. In addition, Basel-Stadt is drawing up a cantonal plan to manage threats linked to radicalisation and terrorism.

72. On the other hand, a new Federal law should be adopted on the basis of Article 57.2 of the Swiss Federal Constitution.⁶⁴ A deeper involvement of the cantons is expected, in particular with regard to funding. At the time of adopting this Opinion, the Conference of Directors of Cantonal Departments of Justice and Police (KKJPD) has not taken position yet. The Advisory Committee welcomes the dialogue set up between the authorities and the minorities concerned as well as the legislative measures envisaged by the abovementioned working group, but notes that the Jewish communities, in response to their growing impression of vulnerability and pending the adoption of concrete measures, regrettably had to self-finance an important part of the day-to-day security measures that the communities decided to take over the previous years.

The following observations may be made:

In July 2018, the Federal Council decided to co-finance the costs necessary to ensure the security of minorities with particular protection needs (including the Jewish communities, Muslims and all other minorities facing an increased risk of being victims of terrorism or other acts of targeted violence). From 2019 onwards, up to CHF 500 000 a year will be set aside to finance measures to disseminate information, raise awareness and educate the public. The Federal Council has instructed the Federal Department of Justice and Police (FDJP) to draft an ordinance to this end and put it out to consultation by the end of 2018. This ordinance will be valid for five years, during which consideration will be given to the feasibility of drafting and enacting a new federal law to finance actual protection measures on the basis of Article 57(2) of the Federal Constitution (“[The Confederation and the Cantons] shall co-ordinate their efforts in the area of internal security”).

Recommendation

73. The Advisory Committee recommends immediate follow-up and implementation of the measures identified in order to ensure the security of persons belonging to national minorities, and calls on the cantonal authorities to further support the efforts of the Confederation, including by financially supporting these measures.

⁶⁴ Article 57 of the Swiss Federal Constitution states that: “1. The Confederation and the Cantons shall within the scope of their powers ensure the security of the country and the protection of the population. 2. They shall coordinate their efforts in the area of internal security.”

Discrimination against non-Swiss Roma

74. The Advisory Committee has already noted⁶⁵ that a number of non-Swiss Roma, benefit from the short-stay areas set up by the Swiss authorities. The forthcoming Action Plan of the Confederation takes into account their needs when planning to create new sites. The Advisory Committee notes however that relations between the Yenish, Sinti/Manush and Roma, including non-Swiss Roma, are sometimes tense. The Advisory Committee has in particular been informed of reluctance from certain groups to share or stay in a facility that had previously been used by non-Swiss Roma, to the extent that some sites are explicitly prohibited to foreigners. From its discussion with the relevant stakeholders, the Advisory Committee has been informed that this reluctance was mostly due to the fact that non-Swiss Roma used to travel in large groups, and have therefore different needs in terms of sites. The Advisory Committee is of the opinion that in situations where a given facility should be reserved for small groups rather than large groups, the size of the group should be used to limit access rather than the citizenship of the persons concerned. The Advisory Committee welcomes the support given by the federal authorities to mediation projects aimed at improving the relations between the different groups having chosen itinerant ways of life, regardless of their citizenship or ethnic affiliation but regrets that a number of sites are expressly prohibited to non-Swiss Roma. The Advisory Committee similarly regrets a parallel tendency in political as well as in official discourse to differentiate non-Swiss and Swiss “Travellers”, with the potential consequence of inciting the rejection of foreigners.

*Preliminary remark: this section should be entitled “Discrimination against **itinerant (non-Swiss) Roma**”, since it is here a question of the Roma of foreign origin who lead an itinerant lifestyle and travel through Switzerland in the summer months. Most Swiss Roma are sedentary.*

The distinction sometimes drawn by certain cantons and municipalities between short-stay areas frequented by Swiss or foreign nationals has to do primarily with the size of the groups involved. It is a fact that foreign Travellers often move about in bigger groups than Swiss Travellers. This difference is also due to the practice and desire of the Travellers themselves because they do not wish to mix with others, as noted by the Advisory Committee itself and by several cantons. This may have the consequence that high quality sites, such as the new Joux-des-Ponts transit site in the Canton of Fribourg, are not used by Swiss Travellers, for whom, however, there is a shortage of transit sites for summer season stopovers. This is why the “A Future for Swiss Travellers” foundation believes that, in order to avoid conflicts and provide a sufficient number of transit sites for both itinerant foreigners and itinerant Swiss nationals, it may in some cases be justified to maintain separate sites.

According to a statement issued in November 2018 by the Swiss Nomad Union (Union nomade Suisse), the cantons should not provide mixed sites because this leads to conflicts and fails to respect the rights, needs and cultures of the different itinerant groups. It calls on the cantons not to create any more mixed sites.

The Canton of Basel-Stadt states that the transit site located in its territory and made permanent in November 2018 is open – and will remain open – to both foreign and Swiss Travellers. This project has been criticised by the Swiss Nomad Union.

⁶⁵ Second Advisory Committee Opinion on Switzerland, adopted on 29 February 2008, para. 30.

The new Canton of Neuchâtel law of 2 February 2018 on the “encampment of nomadic communities”, which came into force on 1 April 2018, distinguishes between sites for the Swiss communities and those for foreign communities and has been the subject of a legal opinion requested by the Federal Commission against Racism (FCR) in order to establish whether it complies with constitutional and international law. One particular criticism is that the different regulations laid down with respect to Swiss and foreign nationals are not justified and constitute discrimination based on nationality. A petition requesting an abstract review of its constitutionality was filed with the Federal Court in April 2018 and is currently pending.

The Canton of Ticino’s Ombudsman for Travellers’ affairs, who has more than ten years’ experience, points out that in order to avoid demonstrations of intolerance towards the Yenish and Sinti/Manush, it may be necessary to distinguish between Swiss and foreign Travellers because of their historical and cultural differences and the different contacts they maintain with the local population.

The Canton of Jura points out that the management of sites differs depending on whether foreign or Swiss Travellers are accommodated. Moreover, the distinction the Canton du Jura seeks to make between a small transit site for Swiss itinerants and a large transit site for foreign groups is a response to the wishes expressed by Swiss Travellers.

Recommendation

75. The Advisory Committee calls on the federal and cantonal authorities to reconsider measures aimed at prohibiting non-Swiss Roma from using certain sites. Instead, the Advisory Committee invites the authorities, at all levels, to further strengthen their efforts – including support to mediation projects – to bring together different communities with itinerant ways of life, as well as being attentive not to further entrench the isolation of these groups, by reconsidering the reservation of certain sites for the exclusive use of Swiss citizens.

The federal authorities do not have the power “to reconsider measures [taken by the cantons/municipalities] aimed at prohibiting non-Swiss Roma from using certain sites”. However, they support projects to raise awareness and encourage mediation with the aim of reducing conflicts between the different communities who lead an itinerant way of life.

Article 8 of the Framework Convention

Right to manifest one’s belief

76. The 2005 Animal Welfare Act, in force since September 2008, prescribes in Article 21 that mammals must not be slaughtered unless they have been stunned before the exsanguination is begun (Article 21.1). The Federal Council may also stipulate that other animals must be stunned before they are slaughtered (Article 21.2) and specifies the permitted methods of stunning (Article 21.3) as well as regulates the requirements with regard to the training and continuing education of slaughterhouse personnel. Halal and kosher meat products may however be imported and are subject to a lower import tax rate than other meat

products. In December 2015, a parliamentary initiative⁶⁶ called for a stronger control over halal meat imports, invoking discrimination toward companies importing meat without benefiting from the lower tax rate. While the original text of the initiative only refers to halal meat, the Advisory Committee was informed by the Swiss authorities that the initiative may limit either halal or kosher meat. At the time of adopting this Opinion, the initiative is still being discussed in the lower chamber of the Parliament (*Nationalrat, Conseil National, Consiglio Nazionale, Cussegl Naziunal*). The authorities also confirmed that Jewish and Muslim communities were consulted at the preliminary stage of the parliamentary process.

