

FRAMEWORK CONVENTION FOR THE PROTECTION OF NATIONAL MINORITIES



**Compilation
of thematic commentaries
of the Advisory Committee**

2nd edition

Table of contents:

Introduction

Commentary No. 4
The Scope of Application of the Framework
Convention for the Protection of National Minorities
Adopted on 27 May 2016

Commentary No. 3
The Language Rights of Persons belonging to
National Minorities under the Framework Convention
Adopted on 24 May 2012

Commentary No. 2
The Effective Participation of Persons Belonging to
National Minorities in Cultural, Social and Economic
Life and in Public Affairs
Adopted on 27 February 2008

Commentary No. 1
Commentary on Education under the Framework
Convention for the Protection of National Minorities
Adopted on 2 March 2006

INTRODUCTION

The protection of national minorities lies at the heart of the Council of Europe's core values of democracy, human rights and the rule of law: without the full participation of national minorities, democratic societies cannot function effectively in the long term. The Framework Convention for the Protection of National Minorities thus not only forms an integral part of the international protection of human rights, but is also widely recognised as a key tool for identifying and addressing at an early stage signs of interethnic tensions, and thereby contributing to building and maintaining peaceful democratic societies in Europe.

The Advisory Committee on the Framework Convention for the Protection of National Minorities has been monitoring the implementation of the Framework Convention in the 39 states parties, and based on a special monitoring arrangement, in Kosovo*, since its entry into force in 1998. It has adopted country-specific opinions on developments in states parties across four monitoring cycles, thereby building a body of "soft law" related to the protection of minority rights that has assisted states parties in their efforts to implement the provisions of the Framework Convention.

In addition, the Advisory Committee has also taken a transversal approach. In 2004, it launched its thematic work with the aim of summarising its key experience and findings on the main issues of significance for minority protection in states parties, as identified in its monitoring work. Four such thematic commentaries have thus far been adopted: the First Commentary on Education under the Framework Convention (2006); the Second Commentary on the Effective Participation of Persons belonging to National Minorities in Cultural, Social and Economic Life and in Public Affairs (2008); the Third Commentary on the Language Rights of Persons belonging to National Minorities (2012) and the Fourth Commentary on the Scope of Application of the Framework Convention.

The four thematic commentaries are addressed to authorities, decision makers, minority representatives, public officials, non-government organisations, academics and other relevant stakeholders. They offer advice and practical recommendations to assist in the development of suitable strategies to comprehensively guarantee the rights and freedoms of persons belonging to national minorities while promoting a cohesive society that is based on mutually respectful interethnic relations. They are published together in a second volume to facilitate their broad dissemination and effective use in daily life.

March 2018

* All reference to Kosovo, whether to the territory, institutions or population, in this text shall be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo.

The Framework Convention: a key tool to managing diversity through minority rights

Thematic commentary No. 4
The scope of application
of the Framework Convention
for the Protection
of National Minorities

French edition:

*Convention-cadre: un outil essentiel pour gérer
la diversité au moyen des droits des minorités*

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Contents

EXECUTIVE SUMMARY	5
PART I – INTRODUCTION	6
PART II – THE RIGHT TO FREE SELF-IDENTIFICATION	8
1. General considerations	8
2. Free self-identification in the context of census and other general data collection processes	9
PART III – APPROACHES TAKEN BY STATES PARTIES TO THE SCOPE OF APPLICATION OF THE FRAMEWORK CONVENTION	11
1. Declarations and reservations at the time of ratification	11
2. Criteria applied by states parties	12
PART IV – CONTEXT-SPECIFIC ARTICLE-BY-ARTICLE APPROACH DEVELOPED BY THE ADVISORY COMMITTEE	16
1. Fundamental principles	16
2. Practice	17
PART V – FRAMEWORK CONVENTION RIGHTS APPLYING TO ALL PERSONS	19
1. Protection against discrimination – Article 6	19
2. Education and the media as tools for integration – Articles 6(1) and 12	20
PART VI – MINORITY RIGHTS WITH A BROAD SCOPE OF APPLICATION	22
1. Equality – Article 4	22
2. Culture – Article 5	23
3. Association and religion – Articles 7 and 8	23
4. Media – Article 9	23
5. Language – Articles 10(1), 10(3), 11(1) and 11(2)	24
6. Education – Articles 12(3), 14(1) and 14(3)	24
7. Participation – Article 15	25
PART VII – MINORITY RIGHTS WITH A SPECIFIC SCOPE OF APPLICATION	27
PART VIII – CONCLUSIONS	29

Executive summary

Diversity has been an integral part and a major asset of European societies for centuries. It remains an essential feature of contemporary societies. The purpose of the Commentary is to consolidate the manner in which the Advisory Committee has interpreted, over the years, the scope of application of the Framework Convention for the Protection of National Minorities (ETS No. 157), bearing in mind specific societal, economic and demographic developments.

The Commentary shows that, since 1995, the Framework Convention has been and continues to be a key tool for states to accommodate increasing pluralism through minority protection in a way that carefully balances broader societal concerns with individual rights. It supports states parties in managing diversity by creating appropriate societal conditions that allow for the expression and acknowledgement of difference, for equal access to rights and resources despite difference and for social interaction and inclusion across difference.

The Framework Convention is based on the principle that the protection of national minorities is essential to stability, democratic security and peace. Its main purpose is to prevent interethnic tensions and to promote dialogue in open and inclusive societies. Accordingly, the Commentary underlines that the Framework Convention addresses society as a whole and not just individuals or specific groups. Rather than asking “who” should be protected, it asks “what” is required to manage diversity most effectively through the protection of minority rights. It is for this reason that the Convention does not contain a definition of the term “person belonging to a national minority”.

The Framework Convention was deliberately conceived as a living instrument. Its interpretation must be adjusted regularly to ensure that minority rights can be enjoyed effectively in societies that are affected by constant transformation, including through mobility and migration. The right to free self-identification is central to minority protection, including multiple and situational affiliations. It must not be disregarded through imposed categorisation based on predetermined characteristics. Individuals self-identify and form communities through a variety of evolving shared practices and through the common exercise of rights. Societal changes also have an impact on identity perceptions of individuals and of communities and thereby on the applicability of minority rights.

Among the broad range of rights contained in the Framework Convention, some explicitly apply to all individuals in the territory of the state, while the application of others may be linked to specific conditions. When examining the implementation of the Framework Convention by states parties, the Advisory Committee has therefore consistently encouraged the authorities to be inclusive and context specific and to consider, on an article-by-article basis, which rights should be made available to whom in order to ensure the most effective implementation of the Framework Convention based on facts rather than status.

The Commentary concludes that access to minority rights can only be ensured in a society where dialogue, understanding and cultural diversity are viewed as sources of enrichment rather than of division.

Part I

Introduction

1. This Commentary is intended to provide guidance to states parties to the Framework Convention, to persons belonging to national minorities, to international organisations and to civil society and academia regarding the ongoing debate on the scope of application of the Framework Convention. It is based on a close comparative and analytical reading of the Opinions adopted by the Advisory Committee throughout four cycles of monitoring in the states parties since 1998,¹ and builds on three previous thematic commentaries that were adopted by the Advisory Committee: on education in 2006;² on effective participation in public life in 2008;³ and on language rights in 2012.⁴ Valuable input has also been collected from national minority and civil society representatives,⁵ academics and other interlocutors, including during broader consultations held in the final stages of the drafting process.

2. Minority rights are granted at the individual level to each person belonging to a national minority. It is further specified in Article 3(2) of the Framework Convention that minority rights are “exercised individually and in community with others”. In fact, a number of rights only make sense if exercised in community with others, and the enjoyment of some rights presupposes the presence of or even formal association with others. Minority rights therefore have an individual, a social and a collective dimension. Despite the fact that a number of international instruments make reference to minority cultures, languages or traditions, and some common understanding exists as to what the term ‘minority’ entails, there has never been a universally shared definition.⁶ In line with this tradition, the Framework Convention does not contain a definition of the term ‘national minority’ or of the phrase ‘person belonging to a national minority’. As a result, the question of who is to be recognised as a right holder under the Framework Convention has, since its adoption, been the subject of extended debate at international and national, academic and political levels.

3. It is the goal of the Framework Convention to ensure that the space for diversity and for being “different” in society is protected and affirmed, thereby promoting the integration and cohesion of societies.⁷ Broader questions relating to the integration of societies have therefore always featured in the monitoring work of the Advisory Committee, sometimes resulting in disapproval by the respective state party.⁸ Indeed, as a result of the increased diversity of European societies in recent years, increased attention has been paid by a number of actors to the imperative of forming inclusive and integrated societies where diversity is respected and preserved.⁹ With that in mind and in order to clarify both the personal and substantive reach of its work, the Advisory Committee considers it appropriate to devote its Fourth Thematic Commentary to the Framework Convention’s scope of application.

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1. The Commentary makes references to first, second, third or fourth cycle, country-specific Opinions where findings of particular relevance to the scope of application were made. These references are illustrative only.
 2. See Advisory Committee on the Framework Convention for the Protection of National Minorities (ACFC) First Commentary on Education under the Framework Convention for the Protection of National Minorities, ACFC/25DOC(2006)002, 2 March 2006, www.coe.int/minorities.
 3. See ACFC Second Commentary on the Effective Participation of Persons belonging to National Minorities in Cultural, Social and Economic Life and in Public Affairs, ACFC/31DOC(2008)001, 27 February 2008, www.coe.int/minorities.
 4. See ACFC Third Commentary on the Language Rights of Persons belonging to National Minorities under the Framework Convention, ACFC/44DOC(2012)001, 24 May 2012, www.coe.int/minorities.
 5. The term “minority representative” throughout the text does not contain a legal notion; it refers to advocates or spokespersons who have come forward to share their views.
 6. See *travaux préparatoires*, various attempts in the Parliamentary Assembly of the Council of Europe (PACE), and, in particular, the Commentary of the Working Group on Minorities to the 1992 UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities.
 7. See the Preamble of the Framework Convention: “[...] Considering that the creation of a climate of tolerance and dialogue is necessary to enable cultural diversity to be a source and a factor, not of division, but of enrichment for each society [...]”.
 8. See, *inter alia*, First Opinion on Denmark and Government Comments on the First Opinion on Denmark, and First Opinion on Germany and Government Comments on the First Opinion on Germany.
 9. The increased preoccupation with integration-related issues is, for instance, reflected in the work of the OSCE High Commissioner on National Minorities (HCNM) (see Ljubljana Guidelines on Integration of Diverse Societies November 2012) as well as in the fact that the European Commission against Racism and Intolerance (ECRI) has included integration policies in the four topics common to all member states in its fifth round country reports.

4. The adoption of the Framework Convention in 1995, in the aftermath of violent conflicts in Europe, as the only legally binding international instrument on the rights of persons belonging to national minorities, firmly anchored the protection of minority rights within the universal set of multilaterally recognised human rights. Minority rights, according to Article 1 of the Framework Convention, form part of the international human rights protection system, which is based on the premise that everyone is born free and equal in dignity and rights.¹⁰ The purpose of embracing minority rights as an integral part of human rights was not to challenge the notion of equality among all individuals, but to advance it further by establishing a set of specific rights for persons belonging to national minorities to ensure that they are enabled to participate fully and equally in society while being protected from assimilation. Importantly, persons belonging to national minorities require guarantees to enable them: (i) to express difference and to have that difference recognised; (ii) to gain equal access to resources and rights despite difference; and (iii) to engage in social interaction on the basis of respect and understanding across difference.

5. The superficial conclusion is sometimes made that the application of the Framework Convention, given the absence of a definition of national minority, is in practice left solely to the discretion of states parties. This interpretation, however, is incorrect. It runs counter to Article 26 of the Vienna Convention on the Law of Treaties and the basic principle of *pacta sunt servanda*. The purpose of this Commentary is to make it clear that the absence of a definition in the Framework Convention is indeed not only intentional but also necessary to ensure that the specific societal, including economic and demographic, circumstances of states parties are duly taken into account when establishing the applicability of minority rights. The Framework Convention was deliberately conceived as a living instrument whose interpretation must evolve and be adjusted regularly to new societal challenges. Multiple identities and increasing mobility, for instance, have become regular features of European societies. However, such features must not limit access to minority rights. This approach is fully in line with the principle of dynamic interpretation developed by the European Court of Human Rights with respect to the European Convention on Human Rights.