According to its press release of 17 August 2018, the National Council's Science, Education and Culture Committee has continued its work on the implementation of parliamentary initiative 15.499 on the "Importation of halal meat from animals slaughtered without being stunned". In particular, it has decided to consider whether the system of awarding meat import quotas could be modified.

77. The Advisory Committee was informed by representatives of the Romansh-speaking minorities that religious services happen to be conducted in another language (e.g. German) than Romansh, due to the lack of priests within the Romansh communities and the need to recruit them from abroad. The Advisory Committee notes in this context that Article 99.3 of the Constitution of the Canton of Graubünden/Grischun/Grigioni states that the nomination of priests lies with the parishes and is not a competence of the canton.

Recommendation

78. The Advisory Committee calls on the federal authorities to continue adopting a religiously sensitive approach to the question of import of halal and kosher meat and consider, in consultation with those concerned, solutions that take into account religious freedom.

Article 9 of the Framework Convention

Access to the media

79. The public service broadcaster SRG-SSR⁶⁷ provides several stations and channels entirely in minority languages, including three radio stations each for the French and Italian linguistic regions, two TV channels each for the French and Italian linguistic regions as well as programmes for the Romansh linguistic region. The current licence of the SRG SSR ends on 31 December 2018 and will be extended. The conditions of such extension were questioned by an initiative (also known as "No Billag"), launched in December 2015, which aimed at abrogating the audio-visual public service, or any public financial support to broadcasting services. Annual licence fees amounted to CHF 451 in 2018 and will amount to CHF 365 in 2019. It corresponded to about 75% of the funding of SRG SSR in 2018. The initiative was therefore perceived as a test case of Switzerland's solidarity, given that in this system, the linguistic majority pays for minority language broadcasting. The vote took place on 4 March 2018 and the initiative was rejected by 71.6% (turnout of 54%). The result of the vote underlines the support by the Swiss people for the audio-visual public service, including programmes geared towards persons belonging to national minorities. The government officials informed the Advisory Committee that the new licence for the period 2019-2022 will

⁶⁶ Initiative 15.499, "Importation de viande halal provenant d'abattages sans étourdissement", available at: <https://www.parlament.ch/fr/ratsbetrieb/suche-curia-vista/geschaefte?AffairId=20150499>.

⁶⁷ SRG-SSR stands for *Schweizerische Radio- und Fernsehgesellschaft/Société Suisse de Radio-diffusion et télévision*.

require the SRG-SSR to further promote linguistic exchanges between the linguistic groups but also to provide programmes focused on interregional exchange not only at night but also in prime time schedule.

On the subject of the SRG-SSR and its concession, see the clarifications provided above in respect of paragraph 24.

The “No Billag” initiative did not seek “the end of the public broadcasting service”, as mentioned above, but only proposed eliminating the national radio and television licence fee collected by the company Billag on behalf of the Confederation. However, it is true that the acceptance of this initiative could have resulted in the end of Switzerland’s public broadcasting service and to a radical change in the Swiss media landscape. The fall in the annual licence fee from CHF 451 to CHF 365 from 2019 is due to the change from a licence linked to the possession of a device to a general household-based licence.

80. The Advisory Committee was informed that a new Federal law on media is to be prepared to replace the Federal law on radio and television, in particular to promote public service content also online. The strategy grounding the law, elaborated with, *inter alia*, representatives of linguistic minorities, should also cover the printed media. The Advisory Committee was also made aware that on 1 May 2018 the government of the Canton of Graubünden/Grischun/Grigioni accepted a parliamentary motion⁶⁸ asking for a report to be drawn up about the future of the linguistic and media policies in the canton.

The new Law on Electronic Media will cover all Swiss television services and all types of audio and audio-visual services that help achieve the public-service objectives. However, in the absence of a constitutional provision for this, the draft law does not provide for direct aid to the print media as digital players.

81. The position of Italian-speaking correspondent was created in ATS (Press Agency *Agence Télégraphique Suisse*) in the Canton of Graubünden/Grischun/Grigioni at the beginning of 2017.⁶⁹ The Advisory Committee welcomes the introduction of a local media service in the Italian-speaking part of the canton aiming to improve the situation with regard to the said local media and increasing the number of Italian-language news reports from other parts of the canton. The Advisory Committee also noted with interest that a legal study issued by the *Università della Svizzera italiana*⁷⁰ suggests that insufficient air time of the RSI (*Radiotelevisione svizzera di lingua italiana*, branch in Italian of SRG-SSR) is dedicated to programmes related to the Canton of Graubünden/Grischun/Grigioni and other linguistic regions, which would not be in accordance with the SRG-SSR’s mandate, and that too much air time was devoted to content related to Ticino.

The SRG-SSR is fully aware of the existing imbalance between the information provided by the RSI on Ticino and the Canton of Graubünden. It is currently developing several measures to address this problem.

⁶⁸ Parliament of Graubünden/Grischun/Grigioni, Incarico Atanes concernente il futuro dell’informazione nei Grigioni, available at: <https://www.gr.ch/IT/istituzioni/parlament/PV/Seiten/20180214Atanes06.aspx>

⁶⁹ State report, para. 123.

⁷⁰ Not published, but transmitted to the Secretariat of the Framework Convention.

82. The only daily newspaper in Romansh, *La Quotidiana*, has about 4 000 subscribers. Its funding is not sustainable.⁷¹ For 2018, the Confederation, the Canton of Graubünden/Grischun/Grigioni, *Lia Rumantscha* and the press agency in Romansh ANR supported its publication by a joint donation of CHF 200 000. Its editor has nevertheless asked for further support from the authorities or may discontinue its printing.⁷² *Lia Rumantscha* has in parallel submitted a project to the Federal Office of Culture aimed at setting up a new structure, including the Romansh branch of SRG-SSR, able to produce and make available to media producers content in Romansh language.

The plan to support La Quotidiana is ongoing. It aim is to ensure a diversified media landscape in the Romansh language from 2020. Until the end of 2019, La Quotidiana will appear in its present format.

83. The Advisory Committee's interlocutors belonging to the Yenish and Sinti/Manush minorities underlined the generally negative media coverage they are subject to, as demonstrated in the 2013 study of the University of Zürich (see Article 6).⁷³ The Advisory Committee shares the view that positive media coverage of Yenish and Sinti/Manush cultural events could be further promoted, including by adopting incentive-oriented measures encouraging the production of media content raising awareness about their cultures and ways of life, with active participation of the Yenish and Sinti/Manush in media production, thus further reinforcing cultural pluralism. In this context, the Advisory Committee notes that national cohesion is a key aspect of the mandate of the SRG-SSR.

In the light of the freedom of the media guaranteed by the Federal Constitution (Article 17) and the constitutional principles of the independence of broadcasting and the autonomy of programme planning (Article 93(3)), the federal authorities cannot require media providers to make specific content available on particular population groups. Only abstract service delivery requirements can currently be laid down for media providers that receive funds from the radio and television licence fee. For example, according to its integration remit the SRG-SSR must ensure that its programming also takes into account the Yenish and Sinti/Manush.

As a result of the increased efforts to raise awareness of minorities, with the support of the authorities, the media coverage on the Yenish and Sinti/Manush communities has become more positive. For example, this year's traditional Yenish "Feckerchilbi" festival with the Sinti/Manush held in Fribourg in August 2018 with the support of the cantonal and municipal authorities and the Federal Office of Culture (FOC), was given broad positive coverage both in the local media and on national radio and television. It provided an opportunity to raise the population's awareness of the traditions and way of life of the little known Swiss Yenish and Sinti/Manush communities.