6. While the Framework Convention binds states parties from its entry into force within the domestic jurisdiction, its framework character nevertheless requires additional legal instruments at domestic level to make it fully operational. In many states, definitions of rights holders have been established in domestic legislation to give effect to the provisions laid down in the Framework Convention. The Advisory Committee has consistently acknowledged that states parties have a margin of appreciation in this context, but has also noted that this margin must be exercised in accordance with the general rules of international law contained in Articles 31 to 33 of the Vienna Convention on the Law of Treaties. In particular it must be exercised in line with the obligation to interpret a treaty in good faith and in the light of its object and purpose. In the case of the Framework Convention, its fundamental principles set out in the Preamble remind states parties to seek maximum expression of the spirit of friendly relations and co-operation in all of their actions pertaining to minority protection. Moreover, its Article 2 underlines the essential character of the principles of good faith, good neighbourly relations and non-interference in another state's internal affairs to ensure that the many diverse interests that are affected in the implementation of the Framework Convention can be reconciled by states parties.¹¹

7. When examining the approaches taken by states parties with regard to the scope of application of the Framework Convention, the Advisory Committee has therefore consistently encouraged the authorities to be inclusive and context specific and to consider on an article-by-article basis which rights should be made available to whom. Such an approach not only ensures the most effective implementation of the Framework Convention based on fact rather than status, but it also promotes a societal climate of dialogue and understanding, where cultural diversity is viewed as a source of enrichment rather than division.

8. This Commentary begins with an analysis of the right to free self-identification of persons belonging to national minorities as a cornerstone of minority rights (Part II). It thereafter discusses the various practices developed by states parties to define the beneficiaries of minority rights according to personal and other criteria (Part III). Part IV explains the open and contextual approach that has been applied by the Advisory Committee throughout its monitoring activities in line with the basic principles contained in Articles 3-6 of the Framework Convention. Based on the article-by-article approach developed by the Advisory Committee from its inception, Parts V-VII present an analysis of the scope of application of the various rights contained in the Framework Convention. While some articles explicitly address all persons in the territory of the state party (Part V), there are some minority rights with a broad scope of application that, given their nature, must apply to all national minorities (Part VI), while there are other minority rights where states parties may require specific preconditions for their enjoyment (Part VII).

10. See Article 1 of the Universal Declaration of Human Rights.

11. See also the Framework Convention's Explanatory Report, paragraph 32: "This article provides a set of principles governing the application of the Framework Convention. [...] The principles mentioned in this provision are of a general nature but do have particular relevance to the field covered by the Framework Convention".

Part II

The right to free self-identification

1. General considerations

9. The right to free self-identification contained in Article 3 of the Framework Convention is a cornerstone of minority rights.¹² The Advisory Committee has consistently underlined the centrality of this provision. “Free” implies, in this context, the individually established and informed decision to avail oneself of the protection of the Framework Convention. Article 3 is thus necessarily applicable to everyone, as every person must have the right to identify freely as a member of a specific group, or to choose not to do so. The Framework Convention’s Explanatory Report points out, however, that the choice of the individual is not to be arbitrary but must be linked to some objective criteria.¹³

10. The Advisory Committee has intentionally refrained from interpreting what such objective criteria may be, as it is clear from the wording of the Explanatory Report that they must only be reviewed vis-à-vis the individual’s subjective choice. Thus, objective criteria do not constitute elements of a definition. Self-identification begins with the free decision of the individual which, if no justification exists to the contrary, is to be the basis of any personal identification.¹⁴ In the view of the Advisory Committee, a person’s free self-identification may only be questioned in rare cases, such as when it is not based on good faith. Identification with a national minority that is motivated solely by the wish to gain particular advantages or benefits, for instance, may run counter to the principles and purposes of the Framework Convention, in particular if such action diminishes the intended benefits and rights available to persons belonging to national minorities.

11. While the official recording of a self-identification may, in some cases, require the evidence of objective criteria,¹⁵ a minority identity must not be externally imposed. The Advisory Committee has criticised the mandatory recording of ethnicity in identity documents or in internal records of administrative entities, including the police and health care facilities, as contrary to the right to free self-identification.¹⁶ Moreover, it has considered that free self-identification implies the right to choose on a situational basis when to self-identify as a person belonging to a national minority and when not to do so.¹⁷

12. In practice, this means that each person belonging to a national minority may freely decide to claim specific rights contained in the Framework Convention, while under certain circumstances or with respect to certain spheres of rights, he or she may choose not to exercise these rights.¹⁸ Such individual decisions must, however, not result in disadvantages for other individuals identifying with the same minority by precluding them from claiming their minority rights. In this context, the Advisory Committee has reiterated its view that any numerical thresholds established as a precondition for the applicability of certain minority rights must be interpreted flexibly (see also paragraph 82). 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.

12. According to Article 3(1), “Every person belonging to a national minority shall have the right freely to choose to be treated or not to be treated as such and no disadvantage shall result from this choice or from the exercise of the rights which are connected to that choice.”

13. According to para. 35, Article 3(1) “does not imply a right for an individual to choose arbitrarily to belong to any national minority. The individual’s subjective choice is inseparably linked to objective criteria relevant to the person’s identity.”

14. See also General Recommendation VIII of the Committee on the Elimination of Racial Discrimination (1990).

15. See also *Ciubotaru v. Moldova* (application no. 27138/04), Judgment of 27 April 2010, where the European Court of Human Rights acknowledged the right of a government to require the existence of objective evidence of a claimed identity.

16. See Fourth Opinion on the Czech Republic, First Opinion on Germany, Third Opinion on Ireland, First and Third Opinions on the Russian Federation and First and Second Opinions on Ukraine.

17. Persons belonging to national minorities may for instance choose to have their name officially recognised in a minority language but in parallel not use their minority language in contact with local administrative authorities. See also Third Thematic Commentary (footnote 4), especially paragraphs 16-18.

18. Persons belonging to national minorities may for instance take an informed decision to enrol their children in mainstream schools without suffering any disadvantages in terms of access to other minority rights as a result, and without such a decision having an impact on the general availability of minority language education to other members of the same group.

13. The right to free self-identification also extends to multiple affiliations. In fact, the Framework Convention implicitly acknowledges multiple affiliations by promoting the preservation of minority identities in parallel to successful and effective integration in broader public life. Persons belonging to national minorities should never be obliged to choose between preserving their minority identity or claiming the majority culture, as both options must be fully available to them.¹⁹ This implies that practices by which an individual affiliates with a particular minority should not be seen as exclusive, as he or she may simultaneously identify with other minorities or with the majority.²⁰ In some instances, such a choice may be the consequence of previous assimilation processes into the majority or into another dominant minority. However, this must not be used as an argument against the rights of persons belonging to national minorities to self-identify freely and to claim minority protection.

14. The Advisory Committee has further called on states parties to ensure that all persons and groups who may benefit from the Framework Convention are made aware and enabled to avail themselves of the right to self-identify freely in order to access the rights contained in the Framework Convention. This is the case when the choice of affiliating with a minority is not made difficult in practice and when it is assured that the choice is made free of fear of resulting disadvantages or of loss in social prestige.

2. Free self-identification in the context of census and other general data collection processes

15. In countries where data on national, ethnic or religious affiliation are collected in the context of broader population census exercises, such exercises must be organised and conducted in line with internationally recognised principles, including personal data protection standards.²¹ It follows further from the right to free self-identification that any participation in data collection exercises related to ethnic background must be voluntary. In particular, there must be no automatic inference from a particular indication (for example language use) to another indication (for instance religion, ethnicity) and no assumption of certain linguistic, religious or ethnic affiliations is to be made based on a person's name or other characteristics.²²

16. The right to free self-identification applies in each data collection exercise separately. This means that persons belonging to national minorities must not be required always to self-identify in the same manner. Lists of possible responses to identity-related questions should be open not closed, and the opportunity to express multiple affiliations should be provided explicitly. Given the importance attached in some states parties to the size of a minority population for access to minority rights, multiple affiliations must also not only be recorded but also adequately processed, analysed and displayed. These considerations on the collection, processing and reporting of data must also be applied to other situations (for example school enrolment) that can imply self-identification.

17. In situations where the enjoyment of particular minority rights is linked to numerical thresholds,²³ the right to free self-identification further requires that persons belonging to national minorities are informed of the importance attached by the authorities to census and other data collection exercises. The Advisory Committee has therefore systematically encouraged states parties to make all information on the methodology and aim of data collection available in the languages of national minorities, and to include persons belonging to national minorities in the organisation and operation of such processes, particularly in areas where national minorities are settled in substantial numbers.²⁴

19. See also First and Third Thematic Commentaries (footnotes 2 and 4).

20. This may for instance occur in mixed families where several languages are spoken on an equal basis.

21. In the context of population census exercises, the Advisory Committee has encouraged states parties to adhere to the EUROSTAT/UN recommendations for the organisation of population and housing censuses. See Conference of European Statisticians Recommendations for the 2010 Censuses of Population and Housing, prepared in co-operation with the Statistical Office of the European Communities (EUROSTAT) and the United Nations Economic Commission for Europe, paragraph 426: "respondents should be free to indicate more than one ethnic affiliation or a combination of ethnic affiliations if they wish so", paragraph 431: "Questions will generally refer to one language only. Multiple languages may be required for the mother tongue and main languages of minority groups". See, for example, Fourth Opinion on Cyprus, Third Opinions on Estonia and Romania.

22. See, for example, consecutive Opinions on Italy and the United Kingdom.

23. The opening of minority language schools or the official use of minority languages at local level, for instance, may be linked to the actual number of persons belonging to national minorities (see also Part VII).

24. See, for example, Third Opinion on Hungary and Second Opinion on Slovenia.

18. At the same time, the Advisory Committee has cautioned states parties against exclusively relying on official statistics and figures, as these, for a variety of reasons, may not fully reflect reality.²⁵ Results should be reassessed periodically and analysed flexibly, in close consultation with minority representatives. Authorities should also further avail themselves of other sources of information, including the general labour force and other surveys, as well as independent qualitative and quantitative research available on issues pertaining to the access to rights of persons belonging to national minorities.

25. Due to a history of past disadvantage, discrimination or even persecution based on ethnic origin, some persons belonging to national minorities are still unwilling to indicate their ethnic background to any official entity. Misperceptions about the use or apparent dangers inherent in census exercises are sometimes disseminated among minority communities for political purposes with the very aim of preventing them from being counted in high numbers.

Part III

Approaches taken by states parties to the scope of application of the Framework Convention

1. Declarations and reservations at the time of ratification

19. The Framework Convention is open for signature by member states of the Council of Europe and, in principle, also by other states.²⁶ There are currently 39 states parties to the Framework Convention, all of them member states of the Council of Europe. The last ratification took place in 2006 when Montenegro became a party to the Convention.²⁷ In addition to the 39 states parties, where the implementation of the Framework Convention is monitored by the Advisory Committee, Kosovo* is subject to a specific monitoring arrangement in conformity with the 2004 Agreement between the United Nations Interim Administration in Kosovo (UNMIK) and the Council of Europe.

20. Eight Council of Europe member states are not parties to the Framework Convention. Belgium, Greece, Iceland and Luxembourg have signed the Framework Convention and have therefore committed themselves to act in line with the objectives and purpose of the Framework Convention,²⁸ while Andorra, France, Monaco and Turkey have neither signed nor ratified the treaty.

21. The Advisory Committee considers that the implementation of the rights contained in the Framework Convention, given its objectives of managing diversity through the effective protection of minority rights,²⁹ and promoting balanced approaches to the sometimes conflicting goals of individual rights protection and the safeguarding of broader state interests, is beneficial to all societies. It notes that any reasoning provided in the 1990s for not ratifying the Framework Convention must be regularly reassessed as societies have substantially changed since then. Similarly, the argument that no national minorities exist in the country may well no longer reflect contemporary realities. For the same reason, the Advisory Committee also regularly invites states parties that have not yet done so to ratify the European Charter for Regional or Minority Languages (ECRML, ETS No. 148). While placing the emphasis on the obligation of the state to protect and promote regional or minority languages as part of cultural heritage, rather than granting individual rights to the speakers of these languages, the Charter represents a unique international instrument in this field and plays a complementary role to the Framework Convention.³⁰

22. According to Article 27 of the Framework Convention, non-member states of the Council of Europe may ratify the Framework Convention upon invitation by the Committee of Ministers. The Explanatory Report makes it clear that Article 27 refers to participating states of the Organization for Security and Co-operation in Europe (OSCE). The Advisory Committee agrees that the Framework Convention could indeed be particularly relevant in some OSCE participating states, such as Central Asian states, due to the broad diversity of their societies. It further notes that some interest in this regard has already been expressed. In line with its general principle of dynamic interpretation, it considers however that the Explanatory Report should not be understood as preventing other states that co-operate with the Council of Europe in a variety of ways, including as observer states, from becoming a party to the Framework Convention.

26. See the wording of Article 27 of the Framework Convention.

27. Following the declaration of independence on 3 June 2006, the Framework Convention was ratified on 6 June 2006.

* All reference to Kosovo, whether to the territory, institutions or population, in this text shall be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo.

28. See Article 18 of the Vienna Convention on the Law of Treaties.

29. See Explanatory Report, paragraph 28.

30. See also Third Thematic Commentary (footnote 4), paragraph 11.

23. States parties to the Framework Convention have developed various approaches to establish the beneficiaries of the rights contained in the Framework Convention. In 18 cases, declarations and reservations were deposited at the time of ratification or signature, clarifying to whom the rights contained in the Framework Convention are to be applied or how certain provisions are to be interpreted.³¹ The declarations typically either establish a general definition with specific criteria that must be met,³² list explicitly which groups are to be covered,³³ or state that there are no national minorities present in the territory.³⁴ Reservations at the time of signature or ratification were declared in two cases.³⁵

24. The Advisory Committee has systematically reviewed the effects of these declarations and reservations on persons belonging to national minorities and on their access to rights. Given that, in many cases, the declarations date back to the late 1990s, and taking into account the substantially changed conditions in states parties since then, their pertinence should be reviewed at regular intervals by the states parties concerned to ensure that the approach to the scope of application accurately reflects the present-day societal context.