Finally, mention should be made of the release in Swiss cinemas in the summer of 2017 of the film/documentary "Yenish Sounds" ("Yéniche Sounds"/"Unerhört Jenisch"), supported by the FOC. Together with the Swiss singer of Yenish origin Stephan Eicher, the audience is

⁷¹ RTS, Sauvetage de l'unique quotidien en langue romanche de Suisse, published on 17 August 2017: <https://www.rts.ch/info/regions/autres-cantons/8848962-sauvetage-de-l-unique-quotidien-en-langue-romanche-de-suisse.html>.

⁷² La Tribune de Genève, L'unique quotidien romanche sur la sellette, published 31 March 2017: <https://www.tdg.ch/suisse/L-unique-quotidien-romanche-sur-la-sellette/story/31421487>.

⁷³ University of Zürich, Study on the quality of the information on Roma in the main media of Switzerland, available at: <http://www.ekr.admin.ch/dokumentation/f107/1120.html>.

taken on a journey to discover the history and culture of the Yenish, in particular their musical traditions, which have a significant influence on Swiss folklore. With the support of the authorities of some cantons, such as Graubünden, Bern and Fribourg, this film has been shown at Traveller sites or at events to raise the local population's awareness of the Yenish culture.

Recommendations

84. The Advisory Committee calls on the federal and cantonal authorities to ensure that the terms of the audio-visual public service licences respect the rights of persons belonging to linguistic minorities flowing from Article 9 of the Framework Convention and to ensure that such terms are respected in practice by the broadcasting company. The Advisory Committee also encourages the federal and cantonal authorities to continue supporting edition and printing of the Romansh media, for example the daily newspaper *La Quotidiana*, and of the Italian-speaking media.

On the subject of the SRG-SSR and its concession, see the clarifications provided in respect of paragraph 24 above.

85. The Advisory Committee calls on the federal and cantonal authorities to promote the production of media content, with active participation of the Yenish and Sinti/Manush in media production, to raise awareness about their cultures and ways of life, and their other interests.

The following clarifications should be given in respect of this recommendation:

First, this recommendation can be directed only at the federal authorities because, pursuant to Article 93 of the Federal Constitution, "(l)egislation on radio and television and on other forms of transmission of productions and information via public telecommunications services shall fall within the jurisdiction of the Confederation".

Second, this recommendation is too broadly worded because the federal authorities can, in keeping with the constitutional freedom of the media and the constitutional principle of media independence, only be called upon to establish conditions favourable for the broadcasting of audio and audio-visual content on the culture and lifestyle of the Yenish and Sinti/Manush.

86. The Advisory Committee calls on the federal and cantonal authorities to ensure through open dialogue and consultation that any new legislation on the media will be inclusive and take into consideration all persons belonging to a national minority, in particular speakers of minority languages.

Again, for the reasons set out in respect of paragraph 85 above, this recommendation can be directed only at the federal authorities.

Article 10 of the Framework Convention

Promotion and use of minority languages at federal level

87. The Federal law on Languages covers both the promotion of multilingualism at federal level and the promotion of linguistic diversity in society as a whole. Article 6 guarantees the right to address a federal authority in any of the official languages and to receive an answer in that language. Persons speaking Romansh may address the federal authorities in any of versions of Romansh, and will be answered in *Rumantsch Grischun*. The Federal Council

may however restrict the free choice of official language for dealings with authorities whose activities are limited to a specific region. The Advisory Committee notes that the multi-language policy is applied in practice to the federal administration.

88. The judgments of the Federal Tribunal are delivered in the language of the requesting party, in full compliance with the Federal law on Languages. The Advisory Committee considers that the current practice does not diverge from the requirements of the Framework Convention and welcomes this approach to multilingualism. However, interlocutors of the Advisory Committee are of the opinion that in the absence of a law degree in Italian or Romansh in Switzerland, lawyers are more inclined to submit complaints in German or French than in Italian or Romansh, which may render access to the judgments of the Federal Tribunal more difficult for minority language speakers. The Advisory Committee is concerned that there may be, in the long-term, an issue with regard to access to rights if the case-law keeps developing only in certain languages.

To clarify: Section 54 of the Law on the Federal Tribunal (not the Federal Law on Languages mentioned in the Opinion) states that proceedings before this court shall be conducted in one of Switzerland's official languages (German, French, Italian or Rumantsch Grischun), as a rule in the language of the contested decision. If the parties use another official languages, that may be used.

The Federal Tribunal does not have any translations made apart from summaries of its principal judgments, which are always available in German, French and Italian, but some specialised legal journals do so. For example, the "Journal des Tribunaux" mainly aims to make the Federal Court's judgment published in German or Italian available to French-speaking lawyers in the form of (sometimes summarised) translations.

The Federal Chancellery, which, according to the Federal Law on Languages, is responsible for official publications in Romansh, is open to considering with the Federal Tribunal the possibility of translating the judgments concerning the rights of Romansh speakers into Romansh, or at least the summaries of these judgments.

Recommendation

89. The Advisory Committee encourages the federal authorities to pursue their efforts with a view to ensuring effective equality among persons belonging to the different linguistic communities in order to further enable them to use their own languages in their contacts with the federal administration and invites the federal authorities, in co-ordination with minority representatives concerned, to consider on an as needed-basis translating the main judgments of the Federal Tribunal related to the rights of persons belonging to national minorities into other national languages, as they deem relevant.

With regard to the first part of this recommendation, it should be made clear that the right to address the federal authorities in their own language applies only to speakers of Switzerland's four official languages, in accordance with the provisions of Section 6 of the Federal Law on Languages, and not, as stated in this recommendation, "persons belonging to the different linguistic communities".

Use of minority languages in the Canton of Graubünden/Grischun/Grigioni

90. The cantonal language law,⁷⁴ entered into force in 2008, includes provisions on the use of the three official languages of the canton, i.e. German, Italian and Romansh. According to the law, any person may address the cantonal authorities in the official language of his or her choice (Article 3.2) and receive an answer in that language (Article 3.3). In the cantonal Parliament, members can take the floor in the official language of their choice (Article 4.1) and can ask for translation of documents in an official language they understand (Article 4.2). As for the cantonal courts, while the judges may choose the official language they want to use orally (Article 7.2), the language of the written procedure is the one of the contested decision or of the defending party (Article 8), unless both parties agree otherwise (Article 7.5). A party that does not understand the language in question may however ask for cost free translations (Article 7.4). At regional level,⁷⁵ if the region only has one official language, the procedure, the hearing and the decision will be in that language (Article 9), whilst if the region is multilingual, the parties may use one of the official languages of the region for the written procedure, while the hearing will be in the language of the contested decision or of the defending party (Article 10).

91. The Advisory Committee welcomes the high level of protection offered to the minority languages (Romansh and Italian), as provided for in the cantonal language law. According to representatives of the linguistic minorities, difficulties remain in acceding to the documents of the cantonal administration in Romansh or Italian, in particular government acts or documents related to parliamentary work, in particular when a commission does not have in its composition a member speaking a minority language and that therefore no translation is requested in that language. The Advisory Committee was also informed of public institutions' websites (e.g. a hospital), which seem to have been translated into minority languages using online translation tools, with an unsatisfactory result. Interlocutors of the Advisory Committee also regretted that information campaigns, including health prevention or sport promotion campaigns, are mostly published in the language of the majority. The Advisory Committee was further informed that emergency assistance services were not accessible 24/7 in minority languages, with a potential risk of miscommunication with the people in need of help.

92. According to Article 6 of the cantonal language law, preference is given to candidates having knowledge of at least two of the cantonal official languages when candidates for a vacant post in the cantonal administration present the same level of qualification. The Advisory Committee welcomes the multilingual approach enshrined in the text of the law, but notes, as underlined by representatives of the Italian-speaking minority, the absence of any Italian-speaking civil servant in the first four levels of salary of the cantonal administration as well as in the cantonal judiciary. In this regard, the Advisory Committee was transmitted a list of recent vacancy notices published by the cantonal authorities, none of them requiring candidates to speak Italian, but considering at best speaking Italian as an asset.

The Canton of Graubünden wishes to issue the following corrigendum: there are two Italian-speaking judges, one who sits on the cantonal court and one on the cantonal administrative court.

⁷⁴ Law on languages of the Canton of Graubünden/Grischun/Grigioni (492.100) of 19 October 2006.

⁷⁵ The Canton of Graubünden/Grischun/Grigioni is divided into 11 regions, which refers to a subnational entity between the canton and the municipalities and is used in particular for court organisation.

Recommendation

93. The Advisory Committee calls on the authorities of the Canton of Graubünden/Grischun/Grigioni to further promote the use of minority languages in their day-to-day activities, in information campaigns, in public administration and in the judiciary.

Article 11 of the Framework Convention

Bilingual or trilingual topographical indications and other signs and inscriptions

94. According to Article 49 of the Federal Ordinance on road signs, signs indicating the name of the municipality/place are in the official language of the municipality concerned. In bilingual municipalities, the language of the majority is used; however a minority language is to be added when the linguistic minority represents at least 30% of inhabitants. In the Canton of Graubünden/Grischun/Grigioni, without prejudice to the application of the abovementioned federal provisions, Article 8 of the cantonal language Ordinance⁷⁶ states that topographical signs shall be in the respective official languages of the municipality concerned. The Advisory Committee has been informed by some of its interlocutors that the practice, in bilingual municipalities, may deviate from the cantonal Ordinance and that the language displayed on topographical signs or inscriptions is usually the one of the majority of inhabitants of the sub-part of the municipality concerned, which may therefore vary from one sub-part to another within one municipality.

95. The Advisory Committee welcomes the possibility foreseen by the federal law to have such signs in a minority language, but recalls that the scope of Article 11 of the Framework Convention includes other signs such as street signs. The Advisory Committee reiterates its view that “any numerical thresholds established as a precondition for the applicability of certain minority rights must be interpreted flexibly (...). Otherwise, an indirect obligation to self-identify would be placed on persons belonging to national minorities in order to ensure that access to a specific right is maintained. At the same time, the individual decision to identify or not to identify with a particular minority must be respected by others who affiliate themselves with the same group and who equally must not exert pressure one way or the other.”⁷⁷ In this context, the Advisory Committee considers that actual practice tends to follow a narrow application of the principle of territoriality and that the percentage required to introduce bilingual signs is fixed at an unduly high level.

It is first of all necessary to reiterate that it is the cantons that are responsible for determining their official languages (cf. Article 70(2) of the Federal Constitution) and that the federal authorities cannot compel them or the municipalities to promote the use of bilingual or trilingual topographical signs. However, it should be pointed out that Section 49 of the Federal Road Sign Ordinance is interpreted in a flexible manner by some municipalities in multilingual cantons. This is the case in the city of Fribourg, where street signs are in French and German, even though the German-speaking minority make up only 21% of the population. Similarly, in 2012, with the financial support of the canton, the city installed new “Fribourg-Freiburg” signs at the entrance to its station, adding German to the French. The town of Murten/Morat, in the bilingual Canton of Fribourg, has also installed “Murten-Morat” signs in its station despite the fact that only 15% of its citizens are French-speaking.

⁷⁶ Ordinance on languages of the Canton on Graubünden/Grischun/Grigioni (492.110) of 11 December 2007.

⁷⁷ ACFC Thematic Commentary No. 4 “The Framework Convention: a key tool to managing diversity through minority rights”, para. 12.

Recommendation

96. The Advisory Committee calls on the federal and cantonal authorities to promote the use of bilingual or trilingual topographical indications in bilingual and trilingual cantons or municipalities, including by extending the legal possibilities to display such signs in areas traditionally inhabited by persons belonging to linguistic minorities in line with the provisions of Article 11 of the Framework Convention.

Article 12 of the Framework Convention

Access to education for the Yenish and Sinti/Manush and teaching of their cultures and history

97. The forthcoming Action Plan⁷⁸ of the Confederation (see also Articles 5 and 15) acknowledges the necessity to balance the right to education with the right to choose itinerant ways of life but underlines the limited competence of the Confederation with regard to teaching programmes, limiting the room for manoeuvre of the Confederation to the funding of pilot projects. It also recognises that the authorities and communities have difficulties in finding a common understanding on the measures to be taken in the field of education, more than in any other fields, recalling that past human rights violations suffered by persons with itinerant ways of life (see Article 5) are still present. The forthcoming Action Plan of the Confederation calls on all actors concerned, i.e. cantons, municipalities, schools, training companies but also families, to join their efforts to face the remaining challenges.

The report and draft Action Plan of the Confederation do not state that “past human rights violations suffered by persons with itinerant ways of life [...] are still present”. What the report/draft Action Plan states, among the working group’s recommendations, is that representatives of the Yenish itinerant community are still affected by the traumatic experience of the “Children of the Country Road” (“Enfants de la grand-route”/“Kinder der Landstrasse” project and are suspicious of offers of support from the Confederation concerning the education of their children.

98. The Advisory Committee welcomes the approach of the authorities to try to balance the rights in question by bringing together all the persons and groups concerned. In the course of its visit, the Advisory Committee met with a number of families with itinerant ways of life as well as with representatives of the field of education. A noticeable attendance problem was observed, not only during the summer months, but also during the winter period, with a series of indicators showing a lack of motivation on the side of the persons concerned belonging to national minorities, giving the impression that school is perceived more as a danger which might assimilate these persons than as an opportunity to have their rights protected. The Advisory Committee finds it crucial to remind all involved of their rights and obligations, in order to ensure that children’s right to education is effectively guaranteed. Some projects are already funded by the Confederation and being implemented at the local level, such as the “Lernen Unterwegs” project in the Canton of Bern/Berne, which combines standard classes hours with specific workshops in small groups during winter time, and a distance-learning dimension during summer time using computers and internet connection provided by the project, thus allowing students to have regular contacts with teachers, through a fixed-time window of two hours per week.

⁷⁸ The draft Action Plan, dated December 2016, is available at: <https://www.bak.admin.ch/bak/fr/home/sprachen-und-gesellschaft/les-yeniches-et-les-manouches-sont-une-minorite-nationale/plan-d-action.html>.

The following clarifications can be given:

- *The “Lernen unterwegs” project is financed by the Canton and City of Bern, not by the Confederation.*
- *A pilot project along the same lines as “Lernen unterwegs” is under discussion in another canton.*
- *The Canton of Zurich Office of Compulsory Education is proactive when it comes to dealing with the question of teaching children from families with an itinerant lifestyle. The canton’s municipalities have been informed that it must be possible to send these children to school from the very first day of their stay in the canton, even if that stay is of short duration. The “intercultural education” sector closely monitors this issue and suggests additional measures when necessary. The Canton of Zurich also notes that individual flexible solutions can be found for young people from itinerant families as far as vocational training in its territory is concerned. The Canton of Graubünden also points out that a flexible approach is adopted in its territory to the schooling of children from itinerant families and that as a general rule no problems arise in this connection.*
- *The Canton of Vaud notes that, while there is no travelling secondary school or the possibility of following a cantonal curriculum at secondary level while travelling (online, for example), a young person belonging to the Traveller community is able to prepare, as an external candidate, for the Swiss secondary school leaving examination organised by the (federal) State Secretariat for Education Research and Innovation. In the area of vocational education and training, which is essentially a federal responsibility, there is currently no possibility of undergoing vocational education while travelling. However, pursuant to Section 32 of the Federal Ordinance on Vocational Education and Training a person over 22 years of age with 5 years’ vocational practice, for example acquired whilst travelling, can sign up to the Vaud qualification certification procedures.*

99. The Advisory Committee was also informed by the representatives of the Yenish community of the absence of Yenish cultures and history from the school programmes and textbooks published by the cantons. The Working Group in charge of its preparation also underlined the need to mention the Yenish cultures in the latest draft of the forthcoming Action Plan of the Confederation.⁷⁹ The Advisory Committee notes in particular the importance of including in the school curricula the history of oppression and past human rights violations, in order to promote better understanding of the Yenish identities and cultures among the majority.