25. Other states parties have incorporated statements into the first state report or have adopted national legislation containing references to the groups of persons who are to be considered as belonging to national minorities. These definitions, again, are usually formulated as delimitations to the scope of application, either by explicitly naming specific groups of beneficiaries, or by enlisting the preconditions that must be met in order for individuals to become eligible to benefit from the Framework Convention.³⁶

26. According to Article 26 of the Framework Convention, the Committee of Ministers is to be assisted by the Advisory Committee in evaluating the adequacy of the measures taken to give effect to the principles set out in the Framework Convention. In doing so, the Advisory Committee has reviewed the measures taken by states parties with respect to the scope of application in the same way as any other measure aimed at implementing the Framework Convention. In particular, the Advisory Committee has considered it to be its duty to assess whether the approach taken to the scope of application is in good faith and does not constitute a source of arbitrary or unjustified distinction among communities with regard to access to rights.³⁷ In its work, it has thus assessed the various approaches and delimitations established by states parties in order for the Framework Convention to become applicable, which are often based on the elements below.

2. Criteria applied by states parties

a. Formal recognition

27. The formal recognition of a national minority as such is required in a number of states parties in order for persons belonging to these groups to access minority rights. The Advisory Committee has consistently criticised such an approach as per se exclusionary and not in line with the principles contained in the Framework Convention. While some states parties have explicitly acknowledged the impracticality of relying on a formal recognition for the application of minority rights,³⁸ a number of other states have, on a *de facto* basis, disregarded a requirement for formal recognition, thereby broadening the scope of application of the Framework Convention in practice.³⁹ Such developments have always been welcomed by the Advisory Committee and understood as efforts to correct the shortcomings that arise from applying formal criteria that are either too rigid or no longer reflect the actual situation. This further reaffirms that the Framework Convention is not suited for static definitions or criteria.

31. See Full List of Reservations and Declarations for Framework Convention for the Protection of National Minorities (ETS No. 157) www.coe.int/en/web/dlapil/treaty-office.

32. See the declarations by Austria, Estonia, Latvia, Luxembourg, Poland and Switzerland.

33. See the declarations by Albania, Denmark, Germany, the Netherlands, Norway, Sweden, the Slovak Republic, Slovenia and “the former Yugoslav Republic of Macedonia”.

34. See the declarations by Liechtenstein, Luxembourg and San Marino. Some states declared that they viewed the ratification of the Framework Convention as an act of solidarity with the objectives of the Convention. See First State Reports submitted by Liechtenstein and by Malta.

35. Belgium declared that the Framework Convention should apply without prejudice to the constitutional provisions and principles and the legislative rules governing the use of languages, and that the notion of national minority would be defined at national level. Malta reserved the right not to be bound in some respects by the provisions of Article 15.

36. See First State Reports submitted by Armenia, Bulgaria and Hungary.

37. References to this duty can be found in all First Opinions of the Advisory Committee.

38. See First State Report submitted by Finland, stating that “the existence of minorities does not depend on a declaration by the Government but on the factual situation in the country”.

39. Roma have, for instance, been included under the protection offered by the Framework Convention in Cyprus, despite not officially being recognised as national minorities. See Second State Report submitted by Cyprus. Finland has applied guarantees provided to “Old Russians” as well as to newer Russian-speaking arrivals. See Third Opinion on Finland.

28. The Advisory Committee has further observed that the *de facto* inclusion of beneficiaries under the protection of the Framework Convention or of certain of its articles often forms part of an evolutionary process that eventually may lead to formal recognition. Beginning with the free self-identification of individuals who are acknowledged by society as forming a distinct – albeit equally valued – minority, access to rights is then granted to promote and preserve the practices by which the group defines itself, leading in some cases to the inclusion of the minority in formal mechanisms of national minority protection.⁴⁰ Thus, official recognition as a national minority or the granting of a specific status, do not constitute the beginning of the process of minority rights protection, nor are they essential for the application of the Framework Convention or of specific articles of it. Recognition as a national minority has a declaratory rather than a constitutive character. Access to minority rights should therefore not depend on formal recognition.

b. Citizenship

29. A recurrent precondition used by states parties is the requirement that a person belonging to a national minority must be a citizen in order to benefit from the protection of the Framework Convention. The Advisory Committee has pointed out in this regard that the inclusion of the citizenship requirement may have a restrictive and discriminatory effect, given that it is often the members of particularly disadvantaged groups and minorities, including those who have suffered or been displaced as a result of conflict, who face difficulties in obtaining citizenship and are therefore affected by this restriction.

30. In a number of regions in Europe, persons belonging to national minorities have lost their citizenship or even become stateless due to the creation of new states, despite having long-lasting ties to their places of residence. The Advisory Committee has consistently underlined the specific challenges faced by persons belonging to national minorities who are *de jure* or *de facto* stateless and has drawn attention in this context to the right of each person to a nationality in line with the European Convention on Nationality (ETS No. 166).⁴¹ Indeed, it should be considered for each right separately whether there are legitimate grounds to differentiate its application based on citizenship.⁴² The Advisory Committee has always welcomed instances in which states parties have extended minority rights to non-citizens, thereby in practice disregarding an officially still existing precondition of citizenship.⁴³ In some instances, it has explicitly recommended the more consistent application of minority rights to “non-citizens”.⁴⁴

c. Length of residency

31. In their definitions of national minorities, a number of states parties refer to the length of residency of a particular group in the territory of the state.⁴⁵ Attempts at creating time limits in definitions such as “prior to the 20th century”,⁴⁶ or “approximately 100 years”,⁴⁷ have been used in this context. Less absolute concepts that are subject to interpretation have also been developed, including the notion of “traditional residence”, “traditional minorities” or the term “autochthonous national minorities”.⁴⁸ In some cases the notion of “long-lasting ties to a particular region” is applied, including with regard to non-residents who express a willingness to return to this region and to benefit from the protection of the Framework Convention.⁴⁹ The Advisory Committee considers that it follows by implication from the fact that only Articles 10(2), 11(3) and 14(2) of the Framework Convention establish specific guarantees in areas traditionally inhabited by persons belonging to national minorities, that the length of residency in the country is not to be considered a determining factor for the

40. In the Czech Republic and Finland, for instance, immigrant groups such as Somalis and Vietnamese are also represented in cultural consultation mechanisms and receive state support for their activities.

41. See in particular Article 4 of the European Convention on Nationality (ETS No. 166).

42. See also the Venice Commission Report on Non-citizens and Minority Rights (CDL-AD(2007)001) adopted at its 69th plenary session (Venice, 15-16 December 2006), comprehensively analysing international and European standards and practice as regards the relevance of citizenship and other criteria for defining beneficiaries of minority rights, and calling for a nuanced approach to the citizenship criterion for the applicability of minority rights, depending on the specific right in question.

43. See Third Opinion on the Czech Republic, for instance.

44. See Second Opinion on Latvia.

45. See, *inter alia*, Austria, Denmark, Germany and Hungary. The request for access to minority rights by the Polish minority in Austria, for instance, has been rejected based on the argument that there has not been uninterrupted and “traditional” residence. See Fourth State Report of Austria.

46. See, for instance, First State Report of Sweden.

47. See, for instance, First State Report of Austria.

48. At the time of depositing the instrument of ratification, Slovenia declared, for instance, that it would consider as national minorities “the autochthonous Italian and Hungarian National Minorities”, and that “the Framework Convention shall apply also to the members of the Roma community, who live in the Republic of Slovenia.”

49. See, for instance, Second Opinion on Georgia, welcoming the government’s open approach towards Meshketians and Ossetians who were deported or displaced by conflict.

applicability of the Framework Convention as a whole (see also Part VII).⁵⁰ It has further consistently held that any temporal restrictions should be regarded flexibly and that distinctions in the treatment of otherwise similar groups based solely on the length of their residency in the territory can be unjust.⁵¹

d. Territoriality

32. A number of states parties have also applied territorial criteria for the identification of rights holders under the Framework Convention, establishing that minority rights may only be enjoyed within specific areas. The Advisory Committee has argued that flexibility should be applied and that persons belonging to a national minority who live outside such areas should not be disproportionately disadvantaged.⁵² In particular the fact that only some rights (that is Articles 10(2), 11(3) and 14(2)) allow for territorial limitations implies again that the applicability of other rights should not in principle be restricted to certain regions. The Advisory Committee has indicated on a number of occasions that this approach is in line with Article 29 of the Vienna Convention on the Law of Treaties which determines that a treaty is binding in respect of the state party's entire territory unless a different intention is ascertained. In addition, territorial limitations may constitute an a priori exclusion of persons belonging to national minorities from the scope of application which is incompatible with the principles contained in the Framework Convention.⁵³

33. The Advisory Committee has further criticised situations in which imposed differentiations between members of a group based on territorial features lead to the weakening of a group and, as a result, to the reduced access to rights for persons belonging to that national minority.⁵⁴ It has in particular argued that demographic changes over time must be taken into account.⁵⁵ Increased mobility in many countries has resulted in a high number of persons belonging to national minorities moving from areas of their traditional settlement to other regions that offer more favourable economic conditions or educational opportunities, such as industrialised areas or urban centres.⁵⁶ While residence in a specific area might thus be conducive to the more effective enjoyment of some minority rights, it must not result in the arbitrary denial of the enjoyment of all minority rights.⁵⁷

e. Substantial numbers

34. Also linked to the territorial criteria is the notion of "in substantial numbers", as found in Articles 10(2) and 14(3) and in Article 11(3) (see also Part VII). As with other criteria contained in these articles, various interpretations by states parties have been made. In some cases, the term 'compact settlement' has been used to define the specific rights holders.⁵⁸ While acknowledging that it may be more problematic to ensure access to some minority rights for persons belonging to national minorities who live dispersed throughout the country, the Advisory Committee has pointed out repeatedly that their recognition as national minorities and their access to minority rights in general must not be impeded through the use of numerical criteria. It has expressed its deep concern, for instance, when Roma⁵⁹ have been excluded altogether from the scope of application of the Framework Convention and thereby entirely denied protection as a national minority, because of the fact that they live territorially dispersed and not settled in substantial numbers anywhere in the country.⁶⁰

f. Support by "kin-states"

35. A number of states parties define the term 'national minorities' as those groups who have a link with a "kin-state", classifying those without such link as 'ethnic minorities' or 'ethno-linguistic groups'. The Advisory Committee considers that the question whether support is or is not available from another state cannot be

50. The length of residency within the state is irrelevant in terms of the applicability of minority rights arising under Article 27 of the International Covenant on Civil and Political Rights (ICCPR). See General Comment of the UN Human Rights Committee No. 23(50), CCPR/C/21/Rev.1/Add5/26 April 1994.

51. See Third Opinion on Austria. See also Fourth Opinion on Denmark, where Roma are not recognised as national minorities with the argument that they "have no historical or long-term and unbroken association with Denmark".

52. For instance, Third Opinion on the Slovak Republic.

53. See, for instance, First Opinion on Denmark and First Opinion on Italy.

54. See Second Opinion on Austria with regard to the differentiation between Burgenland Croats and Croats.

55. See, for instance, Fourth Opinion on the Slovak Republic.

56. See Third Opinions on Finland and Germany.

57. See, for instance, consecutive Opinions on Denmark, Italy and Portugal.

58. See, *inter alia*, First State Reports submitted by Austria, Azerbaijan and Germany.

59. The term "Roma and Travellers" is used at the Council of Europe to encompass the wide diversity of the groups covered by the work of the Council of Europe in this field: on the one hand a) Roma, Sinti/Manush, Calé, Kaale, Romanichals, Boyash/Rudari; b) Balkan Egyptians (Egyptians and Ashkali); c) Eastern groups (Dom, Lom and Abdal); and, on the other hand, groups such as Travellers, Yenish, and the populations designated under the administrative term "*Gens du voyage*", as well as persons who identify themselves as Gypsies.

60. See First Opinion on the Netherlands.

used as a relevant point of differentiation with respect to recognition or access to rights. While not favouring any particular terminology, it has criticised cases when different categories lead to the formation of hierarchies and different “categories” of minorities, as this may result in unjustified distinctions with respect to applicable rights.⁶¹

36. The Advisory Committee has welcomed bilateral agreements to facilitate cross-border relations and co-operation, for instance regarding the supply of textbooks and exchanges of teachers for the benefit of high-quality education in minority language schools. However, it has disapproved of agreements that out-source such fundamental aspects of minority protection to another state.⁶² It follows from the international law principle of state sovereignty that states hold the single jurisdiction over their territory and population, a jurisdiction that can be restricted only within the limits of international law. Overall, the responsibility to protect minority rights, as part of general human rights, lies primarily with the state where the minority resides.⁶³ While the Advisory Committee interprets Article 17 to imply that states parties must not interfere with the enjoyment of benefits from other countries, they must not rely on them instead of striving themselves for the realisation of minority rights.

g. Specific identity markers and ascribed categories

37. In a variety of states parties, the understanding of the term ‘national minority’ is linked to specific characteristics that are often considered as emblematic for identity and for differentiating the minority from the majority, including language, religion, culture, ethnic background, specific traditions or visible features. These markers are often based on common perceptions that are shared within society, by members of the majority and minorities alike. Nevertheless, employing such externally defined markers entails the danger of including or excluding individuals against their will.⁶⁴ The Advisory Committee reiterates its position that a person’s identification must be based on free self-identification, unless there is a valid justification for not doing so (see paragraph 10).

38. Moreover, caution must be applied in the use of externally defined markers, as they are often based on presumptions. The categorisation of the minority as a static and homogeneous group may reinforce stereotypes and does not pay adequate attention to the broad diversity and intersectionality that exists within minorities, as within all groups (see also paragraph 40). In some states parties, legislation makes reference to other externally imposed criteria, such as “ethnic minority threatened by social exclusion” or “citizens in a vulnerable socio-economic situation”;⁶⁵ while in others, an affiliation with a particular national minority may be presumed based on names.⁶⁶ The Advisory Committee considers such practices of association of persons with a specific group based, without consent, on presumptions such as names, language, or visible features, as incompatible with Article 3(1) and the right to free self-identification (see also paragraph 15).⁶⁷

61. See, for instance, Second and Third Opinions on Albania and First Opinion on Poland.

62. See Second Opinion on Albania and First Opinion on Germany.

63. See also OSCE HCNM Bolzano/Bozen Recommendations on National Minorities in Inter-State Relations, June 2008.

64. The Advisory Committee considered, for instance, that the over-reliance on the “racial group” criterion applied in the United Kingdom might, despite its wide application, result in a priori exclusions of groups that have legitimate claims. See Third Opinion on the United Kingdom.

65. See, *inter alia*, Third Opinion on Bulgaria.

66. See, *inter alia*, First Opinion on Italy.

67. See Third Thematic Commentary (footnote 4).

Part IV

Context-specific article-by-article approach developed by the Advisory Committee

1. Fundamental principles

39. The Framework Convention contains a catalogue of rights in different spheres of public life, ranging from individual freedoms, to media, language and education rights and the right to effective participation. Given their different nature, the scope of application of the various rights must be adjusted accordingly: the right to manifest one's religion, for instance, as also stipulated in Article 9 of the European Convention on Human Rights, must be extended to all persons belonging to national minorities, while the right to display a minority language on topographical signs may, for legitimate reasons, be made available only under certain preconditions. Depending on the nature of the minority rights contained therein, the scope of application of the Framework Convention must therefore be established separately for each article, which is why, from its first monitoring cycle, the Advisory Committee has referred to its article-by-article approach.⁶⁸ Overall, the implementation of the Framework Convention must always be based on the fundamental principles contained in its Articles 3-6, which are interlinked and which must inform the interpretation of the instrument as a whole.

40. National minorities within one country typically vary in number and size, and they may live compactly or be more or less dispersed throughout the territory. It is also important to consider the diversity that exists within minorities as in any population group, including on the basis of gender, sexual orientation, age, disability, religion, political beliefs or access to economic resources. Accordingly, the priorities of minority communities and the individual priorities of persons belonging to these communities often diverge. For some persons belonging to minorities, the main priorities are equality and integration; for others, it may be the quest for a protected space to maintain and promote their minority identity. These priorities may further change over time, depending on the context, the political climate and socio-economic conditions. It is the Advisory Committee's view that the diversity within and among national minorities must be acknowledged and respected in the implementation of all minority rights, regardless of their specific nature.

41. With respect to the obligation of states parties to promote the conditions for the preservation and development of national minority cultures, this also implies that the term 'minority culture' must not be interpreted in a static, unitary or limiting sense. It is each person belonging to a national minority who, in line with the right to free self-identification, decides how he or she will practise the minority culture or identity. Accordingly, not only is the right to preserve traditions protected but also the right to develop a minority culture in line with broader societal evolution, and to form contemporary expressions of minority identity.

42. Equality considerations are essential for the promotion of all minority rights, not only with respect to relations between national minorities and the majority but also, importantly, regarding relations between the various minorities. In the view of the Advisory Committee, the general equality principle is called into question when altogether different principles or disproportionately different protection mechanisms are applied to the various minorities, or when separate government bodies are responsible for the protection and promotion of their respective rights.⁶⁹ While efforts to promote equal opportunities for all persons belonging to national minorities must be tailored to the specific needs and situations of the various groups in order to be effective, the basic approaches and rights standards that are applied must be equal.

68. See all First Opinions of the Advisory Committee.

69. In a variety of states, the protection of the rights of Roma is considered to be a socio-economic and sometimes even a security issue. As a result, protection and promotion measures are frequently co-ordinated separately from those related to other minority groups which may result in the application of different standards. While the Advisory Committee values the specific attention that is paid to the particular socio-economic disadvantages that many Roma face, it considers that these measures must be additional to other minority rights' protection measures, such as those related to the preservation of Roma cultures, languages and traditions.

43. Full equality cannot be effectively achieved when diversity as such is perceived negatively or when only certain forms of diversity are accepted and tolerated. The Advisory Committee has repeatedly criticised situations where hierarchies are created among the various minorities and existing inequalities are reinforced through uneven attention and support.⁷⁰ In addition, an environment in which diversity is viewed as “alien” or “imported” and rather disconnected from mainstream society does not offer the appropriate conditions for the expression, preservation and development of minority cultures. Article 6 therefore calls for deliberate efforts to foster a climate of mutual respect, understanding and co-operation where persons belonging to national minorities are recognised as integral elements of society, who effectively enjoy equal access to rights and resources, while being provided with opportunities for social interaction and inclusion across difference. Given its purpose, as established by the Preamble, of promoting broader societal peace and stability through the enhancement of minority rights, the Framework Convention has an immediate relevance for the whole society.

44. The Advisory Committee’s established position is that integration is a process of give-and-take and affects society as a whole. Efforts cannot therefore be expected only from persons belonging to minority communities, but they must also be made by members of the majority population.⁷¹ This is particularly relevant in distinguishing successful integration from forced assimilation, which is explicitly prohibited in Article 5(2) of the Framework Convention. While assimilation forces persons belonging to a minority to relinquish their specific characteristics to blend into a society that is dominated by the majority, integration requires both the majority and the minorities to mutually adapt and change through an ongoing negotiation and accommodation process.

45. In the view of the Advisory Committee, the above fundamental principles of the Framework Convention contained in Articles 3-6 must be considered in the interpretation of all further articles in order to ensure that the rights of persons belonging to national minorities are effectively enjoyed.

2. Practice

46. In line with its article-by-article approach, the Advisory Committee has repeatedly considered the application of the Framework Convention to persons who do not belong to national minorities but live in a similar situation. Persons belonging to the majority population who live in areas that are mainly inhabited by minority communities, for instance, have been considered in the context of the education rights under the Framework Convention.

47. The Advisory Committee has emphasised in this context that the same protective measures that are applied in minority-language schools, such as the requirement of fewer pupils per class, should also apply to state schools that teach in the official language in otherwise minority-language dominated areas.⁷² Furthermore, the Advisory Committee has considered that other groups which enjoy special protection but are not recognised as national minorities may, in addition, benefit from the protection of the Framework Convention.⁷³ In some contexts, it has also noted that extending the protection of the Framework Convention on a case-by-case basis to persons belonging to the constituent peoples who live in a minority situation could provide an additional tool for promoting their access to rights and addressing the issues they are faced with, without implying a weakening of their status. Indeed, the applicability of minority rights to them is considered by the Advisory Committee as fully in line with the objective and aim of the Framework Convention.⁷⁴

48. In addition, the Advisory Committee has emphasised that the protection offered by the Framework Convention also extends to persons belonging to indigenous peoples without this having an effect on their status as members of indigenous peoples. Specific rights may be applicable to them, whether or not they are formally recognised as a national minority, and without implying recognition as a national minority.⁷⁵ This means that individuals are free to avail themselves, beyond the rights they hold as members of indigenous groups,

70. See, for instance, Third Opinion on Romania and Second Opinion on Georgia.

71. See, for instance, Third Opinion on Estonia. See also Third Thematic Commentary (footnote 4).

72. See Third Opinions on Estonia and Lithuania.

73. See, for instance, Fourth Opinion on Spain with respect to speakers of Catalan, Basque and Galician, namely languages with co-official or protected status. The Advisory Committee found here that language rights can particularly benefit speakers of languages who live outside the designated areas.

74. See Third Opinion on Bosnia and Herzegovina.

75. The Norwegian Sami Parliament stated, for instance, that the Sami did not wish to be considered a national minority as they wished to maintain their status as an indigenous people. The Advisory Committee, however, considered that both protection schemes are not exclusive and may provide parallel benefits to individuals of the group. See First and consecutive Opinions on Norway. See also consecutive Opinions on Denmark, Finland, the Russian Federation and Sweden.

of the protection under the Framework Convention, or to refuse to do so. This has been particularly relevant with respect to the rights contained in Article 5 of the Framework Convention where the Advisory Committee has held that the protection from assimilation also implies that affected individuals must be supported in their efforts to adjust their traditional practices to contemporary challenges, or to engage in economic activities in order to be able to preserve their culture.⁷⁶

49. As regards disputed territories or regions of states parties to the Framework Convention that are *de facto* outside the control of the authorities, the Advisory Committee observes that the applicability of the rights contained in the Framework Convention is not altered as a result of the change in *de facto* authority. On the contrary, the rights of persons belonging to national minorities remain in force and often gain a particular urgency in times of conflict.⁷⁷ International access and the continuation of regular monitoring activities, however, are deeply affected if not entirely stalled by such territorial disputes. The Advisory Committee has repeatedly called on all parties to take a constructive approach in line with the general principles of international law and of the Framework Convention, with a view to safeguarding the rights of persons belonging to national minorities as an integral part of universally applicable human rights throughout the territories of all states parties to the Framework Convention.⁷⁸

76. See, for instance, Third Opinion on the Russian Federation.

77. See also the Advisory Committee ad hoc report on the situation of national minorities in Ukraine, April 2014.

78. See the Advisory Committee Open Statement on the situation of national minorities in Crimea, May 2014, at <http://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168069faed>.

Part V

Framework Convention rights applying to all persons

50. A number of articles of the Framework Convention apply to all persons on the territory of states parties, including those not belonging to national minorities, either explicitly or by implication through their specific link with provisions that are applicable to all.

1. Protection against discrimination – Article 6

51. Article 6 of the Framework Convention explicitly applies to “all persons” living in the territory of states parties. Its protection extends into two areas: firstly, effective measures must be taken to promote mutual respect, understanding and co-operation among all persons irrespective of their ethnic, cultural, linguistic or religious identities. Secondly, all persons must be protected against discrimination based on those aspects of their identities.

52. The Advisory Committee has consistently underlined this broad application of Article 6 as the lack of respect for or ill-treatment of migrants, asylum seekers, refugees and/or other individuals who are, for whatever reason, considered to be different from the majority population, may prompt a general environment of fear. This may entice persons belonging to minorities to strive for conformity rather than for the active enjoyment of their rights. Based on Article 6, the Advisory Committee has also evaluated the implementation of the Framework Convention in states parties where, according to the authorities, no persons belonging to national minorities reside.⁷⁹ This has allowed the Advisory Committee to engage in comprehensive discussions with state authorities on “measures taken in pursuance of their general integration policies”.⁸⁰

a. Promotion of mutual respect and intercultural dialogue

53. Some states parties have argued against the relevance of societal cohesion and broader concepts of tolerance and respect for diversity in the protection of national minorities. The Advisory Committee has consistently held, however, that an exclusive view that separates the issue of traditional minority protection from broader questions surrounding the integration of society does not do justice to the aim and purpose of the Framework Convention but rather hinders the enjoyment of the rights of persons belonging to national minorities.⁸¹ In fact, the promotion of tolerance and openness towards diversity in society is essential not only for the development and implementation of successful integration strategies, but it is also a central precondition for persons belonging to national minorities to self-identify as such without hesitation and proactively claim the rights contained in the Framework Convention.

54. Openness and tolerance in society can only be genuine if they are not limited to certain predefined groups but embrace everyone. The Advisory Committee therefore considers questions surrounding the formulation and implementation of effective integration strategies as one of its important concerns. Integration strategies are being developed in many European states today, chiefly in order to address the situation of often large communities of immigrants, some second and third generation, who share linguistic and cultural practices and backgrounds, and who often live in the country as citizens, whether naturalised or by birth.⁸² It is essential that all segments of society, majorities and minorities alike, are addressed in order for integration strategies to effectively facilitate the formation of societal structures where diversity and respect for difference are acknowledged and encouraged as normal, through recognition, mutual accommodation and active engagement on all sides.⁸³

79. See, for instance, Fourth Opinion on Liechtenstein or Third Opinion on Malta.

80. See Article 5(2) of the Framework Convention.

81. Broader concerns related to the integration of society and effective mechanisms regarding protection from discrimination have also consistently been raised in Council of Europe Committee of Ministers’ resolutions on the implementation of the Framework Convention, such as, *inter alia*, in the Fourth Resolution on Denmark, the Third Resolution on Estonia, the Fourth Resolution on Germany, and the Third Resolution on Malta.