It is not only the Yenish but also the Sinti/Manush and Roma who want their history and culture to be included in school curricula and textbooks. Accordingly, among the measures of the Confederation, the future Action Plan provides for supporting projects to introduce lessons on the history and culture of these three communities.

Such a project is currently being developed. It is led by the association “Radgenossenschaft der Landstrasse” in collaboration with the textbook publishers of the Canton of Zurich, with the aim of producing a learning aid on the Yenish, Sinti and Roma entitled “Jenische, Sinti, Roma – unbekannte Minderheiten in der Schweiz. Ein Lehrmittel”. It will be a teaching aid in German that will tell 7-10 year-old pupils the story of these minorities: Who are they? How

⁷⁹ Office Federal of Culture, Working Group “Improving conditions for the nomadic way of life and promoting the culture of Yenish, Sinti/Manouches and Roma in Switzerland”, Report and Action Plan, Item 3.4.3.

do they live and work, etc.? This project is supported by the Federal Office of Culture to the tune of CHF 30 000.

Several German-speaking cantons also point out that the “Lehrplan 21” (compulsory schooling) curriculum currently being introduced in the German-speaking cantons should provide an opportunity to focus on raising awareness of the culture and history of the Yenish, Sinti/Manush and Rom.

Recommendation

100. The Advisory Committee calls on the cantonal authorities to continue to develop flexible learning/teaching solutions adapted to persons with itinerant ways of life and to involve the families concerned in the development of new projects, in order to guarantee and balance the right of children to education and the right to choose itinerant ways of life. The Advisory Committee calls on the cantonal authorities, in all cantons, to include Yenish cultures and history in school programmes and textbooks in order to promote diversity and societal integration among the general public and develop awareness and acceptance of their ways of life.

It is the culture and history of not only the Yenish but also of the Sinti/Manush and Roma that should be included in school curricula and textbooks.

Article 14 of the Framework Convention

Teaching in and of minority languages

101. In primary and secondary schools, the official language of the canton is the teaching language (see also Article 12). In bilingual and trilingual cantons, the teaching language is the official language of the municipality, respecting thus the principle of territoriality. The management of schools is the competence of cantons and is usually devoted to a sub-cantonal administrative unit comprising one or several municipalities. When such a unit includes municipalities with different official languages, or includes bilingual municipalities, free access to public schools in both languages shall be ensured. Alternatively, authorities may allow a student to go to a school outside the administrative area where he/she lives, for language reasons. Secondary education (level two) is not always available in minority languages. It is for example the case of Italian in the Canton of Graubünden/Grischun/Grigioni, although it is one of the three official languages of the canton. The Advisory Committee recalls that in order to develop minority language skills as an added value for their speakers as well as society, there must be continuity in access to teaching and learning of and in minority languages at all levels of the education system, from pre-school to higher and adult education.⁸⁰

102. The inter-cantonal agreement on harmonisation of compulsory schooling (called “HarmoS”) entered into force in 2009 and has now been signed by 21 cantons out of 26. It intends to harmonise the teaching and learning of languages by developing a strong culture in the local language as well as essential competencies in two “foreign” languages. According to Article 4, the first “foreign” language is taught at the latest as of the fifth year and the second one as of the seventh year. One of these two “foreign” languages must be a national language,

⁸⁰ ACFC Thematic Commentary No. 3, “The language rights of persons belonging to national minorities under the Framework Convention” (2012), para. 75.

the other one being English, and their teaching includes a cultural component. As it foresees the teaching of a third compulsory “foreign” language, which must be a national language, the Canton of Ticino may derogate from the provision concerning the year at which the two first “foreign” languages are to be introduced. In other cantons having signed the HarmoS agreement, an optional third national language is proposed during compulsory school (which starts at the age of four and lasts 11 years). The order in which the foreign languages are taught is co-ordinated at regional level, but quality and development criteria respect a global strategy adopted at national (i.e. inter-cantonal) level.

103. The Advisory Committee takes note of parliamentary initiatives aimed at safeguarding the teaching of a second national language in primary school and notes that the Federal Council held a consultation in 2016 on a draft revision of the Federal law on languages with the objective of making a second national language compulsory in primary school, ensuring thus that children belonging to national minorities can learn their language at primary school when they live outside areas traditionally inhabited by persons belonging to their minority. However, this process has been discontinued by the Federal Council considering that the timing was not opportune.

The draft revision of the Federal law on languages did not ensure that “children belonging to national minorities can learn their language at primary school when they live outside areas traditionally inhabited by persons belonging to their minority”. The Federal Council has discontinued this revision process given that no canton has, for the time being, discontinued the present model of teaching the national languages at primary school (see on this subject the comment below in respect of paragraph 105).

104. The Advisory Committee notes also the intention of the Federal Council as stated in the Cultural Message 2016-2020 to promote the Italian language and cultures outside the Canton of Ticino and the Italian-speaking parts of the Canton of Graubünden/Grischun/Grigioni, and to potentially extend it to Romansh as of 2021. Half of Italian speakers and a third of Romansh speakers⁸¹ live outside the cantons traditionally inhabited by persons belonging to those linguistic groups (i.e. Ticino and Graubünden/Grischun/Grigioni for the Italians and Graubünden/Grischun/Grigioni for the Romansh), in particular in the bigger cities. The Advisory Committee notes in this regard that a cantonal school in French language has been established in Bern/Berne by the 1981 federal law⁸². Therefore, as the Swiss authorities are fully aware, a strictly territorial approach to minority rights would not adequately reflect and accommodate the needs of persons belonging to minorities in a modern, dynamic and mobile society. In this regard, the Advisory Committee welcomes the efforts made by the authorities to adapt to these changing circumstances and promote the rights of linguistic minorities beyond their traditional area of settlement, in particular through the Message on Culture.

The Canton of Graubünden states that its practice is to support teaching in Italian and Romansh and the teaching of these languages outside the areas traditionally inhabited by Italian or Romansh speakers. Accordingly, Section 20(2) of the Canton of Graubünden Law on Languages provides: “in the German-speaking or multilingual municipalities, the government can, at a municipality’s request, authorise the establishment of a bilingual school

⁸¹ Federal Office of Statistics, “Population résidente permanente selon les langues principales et le canton, en 2016”, available at:

<https://www.bfs.admin.ch/bfs/fr/home/statistiques/population/langues-religions/langues.assetdetail.4542308.html>.

⁸² See, Federal law on the award of grants to cantonal school in French language of Bern/Berne (411.3) available at: <https://www.admin.ch/opc/fr/classified-compilation/19810127/index.html>.

with the aim of preserving a traditional language”. Moreover, the Graubünden Directorate of Public Education maintains a continuous dialogue with Lia Rumantscha and Pro Grigioni, the umbrella organisations for the defence of the minority languages.

Several cantons, including Zurich, Aargau and Basel-Stadt, say they receive no requests to provide support for courses in Romansh language and culture, unlike Italian. The Canton of Thurgau mentions that several municipalities in the canton organise exchanges with Romansh-speaking pupils.

Several cantons situated outside the areas traditionally inhabited by Italian speakers offer Italian courses at Secondary Level I or II. Examples are the cantons of Aargau and Zurich, where the “liceo artistico” also makes it possible to obtain a bilingual federal secondary school leaving certificate with Italian. In the Canton of Thurgau, too, it is possible to study for this certificate in German and Italian. In the cantons of St. Gallen, Basel-Stadt and Appenzell Innerrhoden, for example, Italian is taught at Secondary Level I as an optional subject, whereas at Secondary Level II it is taught as one of the compulsory options.

As far as support for Italian is concerned, the Culture Message 2016-2020 gives priority to education and teaching, in particular in order to strengthen measures to raise awareness and develop cultural projects in schools, as well as to promote the development of teaching materials in Italian and the curriculum for the bilingual school-leaving certificate with Italian. In 2016 and 2017, the Federal Office of Culture supported 12 projects to a total of CHF 1 145 000. Measures to promote Romansh outside the territory where it is spoken (especially in the German- and Italian-speaking areas of the Canton of Graubünden and in the Swiss Romansh diaspora towns) are being considered and will be offered from 2020 onwards. These will mainly consist of educational measures, in particular improving the conditions governing the teaching of languages and the provision of teaching in Romansh for preschool and school-age children.

105. The Advisory Committee notes a series of recent citizens’ initiatives aimed at limiting the number of compulsory languages learned in primary school, such as the “Only one foreign language in primary school” initiative in the Canton of Graubünden/Grischun/Grigioni. This initiative intends to limit the learning of “foreign” language(s) in primary school to a single compulsory language, namely English in German-speaking municipalities of the canton, and German in Italian or Romansh-speaking municipalities. A decision of the Federal Tribunal⁸³ has validated this initiative in the light of the cantonal law, but the Advisory Committee remains concerned that it may result in persons belonging to national minorities no longer being able to learn their language at primary school. The federal authorities are closely monitoring any development in this domain and continue to promote multilingualism in particular through strong financial support for exchange programmes.⁸⁴

On 23 September 2018, the citizens of the Canton of Graubünden firmly rejected the “Only one foreign language in primary school” cantonal popular initiative by 65.19% of the votes cast.

Up to now, all attempts to switch from two foreign languages to a single foreign language taught at primary school have therefore failed in popular votes or the cantonal parliaments.

⁸³ Swiss Federal Tribunal, judgment of 3 May 2017, case No. 1C_267/2016.

⁸⁴ State report, para. 137.

Recommendations

106. The Advisory Committee encourages the federal and cantonal authorities to provide access to teaching in and of Italian and Romansh outside the areas traditionally inhabited by persons belonging to these communities, in particular in bigger cities. The Advisory Committee calls on the authorities of the Canton of Graubünden/Grischun/Grigioni to engage in a dialogue with the representatives of minorities concerned and assess the needs of the Romansh and Italian-speaking persons with regard to secondary education (level two) in their minority language.

107. The Advisory Committee calls on the federal and cantonal authorities to consider further awareness-raising activities on linguistic rights of persons belonging to national minorities in the cantonal administrations of bilingual and trilingual cantons, including among the judiciary.

On the subject of this recommendation, there has been a positive development in the bilingual (French/German) Canton of Fribourg: in September 2018, the cantonal parliament accepted a proposal calling on the State Council (the executive) to promote the “Bilingualism Seal of Approval” in the cantonal administration. This involves further developing the measures already taken (including language courses) so that the citizens of Fribourg can deal with the authorities in the official language of their choice. The City of Fribourg (the capital of the canton) also decided, in October 2018, to set up a Standing Bilingualism Commission, which will be responsible for proposing specific measures in order to promote the employment of bilingual people in the municipal administration and encourage city staff to improve their knowledge of the partner language.

Teaching and learning materials in and of minority languages

108. Article 15 of the Federal law on languages states that the Confederation and the cantons shall, within the scope of their responsibilities, ensure that the teaching language, and in particular its standard form, is accorded special attention at all academic levels (Article 15.1). They shall also, within the scope of their responsibilities, encourage multilingualism among learners and teachers (Article 15.2) and be committed to a system of teaching foreign languages which guarantees that, at the end of their compulsory schooling, students have skills in at least one second national language and one other foreign language. The teaching of the national languages shall take account of the cultural aspects of a multilingual country (Article 15.3). In Switzerland, primary and secondary school curricula are elaborated by the cantonal authorities; If the cantons fail to harmonise by means of co-ordination, *inter alia*, the duration and objectives of levels of education as well as the recognition of qualifications, the Confederation may issue regulation to achieve harmonisation.⁸⁵

109. Representatives of the Italian-speaking minority regret a lack of investment in the Canton of Graubünden/Grischun/Grigioni in the translation into Italian of teaching and learning materials. Such materials, which have been initially designed for German-speaking students, have to be translated and reformulated for the Italian-speaking reality, which requires both linguistic and pedagogical competencies. They emphasised that materials produced in the Canton of Ticino cannot always be used, because of the differences in the school curricula.

⁸⁵ See Article 62.4 of the Swiss Federal Constitution.

110. The Advisory Committee recalls that “with regard to materials, it is important that the content and language used are tailored to the specific needs of the minority groups concerned, including as regards specific minority language terminology of technical subjects and that priority should be placed on materials produced in the country, although materials developed in neighbouring states may also be approved and made available where appropriate”.⁸⁶ The Advisory Committee observes that the education system in Switzerland is such that a majority of materials in Italian used in the Canton of Graubünden/Grischun/Grigioni is translated from German in order to respect the cantonal curriculum. This requires adequate funding.

The Canton of Graubünden says it intends to persevere in its efforts to make financial resources available for translating teaching materials into Italian and Romansh. Priority will be given to translating materials in German that have been adapted to the “Lehrplan 21” curriculum.

Recommendation

111. The Advisory Committee calls on the authorities of the Canton of Graubünden/Grischun/Grigioni to ensure adequate funding for the translation into Italian or the production in Italian of teaching and learning materials.

Article 15 of the Framework Convention

Representation and participation in institutions and administrations

112. With regard to political representation and participation, persons belonging to national minorities in Switzerland do not enjoy special political rights such as guaranteed representation in elected bodies, exemption from threshold requirements, reserved seats or veto rights. As citizens, they enjoy the individual rights guaranteed to any Swiss citizen by the Constitution, including the right to take part in the election to the lower chamber of the Parliament, the right of petition (Article 33) as well as the right to form, join or belong to a political party (Article 23). The Advisory Committee also observes that they may lobby for their concerns to be raised by parliamentarians and participate in open consultations held by the federal authorities at the preliminary stage of any federal legislative procedure.

The following points should be noted:

In accordance with Article 52 of the Constitution of the bilingual (French/German) Canton of Valais/Wallis, in the election to the State Council (executive and administrative authority) one of the five members must be chosen from among the electorate of the German-speaking districts.

In addition, in the bilingual (German/French) Canton of Bern/Berne, Article 84 of the Cantonal Constitution guarantees that one seat out of seven on the Executive Council shall be allocated to a French speaker. Moreover, also in the Canton of Bern/Berne, the “Deputation”, consisting of the members of the Grand Council (the cantonal parliament) elected in the Bern Jura and French-speaking members elected in the Biel/Bienne-Seeland constituency, represents the interests of the Bern Jura and the French-speaking population of the Biel/Bienne-Seeland constituency in matters specifically affecting them. It has the right to

⁸⁶ ACFC Thematic Commentary No. 3, “The language rights of persons belonging to national minorities under the Framework Convention” (2012), para. 77.

call for a separate vote on these matters. If the votes of the Deputation and of the Grand Council result in two conflicting decisions, the matter is referred to the relevant body for review.