82. See consecutive Opinions on Liechtenstein, for example.

83. The OSCE HCNM has taken a similar approach. The Ljubljana Guidelines on Integration of Diverse Societies, adopted in 2012, define integration as a process that requires all members of society to accept and create a shared sense of belonging to a given state and common public institutions. See the Ljubljana Guidelines on Integration of Diverse Societies, OSCE HCNM, November 2012.

b. Protection from hostility and hate crime

55. Article 6(2) contains the obligation of states parties to protect all persons against violence and discrimination on ethnic grounds, in other words not only persons belonging to national minorities. Minorities cannot thrive in a society in which diversity is not tolerated or even serves as a pretext for hate crimes and discrimination. This is why it is vital that all states parties strive to apply and achieve the aims of Article 6 of the Framework Convention fully, even those states parties that have explicitly declared that they have only ratified the Framework Convention out of solidarity.

56. The Advisory Committee considers that ethnically based violence must be recognised as an especially nefarious form of violence that concerns and threatens society as a whole, and must thus be resolutely opposed and prevented. In order to address hate crime in a comprehensive manner, criminal codes must contain appropriate provisions that criminalise hate speech, threats and violence based on ethnic grounds as well as public incitement to violence and hatred. In addition, racial motivation must be considered an aggravating circumstance of any offence and law enforcement agents should be appropriately trained to ensure that racially or ethnically motivated attacks and discrimination are identified and recorded, as well as duly investigated and punished through targeted, specialised and prompt action.

57. Fear of discrimination or even violent attack may discourage persons belonging to national minorities from enjoying their right to free self-identification. The downplaying of ethnically based violence as “hooliganism” or the usual wrongdoings of youth can lead to perceptions of tacit approval of such actions by law enforcement agents and thereby dramatically weaken efforts to promote respect and dialogue among different groups. In order to protect individuals from such attacks, it is therefore of equal importance that any such incidents are promptly and unequivocally condemned by senior public figures and community leaders at all levels, and that appropriate messages are communicated to the public through the media and government information channels.

58. The Advisory Committee refers in this context to other bodies with the specific mandate and expertise to address issues related to racial discrimination and protection from hate crime.⁸⁴ It notes in particular the role of the European Commission against Racism and Intolerance (ECRI) in assessing the applicability and effectiveness of anti-discrimination tools and mechanisms, whose monitoring work and reports are central for a systematic interpretation of the Framework Convention in an evolving society.⁸⁵ It is the goal of the Framework Convention to affirm differences in cohesive and integrated societies. Striving for *de facto* equality in the context of the Framework Convention requires adequate and effective strategies to support different identities, including the effective protection from discrimination that is based on any of these differences. In addition, the right to be effectively protected from discriminatory threats or violence contained in Article 6(2) plays an important role in complementing the enjoyment of a number of rights contained in the Framework Convention, in particular those related to political freedoms, such as the freedom of expression, by obliging states parties effectively to sanction any undue interferences or attempts at its limitation.

2. Education and the media as tools for integration – Articles 6(1) and 12

59. Article 6(1) explicitly refers to education, culture and the media as particular fields of importance to the objective of promoting tolerance and intercultural dialogue. In addition, the special significance of education for the integration of society and for the promotion of respect for diversity is reflected in Article 12 of the Framework Convention. Article 12(1) provides that education and research should foster knowledge of the history, cultures, languages and religions of the minorities and of the majority, thereby clearly addressing society as a whole.⁸⁶ In addition, Article 12(2) calls for the development of intercultural exchanges and competencies through the facilitation of “contacts among students and teachers of different communities”. Adequate information on the composition of society, including national and other minorities, must form part of the public curriculum and of textbooks and education materials used in all schools throughout the territories of states parties, not only to promote intercultural understanding and respect among all students, but also to raise the prestige and self-awareness of persons belonging to numerically smaller or disadvantaged groups.

⁸⁴. See in particular the UN Committee on the Elimination of Racial Discrimination and the OSCE/ODIHR hate crime reporting initiative.

⁸⁵. See in particular in this context ECRI General Policy Recommendation (GPR) No. 15 on Combating Hate Speech, adopted on 8 December 2015. This GPR builds on the findings and recommendations published by ECRI during its fifth monitoring cycle, providing additional guidance to member states.

⁸⁶. A similar provision is also contained in Article 7(3) of the ECRML, calling on states to promote, by appropriate measures, mutual understanding between all the linguistic groups of the country.

60. Education materials featuring content on minorities must further be prepared in close consultation with representatives of the respective groups and must not be limited to stereotyped images. Moreover, adequate professional development opportunities and training must therefore be available to all teachers to prepare them for the handling of linguistically and culturally diverse environments.⁸⁷ With respect to the teaching of history throughout states parties, critical thinking and the accommodation of multiple perspectives must be promoted in all efforts.

61. The work of the Advisory Committee is based on the recognition and appreciation of the benefits of intercultural dialogue and multilingualism to promote tolerance and respect for diversity in societies. Language and cultural policies must therefore ensure that all languages and cultures that exist in society are visibly and audibly present in the public domain, so that everybody is aware of the diverse character of society and recognises himself or herself as an integral part of it.

62. The Advisory Committee has therefore consistently encouraged language policies that promote the use of different languages in public places and in the media in order to create respect for lesser-used languages and enhance their visibility and prestige. Overall, inclusive language policies should cater for the needs of everybody based on their different characteristics and needs, including persons belonging to national minorities living outside their traditional areas of settlement, immigrants and “non-citizens”.⁸⁸ In view of the overarching aim of establishing integrated societies that are respectful of their diversities, the Advisory Committee has also encouraged measures that promote the knowledge and the use of minority languages by persons belonging to majority communities.

63. Article 6(1) of the Framework Convention also underlines the role of the media as a tool for the promotion of intercultural understanding and a sense of solidarity in society. Given the immediate amplification of messages and values, the Advisory Committee has consistently called on states parties to ensure that public broadcasters take their responsibilities seriously and promote respect for diversity and ethical journalism in all their programmes. Efforts in states parties to promote ethical standards among journalists and media professionals, and to promote media literacy in society more generally, must include minority representatives. Furthermore, it is important for the formation of an open and pluralist media environment that issues of concern and interest to minority communities generally are given weight in the broader public media debate and that persons belonging to such minorities are portrayed as integral members of society, be it in the role of journalists, presenters and/or interviewees.

87. See, *inter alia*, Third Opinion on Estonia, Second Opinion on Georgia, Third Opinion on Kosovo and Fourth Opinion on the Slovak Republic.

88. See Third Thematic Commentary (footnote 4), paragraph 53.

Part VI

Minority rights with a broad scope of application

64. The Framework Convention's Explanatory Report refers to minority rights being exercised "in community with others", pointing to the fact that communities are formed around a variety of shared practices and the common exercise of rights. The practices by which persons seek to identify themselves are dynamic and evolving, built on what people have in common rather than on differences. They include transmitted knowledge or shared memories that may not always be actively demonstrated. As such, they may vary in intensity and scope, depending on the circumstances. They may evolve over time and they may also be performed from a distance. Given its task to monitor the effective implementation of rights contained in the Framework Convention, the Advisory Committee has primarily been concerned with access to rights and only secondarily with questions surrounding status. Indeed, it considers formal recognition of national minorities an act of a declaratory rather than a constitutive nature (see paragraph 28). In order to ensure that minority rights are not arbitrarily withheld from persons belonging to national minorities who should be protected under the Framework Convention, the Advisory Committee has consistently employed a broad scope of application with respect to the rights contained in the Framework Convention and has commended states parties which do the same. In particular it considers that the following articles of the Framework Convention, given their nature, have a broad scope of application, also including under their protection therefore persons belonging to national minorities who are not recognised as such by the respective state party.

1. Equality – Article 4

65. All persons belonging to national minorities, irrespective of their status or recognition, must be guaranteed the right to equality before the law and equal protection of the law. This general principle of human rights contained in Article 4(1) has not been contested by states parties. The Advisory Committee has repeatedly emphasised the gender dimension in this context, drawing the attention of states parties to the phenomenon of multiple discrimination, as frequently experienced by women belonging to national minorities.⁸⁹ Article 4(2) further calls for special measures to overcome structural disadvantages between the minority and the majority in all spheres. These must be developed and implemented in close consultation with those affected and due account must be taken of the specific conditions of the persons concerned in their design.

66. The Advisory Committee has consistently encouraged states parties to base their equality promotion policy instruments or special measures on comprehensive data related to the situation and access to rights of persons belonging to national minorities, also taking into account the various manifestations of multiple discrimination that may be experienced, including those arising from factors that are unrelated to the national minority background such as age, gender, sexual orientation and lifestyle markers. Moreover, particular attention must be paid to members of the most disadvantaged segments of society, that is those who have been disempowered economically, socially or geographically, due to their size or because of past experiences of conflict. In this context of special and targeted measures for the promotion of effective equality, the Advisory Committee has consistently emphasised the importance of regularly collecting reliable and disaggregated equality data related to the number and situation of persons belonging to national minorities. It has, however, cautioned states parties against the over-reliance on statistics and encouraged the authorities also to avail themselves of independent research, in particular when carried out by persons belonging to national minorities themselves, in order to assess and comprehensively address the particular shortcomings faced by persons belonging to national minorities (see also paragraph 18).

⁸⁹. See, *inter alia*, Third Opinions on Azerbaijan and Finland.

2. Culture – Article 5

67. Article 5 of the Framework Convention and the obligation of states parties to promote the conditions for the preservation and development of national minority cultures and identities are best served if the scope of application is interpreted widely. The article's aim is to ensure that persons belonging to national minorities do not assimilate but are enabled to maintain and develop their distinct identities and to actively enjoy minority rights. The Advisory Committee has welcomed the availability of assistance schemes not only to recognised national minorities but also to other groups who would otherwise not be able to maintain their distinct features.⁹⁰ All support measures must be tailored to the specific needs and situations of the various groups, to ensure that the cultural differences that are regarded as specific to each group are affirmed and protected. This may often require targeted efforts by the authorities to revitalise essential elements of the minority culture, without which the expression of some aspects of that identity may not be possible.⁹¹ Numerically larger minorities whose cultures are well represented will usually not experience the same reliance on government support as numerically smaller groups or dispersed national minorities which may be struggling to preserve their distinct characteristics and resist assimilation.⁹² While it is often the cultural associations that are the recipients of funds, the Advisory Committee considers that all national minority representatives, including those not formally linked with such associations or those representing different views, must be consulted and provided with effective opportunities to obtain funding for the preservation of their identities and cultures.

3. Association and religion – Articles 7 and 8

68. The rights to freedom of assembly, freedom of association, freedom of expression, thought and conscience, as well as the right to hold and manifest a religion or belief, as stipulated in Articles 7 and 8 of the Framework Convention, are based on corresponding articles of the European Convention on Human Rights. The Explanatory Report underlines explicitly that they apply to every person, whether belonging to a national minority or not, but that they are considered of such specific importance to persons belonging to national minorities that they were deemed to merit special attention.⁹³ The Advisory Committee has therefore interpreted their scope of application in the broadest sense, in line with the case law of the European Court of Human Rights. It has in particular expressed its deep concern when the overall working conditions for non-governmental organisations engaged in the protection of minority rights have been made difficult, as their role in promoting the awareness and understanding of human and minority rights standards in society is crucial and must be supported rather than hindered.⁹⁴ The Advisory Committee has further held that any measures taken by the authorities to restrict the freedom of assembly or the freedom of expression, which necessarily includes the freedom to express criticism of the government or diverging opinions, can have a direct, negative impact on the enjoyment of rights contained in the Framework Convention as they are likely to deter persons belonging to national minorities, like other members of society, from exercising their rights and to create an intimidating environment that is not conducive to the implementation of minority rights and human rights generally. In this context, the Advisory Committee has also underlined that persons belonging to national minorities should not be banned from forming political parties in order to formulate and better pursue their interests and rights,⁹⁵ or from registering religious organisations in order to manifest their beliefs in community with others.⁹⁶

4. Media – Article 9

69. Article 9 and the media-related rights contained in the Framework Convention have a particular significance for the protection and promotion of minority rights. The availability of print, broadcast and electronic media in minority languages has very specific emblematic value for national minorities, in particular for the numerically smaller ones. Through them, persons belonging to national minorities not only gain access to information, but minority-language media also raise the visibility and prestige of the minority language as an active tool of communication. In particular, these media can play a significant role for persons belonging to national

90. See Third Opinions on the Czech Republic and Finland.

91. See Third Opinion on Finland, welcoming the specific efforts of the authorities to revitalise the Sami culture through "language nests" and other similar activities.

92. See, however, Committee on the Elimination of Racial Discrimination (CERD) General Recommendation No. 32 underlining the distinction between permanent rights (such as those contained in Article 5 of the Framework Convention) and the additional and temporary benefits of special measures as provided for in Article 4(2).

93. See paragraphs 51 and 54 of the Explanatory Report.

94. See Third Opinions on Azerbaijan and the Russian Federation.

95. See Third Opinion on Bulgaria, Second Opinion on Georgia and Third Opinion on the Russian Federation.

96. See Third Opinions on Azerbaijan and the Russian Federation.

minorities who are dispersed for, among other reasons, increased mobility, as they allow for communication and contact over distances. This, in turn, can encourage persons belonging to national minorities to enjoy their rights more actively. The active participation of members of national minority communities in a pluralist media environment may further require targeted training and awareness-raising activities, including in the use of electronic and social media.⁹⁷ In this respect, the Advisory Committee has stressed that the possibility to participate actively in the media and to receive and impart information of interest to persons belonging to national minorities, presupposes access to relevant infrastructure such as high-speed Internet throughout the country, including in remote areas which are often inhabited by national minority communities.

70. The marginalisation of minority identities in the local media, including through the exclusive use of minority languages only for certain programmes, often about folklore, traditional costumes, food and habits, may contribute to the stereotyping of minorities as separate entities and does not promote their respect and prestige in society.⁹⁸ In addition, the division of media audiences according to linguistic backgrounds may enhance the formation of separated and mutually exclusive public spheres. Support for media in national minority languages must therefore be accompanied by targeted steps towards the training of journalists and other media professionals to promote their awareness of and sensitivity towards the specific needs and concerns of diverse groups in society. Moreover, it is important to ensure that minority representatives effectively participate in relevant decision-making processes as well as in media supervisory bodies. The more minority representatives take part in shaping their image in the public media, the more the negative effects of “misrecognition” and stereotyping can be reduced.⁹⁹

5. Language – Articles 10(1), 10(3), 11(1) and 11(2)

71. The right to use one’s language in public and in private, contained in Article 10(1) of the Framework Convention, the right to use one’s personal name in the minority language and to have it officially recognised (Article 11(1)), and the right to put up signs of a private nature in minority languages (Article 11(2)) carry a particular weight for the personal identity, dignity and self-awareness of persons belonging to national minorities.¹⁰⁰ The Advisory Committee considers that, as such, they must be applicable to everyone and any restrictions must be carefully reviewed to ensure that they do not infringe upon the personal dignity and privacy of the individual.¹⁰¹ States may adopt laws aimed at strengthening and protecting the state language. This legitimate aim, however, must be pursued in a manner that is in line with the rights contained in Articles 10 and 11 and other relevant provisions of the Framework Convention and its general spirit of encouraging tolerance and mutual understanding within society. Laws and other measures that are aimed at promoting the state or official languages must not, in particular, infringe on the private sphere of a person but must be implemented in a way that respects the identities and the linguistic needs present in society.

72. Article 10(3), similarly to Articles 7 and 8, reflects the individual human right of being promptly informed in a known language, if necessary through an interpreter, of the reasons for an arrest and of the nature and cause of any accusation. According to the Explanatory Report, the provision, which is based on guarantees contained in Articles 5 and 6 of the European Convention on Human Rights, does not go beyond those safeguards. Thus, it does not imply a right to legal process and trial in one’s minority language and applies to all persons belonging to national minorities.

6. Education – Articles 12(3), 14(1) and 14(3)

73. According to Article 12(3), equal opportunities for access to education at all levels for persons belonging to national minorities must be promoted.¹⁰² Given the particular link to Article 4 and the general principle of equality, the Advisory Committee has consistently encouraged a broad and inclusive approach, referring also to the United Nations Convention on the Rights of the Child. Accordingly, the Advisory Committee has strongly condemned all instances of segregated education and has urged states parties to take all necessary

97. See Fourth Opinion on Cyprus.

98. See also Second Opinion on Georgia.

99. See also Third Opinion on Croatia.

100. For a comprehensive analysis and discussion of the Advisory Committee’s findings on access to language rights of persons belonging to national minorities, reference is made to its Third Thematic Commentary (footnote 4).

101. See also Communication No. 1621/2007 *Leonid Raihman v. Latvia*, made public by decision of the Human Rights Committee UN Doc. CCPR/C/100/D/1621/2007 (2010), finding a violation of Article 17 of the ICCPR with respect to the unilateral change of the author’s name by the state party.

102. For a comprehensive analysis and discussion of the Advisory Committee’s findings on access to education rights of persons belonging to national minorities, reference is made to its First Thematic Commentary (footnote 2).

measures to ensure equal access to integrated education for all children.¹⁰³ In addition, Article 14(1) makes provision for the right to learn one's minority language, while Article 14(3) stresses the right to learn or be taught in the official language or languages.

74. The Advisory Committee has repeatedly expressed its view that both opportunities to learn a minority language and adequate opportunities to learn the official languages are applicable to all persons belonging to national minorities and must be available in parallel.¹⁰⁴ It has generally pointed to the substantial research that suggests noticeable benefits of first language learning for the learning of other languages, including official languages, and has expressed its general preference for bilingual and multilingual approaches in education that are equipped to accommodate more than one language in integrated classrooms. While consistently acknowledging the importance of language for the integration of a diverse society, the Advisory Committee has reiterated its standpoint that pressure and conditionality are generally inappropriate tools for the promotion of integration, and that the relevant strategies meant to promote skills in the official language must not rely disproportionately on efforts to be made by persons belonging to national minorities.¹⁰⁵

7. Participation – Article 15

75. Undue exclusions from the right to effective participation in public life can result in significant obstacles to the enjoyment of a variety of minority rights.¹⁰⁶ Public life in this context does not only extend to public affairs and decision making but is equally important with respect to economic and social life.¹⁰⁷ The Advisory Committee has therefore consistently underlined the importance of an inclusive approach to the application of Article 15, as effective participation is often a precondition to gaining access to the rights contained in the Framework Convention. Consultation mechanisms and advisory bodies on issues pertaining to minority rights protection that are intended to enhance, for instance, discussion and dialogue among different groups in society, should be open to all, including groups that are not recognised as national minorities but might have expressed an interest in the protection of the Framework Convention.

76. The availability of effective platforms for the discussion of relevant concerns with such groups may not only promote trust among minority communities, but it may also serve to facilitate open and flexible solutions to issues that prevent access to rights, and may thereby promote societal cohesion and stability. In its discussions of Article 15 of the Framework Convention, the Advisory Committee has also further applied a broad scope of application with respect to the comprehensiveness of the matters on which representatives of national minorities should be consulted. These should not be limited to questions related to the preservation of national minority cultures or the allocation of funding, but should include all issues of broader concern to society, including national minority communities.¹⁰⁸

77. Due to the centrality of effective participation of national minorities in public life, particular attention must be paid to ensure that the views and concerns within the various minority communities are adequately taken into account. National minority communities, as is the case in any community, are diverse and their members often hold divergent views. This means that the diversity within the minorities, including women and young people, as well as their various needs and concerns, must be effectively represented in all relevant decision making.

78. Controversies may arise between factions among or within minorities and it is the responsibility of the state authorities to seek flexible solutions that can accommodate them, ensuring that they are all enabled to participate effectively. It is therefore essential for governments to have standards and procedures available to put in place suitable arrangements for the promotion of the effective participation of persons belonging to minorities, in consultation with those concerned. In addition, these arrangements must be sufficiently flexible to allow for renegotiations when conditions or priorities change. In a number of states parties, the granting of different forms of self-governance or autonomy (territorial and non-territorial) is used at regional

103. See, *inter alia*, Third Opinion on Bulgaria, Third and Fourth Opinions on the Czech Republic and Third and Fourth Opinions on the Slovak Republic.

104. Different modules may be applied depending on the size of the group wishing to learn the minority language.

105. See, for instance, Second Opinion on Latvia and Fourth Opinion on Liechtenstein.

106. For a comprehensive analysis and discussion of the Advisory Committee's findings on the effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs, as contained in Article 15, reference is made to its Second Thematic Commentary (footnote 3).

107. The term 'economic and social life' covers a wide range of issues, from access to adequate housing, health care and social protection (social insurance and social benefits), to social welfare services and access to the public and private labour market, as well as access to business and other self-employment opportunities, which are closely linked to property rights and privatisation processes. See Second Thematic Commentary (footnote 3), paragraphs 23ff.

108. See Third Opinion on Estonia and on "the former Yugoslav Republic of Macedonia".

level, to varying degrees, in order to protect further and more thoroughly and to promote the rights of persons belonging to national minorities. These instruments are fully in line with the international law principle of territorial integrity and can be a useful tool to promote the enjoyment of minority rights, particularly with respect to the preservation and development of minority identities and cultures.¹⁰⁹

109. See also OSCE HCNM Lund Recommendations on the Effective Participation of National Minorities in Public Life & Explanatory Note, September 1999.

Part VII

Minority rights with a specific scope of application

79. Given the particular financial and administrative commitment required in order to give effect to some language rights contained in the Framework Convention, states parties may establish special conditions for their enjoyment.¹¹⁰ The right to use a minority language in relations with local administrative authorities (Article 10(2)), the right to have topographical indications and signposts also displayed in the minority language (Article 11(3)), and the right to learn minority languages or receive instruction in minority languages (Article 14(2)) therefore have a specific scope of application, in that their availability may be limited to certain areas where persons belonging to national minorities reside traditionally (see also paragraph 31) and/or in substantial numbers (see also paragraph 34). In accordance with the express wording of the Framework Convention, the right to use a minority language with local authorities must be guaranteed either in areas where national minorities are settled in substantial numbers or in areas that are traditionally inhabited by national minorities; one of the two alternatives suffices. However, an accumulation of these two criteria, namely traditional settlement and substantial numbers, may be required for the implementation of the right to display topographical signposts in minority languages. Overall, the Advisory Committee has repeatedly encouraged states parties also to promote the enjoyment of the rights contained in Articles 10(2), 11(3) and 14(2) in situations where the conditions are not formally met but where implementation would serve to promote an open society, where multilingualism is encouraged as a reflection of diversity.¹¹¹

80. Given the particular significance of language for the expression and preservation of minority identity, as well as for promoting access to rights and social interaction,¹¹² the Advisory Committee has consistently recommended a flexible and context-specific approach with respect to these conditions and in particular with respect to numerical thresholds. It has purposefully refrained from proposing an acceptable threshold for the applicability of minority rights because it considers that the specific context, history and conditions in the state party must be considered on a case-by-case basis and in consultation with the concerned minority representatives.

81. It is important to underline that any threshold must be applied in a flexible manner so that situations are avoided where a negligible decrease in the minority population or the decision of some persons belonging to national minorities no longer to avail themselves of a specific right, alter the accessibility of the right because a predetermined threshold is no longer met. States parties are explicitly obliged to refrain from any measures, including territorial reforms, which alter the proportions of the population in areas inhabited by persons belonging to national minorities and aim to restrict access to minority rights.¹¹³ It is therefore essential that the specific impact on national minorities and the use of minority languages is taken into account in close consultation with national minority representatives when reviewing administrative borders, as the creation of larger self-government units may indeed result in certain thresholds no longer being met.

82. In the view of the Advisory Committee, increased population mobility in all states requires a careful and flexible approach with respect to numerical or territorial delimitations to the enjoyment of minority rights. This is particularly the case with respect to persons belonging to numerically smaller minorities for whom the use of their minority language in official communications may have a distinct emblematic value. Overall, the Advisory Committee has consistently held that numerical thresholds should be considered indicative and should be flexibly used,¹¹⁴ as regular consultations with the national minority representatives concerned are more apt to promote the enjoyment of minority rights than fixed thresholds. Attention must further be paid to ensure that multiple affiliations are not used as a pretext to lower the numerical size of national minorities. Any self-identification as a person belonging to a national minority must be recorded and processed as such, also when part of a multiple affiliation (see also paragraph 16).

110. See also Explanatory Report, paragraph 64.

111. See, *inter alia*, Third Opinion on Finland, Second Opinion on Latvia and Third Opinion on Lithuania.

112. See also Third Thematic Commentary (footnote 4).

113. See Article 16 of the Framework Convention.

114. Flexibility in this context may mean, for instance, that it is decided on a case-by-case basis whether the number of learners is sufficient to open a class in the specific context and what the modalities of teaching may entail. See Third Opinion on Finland.