113. There is no quota system regulating membership of the Federal Council. Currently, the composition is four German speakers, two French speakers and one Italian speaker. Historically, at least two seats have been held by French or Italian-speaking members. In 2013, a parliamentary initiative⁸⁷ proposed to amend the Constitution⁸⁸ in order to guarantee “fair representation” of “regions and linguistic communities” in the Federal Council, and thus to increase the number of members from seven to nine. The Federal Council rejected the initiative, mostly because of the suggested increase of the number of members, but supported the principle of a fair representation of regions and linguistic communities.

114. While no consultative body exists *per se* for national minorities, the Yenish and Sinti/Manush have a voice in different federal institutions or in bodies or fora related to the Confederation, such as the Foundation “A future for Swiss travellers”, the Federal Commission against Racism, the Working Group entitled “Improving conditions for the nomadic way of life and promoting the cultures of Yenish, Sinti/Manush and Roma in Switzerland” (see Article 5) and the Swiss group of the International Holocaust Remembrance Alliance. In this regard, the decision instituting the Federal Commission against Racism (FCR) has been amended by the Federal Council in November 2015 in order to add a seat for a Roma representative, and since 2017 the Foundation’s Board is equally composed of six representatives of the authorities and six representatives of the Yenish and Sinti/Manush minorities. The Advisory Committee also notes that the Working Group established by the federal authorities in order to prepare the forthcoming Action Plan of the Confederation was composed of equal numbers of representatives of minority organisations and government officials.

115. The Advisory Committee recalls that Article 15 of the Framework Convention provisions effective participation in cultural, social and economic life and public affairs. With regard to participation in public affairs, the Advisory Committee has argued that persons belonging to national minorities can be involved through a number of arrangements, such as representation in elected bodies and public administration at all levels, consultative mechanisms or cultural autonomy arrangements.⁸⁹ Particular attention should be paid to the balanced representation of women and men belonging to national minorities. With regard to social and economic participation, the Advisory Committee has further argued that effective participation requires States not only to remove the barriers preventing equal access of persons belonging to national minorities to economic sectors and social services, so as to establish equal opportunities, but also demands that States promote their participation in the delivery of benefits and outcomes.⁹⁰

116. The Advisory Committee notes that, at the cantonal level, the Canton of Aargau has put in place a consultation structure for itinerant Yenish and Sinti/Manush, including a specialised

⁸⁷ Parliamentary initiative 13.443, *Fair representation of linguistic communities in the Federal Council with nine members*, available at: <https://www.parlament.ch/en/ratsbetrieb/suche-curia-vista/geschaefte?AffairId=20130443>.

⁸⁸ Since 1999, Article 175.4 of the Swiss Federal Constitution states that: “In electing the Federal Council, care must be taken to ensure that the various geographical and language regions of the country are appropriately represented.”

⁸⁹ ACFC Thematic Commentary No. 2, “The effective participation of persons belonging to national minorities in cultural, social and economic life and public affairs” (2008), p. 6.

⁹⁰ ACFC Thematic Commentary No. 2, “The effective participation of persons belonging to national minorities in cultural, social and economic life and public affairs” (2008), p. 4.

service functioning as an intermediary between the persons concerned and persons managing the stopping places, short-stay areas and transit sites, which constitutes a good practice. The Advisory Committee observes however, a general lack of influence of the Yenish and Sinti/Manush organisations in the political or legislative process, in particular at the cantonal level and regrets the lack of a permanent consultation mechanism or consultative bodies, at all levels of government – including at inter-cantonal level – in order to facilitate the development of a mainstreaming approach on issues related specifically to the persons belonging to national minorities.

Another good practice should be mentioned: The Canton of Ticino has set up an operational unit, with a cultural ombudsman, to deal with various Traveller-related matters, whether to act as an intermediary or for awareness-raising activities.

The “A Future for Swiss Travellers” foundation notes that the involvement of the Yenish and Sinti/Manush in matters affecting them should be reflected in the right for them – and the foundation – to oppose procedures for revising allocation plans, which is not always the case.

117. A federal policy flowing from the Federal law on languages aims at rebalancing the proportion of the linguistic groups in the federal public administration. A minor and continuously decreasing overrepresentation of German-speakers (70.9%) remains in the federal administration, compared to the target value (68.5-70.5%) fixed by Article 7 of the Ordinance on Languages. The French and Italian-speakers represent respectively 21.7% and 7.1% of the federal staff, which corresponds to the lowest part of their respective target values (respectively 21.5-23.5% and 6.5-8.5%). As per Romansh-speakers, they remain underrepresented with 0.3% of the federal staff (target value fixed at 0.5-1%). The Advisory Committee notes that, if the tendency is kept as such, the target values could be all reached in the coming years, with the exception of the Romansh community for which the figure remained unchanged since 2013.

118. There is an increasing number of participants in language trainings organised by the Federal Office of Staff (2 854 participants in 2014, including face-to-face as well as online trainings, against 5 752 in 2016, with 39% in French and 23% in German, but also 20% in Italian and 18% in English). The recruitment policy at federal level is based on the principle of multilingualism, and vacancies that were not in line with this principle have been closely monitored by the Parliament and subsequently modified, where relevant. The powers of the “Federal Delegate for Plurilingualism” have been reinforced in 2014 in order to foster its autonomy and to give it the right to formulate recommendations. The Federal Office of Culture has also drawn-up 4-year service contracts with each of the bilingual/trilingual cantons (Bern/Berne, Freiburg/Fribourg, Valais/Wallis and Graubünden/Grischun/Grigioni) in order to support the efforts aimed at improving the language skills of staff working in their cantonal administration and to fund translations.

It is not service contracts but programme agreements that the Federal Office of Culture has entered into with the cantons of Bern, Fribourg, Valais/Wallis and Graubünden to support them in carrying out their particular tasks with regard to their multilingual situation. The aim is also to support the promotion of exchanges between the language regions.

119. New organisations of Yenish and Sinti/Manush have been created since 2014, presenting a diversity of viewpoints within these communities: some defending the rights of the Yenish and Sinti/Manush as a whole, while others focus on protecting the rights persons with an itinerant or semi-itinerant ways of life, or on awareness of Yenish history, or on

promotion of Yenish cultures. Such organisations, as well as the persons they represent, report chronic difficulties when trying to reach the competent authorities at the cantonal or local levels, when dealing with daily education, social or economic issues. The participation of persons belonging to the Yenish and Sinti/Manush communities may also be further complicated by new amendments to the Federal Law on Itinerant traders (see Article 5 above).

Recommendations

120. The Advisory Committee calls on the federal and cantonal authorities to explore, in consultation with representatives of minorities reflecting the existing intra-community diversity, the possibility of expanding participation in public affairs for persons belonging to national minorities allowing them to take part in the decision-making process not only at the federal level, but also at the inter-cantonal level and in all cantons e.g. through permanent mechanisms, consultative bodies and quotas for public administration.

The municipal authorities are also stakeholders in the question of expanding the involvement in public affairs of persons belonging to national minorities, especially Travellers.

Some clarification is required with regard to the example of quotas for public administration. In principle, quotas are not instruments used in Switzerland to increase the representation of minorities. For example, as explained above in respect of paragraph 61, as far as the representation of the official linguistic communities in the federal administration is concerned the Federal Language Ordinance does not provide for quotas but for target figures.

121. The Advisory Committee encourages the cantonal authorities to pursue their efforts to promote diversity and reinforce multilingualism at the federal level and in particular to keep reinforcing efforts with regard to the proportion of Romansh-speaking civil servants at federal level.