83. The right to learn the minority language or receive instruction in it (Article 14(2)) may also be made available only in certain areas where persons belonging to national minorities reside traditionally or in substantial numbers. In addition, this right also presupposes demand for such education. It is essential therefore to ensure that parents are adequately made aware of the possibility contained in Article 14(2) to have instruction in the minority language, as well as of the benefits attached to first language education for the learning of other languages. State obligations to ensure opportunities for minority-language education contained in Article 14(2) are further limited to “as far as possible”, which again indicates that the resources of the state party must be taken into account.¹¹⁵ Yet, the Advisory Committee has encouraged states parties also to extend the ability to access education in and of minority languages to persons belonging to national minorities who live in capitals or other urban centres, including through making contemporary and online learning tools available as such provision does not always have to be cost-intensive.¹¹⁶

115. See Explanatory Report, paragraph 75.

116. See Second and Third Opinions on Austria and Second and Third Opinions on Finland.

Part VIII

Conclusions

84. The common understanding of the protection of national minorities and what it entails has changed over the two decades since the adoption of the Framework Convention in 1995. At that time the concept of minority rights was mainly associated with the preservation of minority identities and with their protection from assimilation during partially violent state-formation and nation-building processes. Since then, the increased global and regional mobility of populations has transformed the demographic profile of European societies, and attention has shifted to the challenge of forming integrated and inclusive societies where diversity is acknowledged and welcomed as their integral feature. The present-day European context is further marked by migratory movements of an unprecedented scale which, coupled with the effects of recurrent economic crises and with growing security concerns, are destabilising societies and altering the manner in which minority rights are perceived in society and by policy makers.¹¹⁷

85. The Framework Convention was deliberately designed as a living instrument that is neither constrained by static definitions, nor by the question of who should be considered as a national minority or who should not. Rather, its interpretation must evolve and be adjusted to the prevailing societal context to ensure effective implementation. Adopted as a result of the courage and commitment shown by state leaders in the 1990s to prevent further interethnic violence through the promotion of individual rights and in the spirit of dialogue and solidarity, it is based on the understanding that minority identities are not exclusive. Persons belonging to national minorities must be allowed both to preserve their identities and to participate effectively in public life as an integral part of society. The Framework Convention therefore lays out a catalogue of rights that are of particular importance in order to maintain and encourage diversity while also promoting integration and social interaction.

86. While in some cases increasing diversity is embraced and conceived as a resource for societal development, in other cases there are references to the dangers of diversity and the threat to an asserted cultural homogeneity of the nation state. The latter perspectives disregard the fact that linguistic, ethnic and cultural diversity has been an integral part and an asset of European society over centuries. Moreover, they lay the foundations for two increasing trends that are of deep concern to the Advisory Committee. Firstly, hate speech and racist, xenophobic and extremist discourse, which is on the rise throughout Europe, often directed at anybody who is perceived as “different”, including persons belonging to national minorities. Secondly, a deepening polarisation along ethnic and linguistic, and at times religious lines, which has in some countries been cemented in parallel education systems that deepen divisions over generations.

87. The Framework Convention was designed as a tool for states to manage diversity in a way that carefully balances broader societal concerns, such as cohesion and democratic stability, with the protection of individual rights. As such, it is of particular relevance today when courage and commitment are again needed to meet the contemporary societal challenges, such as intensifying polarisation, the continued exclusion of some minorities, and the resultant threat of radicalisation in many European countries. Europe today must again meet urgent societal challenges that undermine stability, democratic security and peace. Courage and commitment are again needed to overcome the existing divisions through the enhancement of the principles on which the Council of Europe was founded, including the effective protection of minority rights. The Framework Convention is a powerful tool to assist states to address these challenges and create stable and sustainable societies where difference is expressed and affirmed, where equal access to rights and resources is facilitated despite difference, and where social interaction and constant dialogue is promoted and encouraged across difference.

¹¹⁷. See also the Tenth Activity Report of the Advisory Committee, covering the period from 1 June 2014 to 31 May 2016.



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

THEMATIC COMMENTARY No. 3

**THE LANGUAGE RIGHTS OF PERSONS BELONGING TO NATIONAL
MINORITIES UNDER THE FRAMEWORK CONVENTION**

Adopted on 24 May 2012

TABLE OF CONTENTS

PART I	INTRODUCTION	3
PART II	LANGUAGE RIGHTS AND IDENTITIES	6
1.	Language and personal identities	6
1.1.	Inclusive approach	6
1.2.	Freedom of choice, multiple and situational affiliation	6
1.3.	Data collection	7
2.	Promoting the essential elements of minority identity, including language	8
PART III	LANGUAGE RIGHTS AND EQUALITY	10
1.	Equality before the law and equal protection of the law, effective equality in all areas of life	10
2.	Tolerance, intercultural dialogue and non-discrimination	11
2.1.	Reflecting cultural and linguistic diversity	11
2.2.	Inter-relations between majority and minority language speakers	12
PART IV:	LANGUAGE RIGHTS AND MEDIA	14
1.	Public Sector media	14
2.	Private sector media	15
3.	Print media	15
4.	Technological advances in the media and impact on minorities	16
5.	film/music industry and minority languages	16
PART V:	PUBLIC AND PRIVATE USE OF MINORITY LANGUAGES.....	17
1.	Use of minority languages in public, in the administration and in the judicial system	17
1.1.	Official language laws or ‘state language’ laws	17
1.2.	Use of minority languages in relations with administrative authorities in areas inhabited by national minorities traditionally or in substantial numbers.....	18
1.3.	Right to be informed in criminal proceedings.....	19
1.4.	Alphabet of minority languages	19
2.	Manifestations of Minority languages: Personal names, Place names and Topographical indications	19
2.1.	Personal names and patronyms	19
2.2.	Information of a private nature visible to the public	20
2.3.	Public signs.....	20
PART VI:	LANGUAGE RIGHTS AND EDUCATION.....	22
1.	Access to education	22
2.	Adequate opportunities for teaching and learning of and in minority languages	22
2.1.	Open and inclusive approach to minority languages in education	22
2.2.	Means to enable the full enjoyment of educational rights	24
2.3.	Striking a balance between majority and minority languages in education.....	25
2.4.	The promotion of linguistic diversity and intercultural education	26
PART VII	LANGUAGE RIGHTS AND PARTICIPATION.....	27
1.	Language rights and effective participation in cultural, social and economic life.....	27
2.	Language rights and effective participation in public affairs.....	28
PART VIII	CONCLUSIONS	30

PART I INTRODUCTION

1. In view of the central importance of linguistic rights for the effective protection of all rights of persons belonging to national minorities and the importance of language as an expression of individual and collective identity, the Advisory Committee on the Framework Convention for the Protection of National Minorities is devoting its Third Thematic Commentary to the linguistic rights of persons belonging to national minorities.

2. The Framework Convention requires states to promote full and effective equality for persons belonging to national minorities in all areas of economic, social, political and cultural life. This implies the right to equal protection through law and before the law and the right to be protected against all forms of discrimination based on ethnic origin and other grounds, including language. Full and effective equality also implies the need for the authorities to take special measures in order to overcome past or structural inequalities and to ensure that all persons, including those belonging to a national minority, have equal opportunities. In addition, the Framework Convention includes an obligation for States Parties “to promote the conditions necessary for persons belonging to national minorities to maintain and develop their culture and to preserve the essential elements of their identity, namely their religion, language, traditions and cultural heritage”.¹

3. Although the Framework Convention protects the rights of individual persons belonging to national minorities, the enjoyment of certain rights has a collective dimension.² In fact, some rights, including the right to use a minority language in public, can be effectively enjoyed only in community with others. While nearly all minority rights are interlinked, this is especially the case of language rights. Language being a central form of expression and communication, the protection of linguistic rights must be guaranteed in connection with other rights, including, *inter alia* the right to education, access to the media, and participation in cultural, social and economic life and in public affairs.

4. The Commentary focuses first on the key importance of language rights for the preservation of a person’s identity or identities (Part II - Articles 3 and 5 of the Framework Convention). Part III explores language rights with regard to the equally central principles of non-discrimination and the promotion of full and effective equality (Articles 4 and 6 of the Framework Convention). Parts IV to VII of the Commentary then cover relevant clusters of linguistic rights concerning media, public and private use of languages, education and effective participation (Articles 9 – 17 of the Framework Convention).

5. Following a close comparative and analytical reading of the Opinions adopted by the Advisory Committee so far, the Commentary presents its key findings on language rights as developed in its country-specific first, second and third-cycle Opinions.³ It is thus based on the close monitoring of the implementation of the Framework Convention in the States Parties since 1998, and builds on two previous thematic commentaries adopted by the Advisory Committee: the First Thematic Commentary on Education under the Framework Convention of 2 March 2006,⁴ and the Second Thematic Commentary on the Effective Participation of

¹ See Article 5 paragraph 1 of the Framework Convention.

² See also Article 3 paragraph 2 of the Framework Convention: “Persons belonging to national minorities may exercise the rights and enjoy the freedoms flowing from the principles enshrined in the present framework Convention individually as well as in community with others”. This joint exercise of the rights and freedoms is, according to paragraph 37 of the Explanatory Report, H(1995)010, February 1995, distinct from the notion of collective rights.

³ The Commentary makes frequent reference to first, second or third cycle country-specific Opinions where particular findings were made. These references are illustrative only. Efforts have been made to provide a broad view of findings made in the different States Parties. However, as language rights are not an issue everywhere, only 34 out of the 39 States Parties are referred to.

⁴ See ACFC First Commentary on Education under the Framework Convention for the Protection of National Minorities, ACFC/25DOC(2006)002, adopted on 2 March 2006, www.coe.int/minorities.

Persons Belonging to National Minorities in Cultural, Social and Economic Life and in Public Affairs of 27 February 2008.⁵ Valuable input has also been collected from national minority and civil society representatives,⁶ academics and other interlocutors, including in the course of broader consultations held in the final drafting process.

6. The terminology used in the Commentary is in line with the flexible approach adopted by the Advisory Committee in its work so far. ‘Minority language’ within this Commentary thus means any of the different terms used by member states such as ‘language of the national minority’, ‘language used by the national minority’, ‘language of persons belonging to national minorities’, ‘native language’ or ‘mother tongue’.⁷ It does not imply official recognition as a ‘minority language’ by the authorities.

7. Increasing mobility and migration are current social phenomena that have also diversified means of communication. As a result, sociolinguistic approaches to the notion of language, which was long considered intimately linked to static concepts such as territory and belonging to a group, are changing as well. The Framework Convention is based on an individual rights approach. It is thus not focused on language itself, nor on a language community, but on the speakers. Their communicative repertoire, which may encompass a range of linguistic resources (standard and non-standard forms of languages, dialects, etc.) often develops throughout life as a result of interaction and mobility.

8. While states continue to play an essential role in defining the legal regime governing the use of languages, other entities are gaining momentum, such as local, regional or transnational bodies in which the functionality and prestige of languages are influenced by different actors. Unequal power relations between different groups of speakers may lead to social hierarchies that can also be reflected in language practices and political discourse on languages. This influences the way in which speakers of certain languages are perceived by others and, to some extent, perceive themselves. Language policies aiming at valuing linguistic resources at the individual and social level therefore also have to address the question of hierarchy in language and society, and the issue of unequal access to full participation in society.

9. The protection of national minorities and of the rights and freedoms of persons belonging to national minorities, as laid down by the Framework Convention, forms an integral part of the international protection of human rights.⁸ Hence, the right of every person belonging to a national minority to use freely and without interference his or her minority language, in private and in public, orally and in writing, as enshrined in Article 10.1 of the Framework Convention, also forms part of international human rights standards.

10. In addition to the Framework Convention, other international instruments are relevant for the protection of linguistic rights of persons belonging to national minorities and have been taken into account by the Advisory Committee when drafting this Commentary. They range from legally binding standards to recommendations and guidelines. Legally binding standards include those contained in the European Convention for the Protection of Human Rights and Fundamental Freedoms and the related case-law of the European Court of Human Rights, as well as the revised European Social Charter. In addition, the Oslo Recommendations regarding the Linguistic Rights of National Minorities, published by the OSCE High Commissioner on National Minorities, as well as the linguistic dimension of his

⁵ See ACFC Second Commentary on the Effective Participation of Persons belonging to National Minorities in Cultural, Social and Economic Life and in Public Affairs, ACFC/31DOC(2008)001, 5 May 2008, www.coe.int/minorities.

⁶ The term ‘minority representative’ throughout the text does not contain a legal notion but rather refers to advocates or spokespersons who have come forward to share their views.

⁷ The term ‘mother tongue’ does not necessarily imply an ethnic connotation but rather reflects the language that is freely chosen to be spoken at home, be it a minority or official language.

⁸ See Article 1 of the Framework Convention.

other recommendations such as The Hague Recommendations Regarding the Education Rights of National Minorities, have been carefully considered by the Advisory Committee. Various instruments of the United Nations have also contributed to developing norms in the field of linguistic rights, notably the Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities, as well as the Commentary of the Working Group on Minorities to the Declaration, the Declaration on the Rights of Indigenous Peoples, and relevant recommendations from the UN Minority Forum, in particular related to education and participation. On a more general level, the International Convention on the Elimination of all Forms of Racial Discrimination, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and the Convention on the Rights of the Child have also been taken into account. The Advisory Committee has also considered the practice of the European Commission against Racism and Intolerance (ECRI), as well as - where relevant and applicable - the EU *acquis* on language rights.