Article 16 of the Framework Convention

Territorial and administrative reform

122. In 2014, municipalities of Castrisch, Duvin, Ilanz, Ladir, Luven, Pigniu, Pitasch, Riein, Rueun, Ruschein, Schnaus, Sevgein and Siat (Canton of Graubünden/Grischun/Grigioni) decided to merge into one single municipality called Ilanz/Glion. Ilanz was the only German-speaking municipality, while the other ones were all Romansh-speaking municipalities. As the number of Romansh-speakers in the newly merged municipality exceeded 40%, the new municipality should have been considered “Romansh-speaking” according to the cantonal language law. A compromise has been reached in order to convince the German-speakers to accept the merging and the new municipality has therefore two official languages, German and Romansh. The use of Romansh is ensured in administration and schools and Ilanz hosts a bilingual school. The Advisory Committee observes that, in practice, the municipality remains divided into two sub-territories (see also Article 11); the centre (Ilanz) remains German-speaking while the surrounding territories remain Romansh. In those latter parts, Romansh remains the language taught in primary schools.

Recommendation

123. The Advisory Committee calls on the cantonal authorities, in bilingual and trilingual cantons, to ensure that, in cases where administrative units enter into a merging process, representatives of all communities in society are consulted, that the rights of persons

belonging to linguistic minorities are not restricted as a result of a change in territorial and administrative reform and invites the cantonal and municipal authorities, where it is relevant and in consultation with representatives of these communities, to promote and protect multilingualism throughout the territory of newly created multilingual units.

Article 18 of the Framework Convention

Co-operation between Switzerland and Italy

124. A Protocol was signed in 1982 and confirmed in 1986 between the Swiss Federal Council and the Italian Government in order to set up an “Italian-Swiss Consultative Cultural Commission” (*Commissione culturale consultiva italo-svizzera* also called “Consulta”) with a view to promoting cultural exchanges and relations between the two countries, at both national and regional level, in particular between the Swiss Italian-speaking cantons (Ticino and Graubünden/Grischun/Grigioni) and the neighbouring regions of Italy. The last meeting of the Commission took place in September 2017 and was focused on the teaching and learning of the Italian language. It was agreed to further encourage the creation of bilingual schools (including Italian). A working group has been created to work further on those aspects. The Advisory Committee was informed by some of its interlocutors that the outcomes of these consultations are not widely known among the relevant communities.

Recommendation

125. The Advisory Committee encourages the federal authorities to keep promoting the rights of the Italian-speaking minority, including through continuous co-operation between Switzerland and Italy, and to ensure that persons belonging to the relevant communities are consulted and informed.

This aim of this co-operation between Switzerland and Italy is not to promote “the rights of the Italian-speaking minority” but to promote cultural projects, in particular the teaching in Swiss schools of the Italian language and Italian culture.

III. Conclusions

126. The Advisory Committee considers that the present concluding remarks and recommendations could serve as the basis for the resolution to be adopted by the Committee of Ministers with respect to the implementation of the Framework Convention by Switzerland.

127. The authorities are invited to take account of the detailed observations and recommendations contained in Sections I and II of the Advisory Committee's Fourth Opinion.⁹¹ In particular, they should take the following measures to improve further the implementation of the Framework Convention:

Recommendations for immediate action⁹²

- increase efforts of the federal authorities in raising awareness of the existing anti-discrimination legislation and reconsider the possible adoption of comprehensive federal anti-discrimination legislation; facilitate access to justice for persons belonging to national minorities who are victims of discriminatory treatment, including by recognising for NGOs a *locus standi* in the public interest and the capacity to represent the rights and interests of such victims; establish at the earliest convenience the national human rights institution in line with the Paris principles, especially with regard to its institutional and financial independence, its capacity to promote as well as to protect human rights and the scope of its mandate, and establish ombudsperson institutions at federal and cantonal levels.

On the subject of general federal anti-discrimination legislation, see the reservation expressed in respect of paragraph 39.

On the question of the locus standi of non-governmental organisations, see the clarifications provided in respect of paragraph 67.

On the establishment of a national human rights institution, see the updates provided in respect of paragraph 38.

On the establishment of mediation institutions, see the clarifications provided in respect of paragraph 38.

- devote sufficient financial support, through accessible, fair and transparent procedures, to projects aimed at preserving and developing identities and cultures of persons with itinerant ways of life, including by providing the Foundation "A Future for Swiss Travellers" with the sufficient financial and human resources to accomplish its mission and to reach out to the communities concerned; adopt the forthcoming Action Plan of the Confederation about the Yenish and Sinti/Manush as soon as possible and recommends the implementation of the measures it provides for at the earliest convenience, and raise general awareness about the ways of life of itinerant persons;

⁹¹ A link to the Opinion is to be inserted in the draft resolution before submission to the GR-H.

⁹² The recommendations below are made in the order of the corresponding articles of the Framework Convention.

proceed with the creation of a sufficient number of sites within the deadline agreed upon in the forthcoming Action Plan itself.

On the subject of the “Yenish, Sinti and Roma” Action Plan, see the updates provided in respect of paragraph 54.

- condemn systematically and in a timely manner all instances of intolerance, be it anti-Gypsyism, anti-Semitism or Islamophobia, in particular in public discourse, as well as investigate systematically and prosecute such statements; provide persons belonging to national minorities with the possibility to defend their rights as victims of hate speech in courts, including by recognising to NGOs a *locus standi* in the public interest and the capacity to represent the rights and interests of such victims; follow-up immediately and implement at federal and cantonal levels all the measures aimed at ensuring security of persons belonging to national minorities.

On the question of the locus standi of non-governmental organisations, see the clarifications provided in respect of paragraph 67.

Further recommendations⁹³

- pay attention, when adopting new legislative texts including with a view to guaranteeing public order, to the preservation of identities and cultures of persons belonging to national minorities and continue to support their right to practice traditions; ensure that the interpretation and application given to the amended Federal law on itinerant traders and its subsequent Ordinance remain proportionate to the objectives pursued.
- further step up federal efforts to support awareness-raising projects aiming at combating prejudice against itinerant ways of life of Yenish and Sinti/Manush, including projects targeting media or journalists.
- pursue efforts with a view to ensuring effective equality at federal level among persons belonging to the different linguistic communities in order to further enable them to use their own languages in their contacts with the federal administration; consider, in co-ordination with minority representatives concerned and on an as-needed basis, translating the main judgments of the Federal Tribunal related to the rights of persons belonging to national minorities into other national languages, as they deem relevant; further promote the use of minority languages in the day-to-day activities, information campaigns, in public administration and in the judiciary of the Canton of Graubünden/Grischun/Grigioni.

On the right to deal with the federal administration in one’s own language, see the clarifications provided in respect of paragraph 89.

- continue to develop flexible learning/teaching solutions adapted to persons with itinerant ways of life and involve families concerned in the development of new projects, in order to guarantee and balance the right of children to education and the right to choose itinerant ways of life; include Yenish cultures and history in school

⁹³ The recommendations below are made in the order of the corresponding articles of the Framework Convention.

programmes and textbooks in order to promote diversity and societal integration among the general public and develop awareness and acceptance of their ways of life.

On the inclusion in school curricula and textbooks of the Yenish cultures and history, and those of the Sinti and Roma, see the clarification provided in respect of paragraph 100.

- provide access to teaching in and of Italian and Romansh outside the areas traditionally inhabited by the persons belonging to these communities, in particular in bigger cities; engage in a dialogue with the representatives of minorities concerned and assess the needs of the Romansh and Italian-speaking persons with regard to secondary education (level two) in their minority language.
- explore, in consultation with representatives of minorities reflecting the existing intra-community diversity, the possibility of expanding participation in public affairs for persons belonging to national minorities allowing them to take part in the decision-making process not only at the federal level, but also at the inter-cantonal level and in all cantons, e.g. through permanent mechanisms, such as guaranteed representation, consultative bodies and quotas for public administration.

On the question of quotas, see the clarification provided in respect of paragraph 120.