11. The European Charter for Regional or Minority Languages has special relevance in the field of language. While placing the emphasis on the obligation of the state to protect and promote regional or minority languages as part of cultural heritage, rather than granting linguistic rights to the speakers of these languages, the Charter represents a unique international instrument of great importance in this field and plays a complementary role to the Framework Convention. Significant similarities between the provisions of the Framework Convention and the Charter can be found particularly in the detailed provisions of Part III of the Charter. However, Part III applies only to those minority languages that the State Party has specified at the time of ratification of the Charter. Moreover, States Parties enjoy a margin of discretion in determining which of the Part III obligations, that are often more comprehensive than the language rights contained in the Framework Convention, they will undertake for each language. While the nature and scope of application of the two instruments may thus diverge, the individual rights approach of the Framework Convention and the broader approach to cultural protection and promotion contained in the Charter result in a strengthening of the overall legal framework relevant for the protection of the linguistic rights of persons belonging to national minorities.

12. This Commentary is meant to serve as a comprehensive tool for States Parties to the Framework Convention as well as for persons belonging to national minorities, civil society and academia. While portraying the varying roles of language as a crucial and identifying minority attribute on the one hand, and as an important tool for promoting full and effective equality and integration of multicultural and linguistically diverse societies on the other hand, this Commentary aims at reflecting the main challenges faced by persons belonging to national minorities with regard to their language rights today. As such, it should be understood as a living document whose interpretation will be developed as the monitoring process under the Framework Convention evolves.

PART II LANGUAGE RIGHTS AND IDENTITIES

13. Language is an essential component of individual and collective identity. For many persons belonging to national minorities, language is one of the main factors of their minority identity and identification. However, language, like identity, is not static but evolves throughout a person's life. The full and effective guarantee of the right to use one's (minority) language(s) implies that authorities allow free identification of persons through language, and abstain from constraining personal identities into rigid language categories. The choice of each person belonging to a national minority to choose freely to be treated or not to be treated as such, must be respected in line with Article 3.1 of the Framework Convention. This Chapter deals with the dimension of language rights that is linked to personal/individual identity and identities, and with the rights connected thereto.

1. LANGUAGE AND PERSONAL IDENTITIES

1.1. Inclusive approach

14. States party to the Framework Convention enjoy a margin of discretion in determining its personal scope of application. However, the designation as a national or linguistic minority must not lead to arbitrary or unjustified differentiation in the treatment of such groups.⁹

15. Requests have been made in several States Parties by groups who wish to be recognised as a national minority and to benefit from the protection of the Framework Convention. The Advisory Committee encourages the authorities concerned to pursue an open and inclusive approach and to consider extending the protection of the Framework Convention to groups that are not covered.¹⁰ The personal scope of application should, where appropriate, also extend to non-citizens, particularly where exclusion on grounds of citizenship may lead to unjustified and arbitrary distinctions, such as when such exclusion concerns stateless persons belonging to national minorities who permanently reside on a given territory.¹¹ This is consistent with broader efforts at European level to develop a more nuanced approach to the application of the citizenship criterion in the protection of national minorities.¹²

1.2. Freedom of choice, multiple and situational affiliation

16. Article 3.1 of the Framework Convention stipulates that "every person belonging to a national minority shall have the right freely to choose to be treated or not to be treated as such and no disadvantage shall result from this choice or from the exercise of the rights which are connected to that choice". Respect for the principle of free self-identification is thus of paramount importance in the interpretation and implementation of the Framework Convention.¹³ While language is generally perceived as an essential marker of identity, language competence or lack thereof, as well as the mere use of a language, must not automatically be linked to affiliation with a particular group.¹⁴ Conversely, the enjoyment of

⁹ See, for instance, Second Opinion on Poland; First Opinion on Albania.

¹⁰ First Opinion on Bosnia and Herzegovina; Second Opinion on Croatia.

¹¹ See, for instance, Second Opinion on the Russian Federation; Third Opinion on Croatia.

¹² See also Venice Commission, Report on Non-Citizens and Minority Rights, CDL-AD(2007)001, 18 January 2007, adopted by the Venice Commission at its 69th plenary session on 15 – 16 December 2006.

¹³ See also ACFC First Thematic Commentary on Education.

¹⁴ While persons belonging to national minorities may often affiliate themselves with a particular minority based on linguistic criteria, this Commentary does not discuss the rights of persons belonging to linguistic minorities but rather the linguistic rights of persons belonging to national minorities.

linguistic or cultural rights must not be made dependent on a person's proficiency in his or her minority language, nor on the person's skills in other languages.¹⁵

17. Affiliation with a minority group is a matter of personal choice, which must, however, be based on some objective criteria relevant to the person's identity.¹⁶ No disadvantage shall result from the choice to affiliate with a given group. Due attention must be paid to freedom of choice, especially when the declaration of affiliation with a minority is not anonymous, when it remains unchangeable for a long period, and when the refusal to declare, for instance, one's linguistic affiliation to one of the pre-established language categories leads to exclusion from certain political or civil rights.¹⁷ The association of persons with a specific group based on visible or linguistic characteristics or on presumption without their consent is not compatible with the Framework Convention.¹⁸

18. Moreover, a person might wish to identify herself or himself with several groups. The phenomenon of multiple affiliation is in fact quite common, due to mixed marriages, for instance, or cases of state succession. A person may also identify himself or herself in different ways for different purposes, depending on the relevance of identification for him or for her in a particular situation. The Advisory Committee considers that the principle of self-identification, as contained in Article 3 of the Framework Convention, also guarantees the possibility of multiple affiliation. This implies that, in principle, a person may claim linguistic rights with regard to several minority languages, as long as the relevant conditions, such as demand and/or traditional residence, contained in the respective articles of the Framework Convention are fulfilled.¹⁹

1.3. Data collection

19. The Advisory Committee emphasises the importance of collecting reliable disaggregated data to draw up, implement and evaluate effectively policies that respect and promote the linguistic needs and rights of persons belonging to different groups. The collection, storage and use of such data must fully respect existing standards on personal data protection.²⁰ Importantly, states are encouraged to collect data from a variety of sources, in addition to the population census, such as formal and informal household or school surveys, as well as independent research. When interpreting the collected data, authorities must be aware that past experience and fear of discrimination can prompt persons to hide their linguistic affiliation and identity.²¹ Quantitative data must therefore not be regarded as the sole means of obtaining reliable information for the design of language policies, but must be supplemented with qualitative sociological, ethnographic and other scientific studies, especially when trends reveal a decreasing number of speakers of a particular language or when statistical data differs from estimations made by minority representatives.

20. Language as a marker for ethnic belonging was introduced in the scope of the population censuses in the 19th century. Following the assumption that every person has a dominant language, all persons indicating more than one language were nevertheless usually treated as monolingual for census purposes. However, in order for language policies to respond to current challenges, they must acknowledge individual multilingualism as well as the social and linguistic diversity of contemporary societies. Speakers of minority languages

¹⁵ Second Opinion on Sweden; Second Opinion on Ukraine.

¹⁶ Framework Convention for the Protection of National Minorities and Explanatory Report, H(1995)010, February 1995, paragraph 35.

¹⁷ First Opinion on Italy; Third Opinion on Cyprus.

¹⁸ First Opinion on Germany; First Opinion on the Slovak Republic.

¹⁹ Second Opinion on Armenia.

²⁰ See, for example, the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108) and the Committee of Ministers' Recommendation Rec(97)18 concerning the protection of personal data collected and processed for statistical purposes.

²¹ Second Opinion on Croatia.

may use the official language(s) frequently and often have higher literacy skills in this language. However, this should not prevent them from also identifying themselves as native speakers of the minority language. In order not to reduce minority language speakers to a single language category, including for statistical purposes, questionnaires must allow respondents to indicate more than one language. Optional questions and open lists of alternative answers, with no obligation to affiliate to a set category, are essential to ensure that the results reflect the individual's choice.²²

21. The Advisory Committee encourages authorities to collect data in strict conformity with the principle of self-identification and with the recommendations of the Conference of European Statisticians.²³ The Advisory Committee encourages the authorities to take specific initiatives to include among the census enumerators persons belonging to minorities, and persons speaking relevant minority languages. In addition, questionnaires and other data collection tools should be translated into minority languages, and minority representatives should be consulted in the preparatory phases concerning the methods used during data collection, including questions relating to a person's ethnic or linguistic affiliation. These principles apply to all forms of data collection, such as those related to the provision of public services, social surveys, as well as other relevant research related to national minorities, including in the private sphere.

2. PROMOTING THE ESSENTIAL ELEMENTS OF MINORITY IDENTITY, INCLUDING LANGUAGE

22. The Advisory Committee considers that the authorities should, in close co-operation with national minority representatives, develop balanced and coherent strategies to promote the conditions necessary for persons belonging to national minorities to maintain and develop their culture, and to preserve the essential elements of their identity, including language. The particular link between language and the preservation of culture is underlined by the Advisory Committee in a variety of country-specific Opinions, particularly when concerning numerically small minorities and indigenous peoples whose traditions and cultures are preserved, among others, through the continued use of their languages.²⁴ The rights of persons belonging to national minorities to use their languages should therefore be clearly defined and adequately protected by legislation, and its implementation monitored regularly.²⁵

23. The authorities should continue to support projects for the preservation and development of minority cultures and languages, in consultation with representatives of national minorities, and to allocate support in accordance with the needs of the various groups, in line with fair and transparent allocation procedures.²⁶ In addition, the concerns of persons belonging to national minorities regarding their right to the preservation and development of their specific identity and culture must be listened to and effectively taken into account when funding allocation decisions are made.²⁷ Programmes and projects related to the cultural activities of national minorities should, wherever possible, be managed with the involvement of minority representatives, and justification should be provided whenever the recommendations from minority associations or consultative bodies are not followed.

²² See, for instance, Third Opinion on Finland where the (single) language affiliation indicated in the population registry also determined the language of available daycare.

²³ UN Economic Commission for Europe, Conference of European Statisticians Recommendations for the 2010 Census of Population and Housing. Prepared in co-operation with the Statistical Office of the European Communities (EUROSTAT). UN economic commission for Europe, Geneva (2006): §430-436 on language.

²⁴ See, for instance, Third Opinion on the Russian Federation.

²⁵ Third Opinion on the United Kingdom; Second Opinion on Switzerland.

²⁶ Third Opinion on Armenia; Third Opinion on Cyprus.

²⁷ See also ACFC Second Commentary on Effective Participation.

24. The Advisory Committee notes that preventing assimilation requires not only abstaining from policies clearly aimed at assimilating persons belonging to national minorities into mainstream society.²⁸ It also implies, as stated in Article 5.1 of the Framework Convention, positive action in order to “promote the conditions necessary for persons belonging to national minorities to maintain and develop their culture, and to preserve the essential elements of their identity”, including their language. With regard to numerically smaller minorities in particular, this obligation requires the active promotion and encouragement of the use of minority languages, and the creation of an overall environment that is conducive to the use of these languages, in order to prevent their disappearance from public life. While assimilation may be a voluntary individual process, it is often preceded by a period of cultural, social or political inequality between the majority and minority population which then leads persons belonging to national minorities to consent to assimilate.

25. Integration, as opposed to assimilation, is considered a legitimate aim to which both the majority and minority cultures contribute. It is understood, in this context, as a process of social cohesion that respectfully accommodates diversity while promoting a positive sense of belonging for all members of society. The creation of suitable conditions for persons belonging to minority groups to preserve and develop their cultures and to assert their respective identities is thus considered essential for an integrated society.²⁹ As a two-way process, integration requires recognition and respect on both sides and may often lead to changes within both the majority and the minority cultures. This implies an open attitude and readiness for change on the part of the majority population, in order to welcome the enrichment provided by minority cultures.

²⁸ First Opinion on Norway.

²⁹ First Opinion on Bulgaria; First Opinion on Denmark; Third Opinion on Finland.

PART III LANGUAGE RIGHTS AND EQUALITY

26. According to Article 3.2 of the Framework Convention, the rights contained in the Convention may be exercised individually or in community with others. While minority rights under the Framework Convention are not considered collective rights, some of the rights, including notably language rights, hold a collective dimension. Furthermore, as the term ‘in community with others’ may also include members of other minorities or the majority population, the exercise of these rights has an intercultural dimension which presupposes a general climate of equality and tolerance in society (Articles 4 and 6). This particular social dimension of language rights, which relies on the implementation of the principle of non-discrimination and the promotion of effective equality, is analysed in this Chapter.

1. EQUALITY BEFORE THE LAW AND EQUAL PROTECTION OF THE LAW, EFFECTIVE EQUALITY IN ALL AREAS OF LIFE

27. Many of the principles raised in other sections of the present Commentary relate to the effective implementation of the principles of equality before the law, equal protection of the law, and effective equality in all areas of life, contained in Article 4 of the Framework Convention. The Advisory Committee encourages all States Parties to adopt a clear legislative framework related to the protection of national minorities which should, apart from raising awareness of the authorities’ commitment towards the protection and promotion of the rights of persons belonging to national minorities, entail specific provisions aimed at promoting effective equality. Article 4.2 clarifies that the principle of equality does not presuppose identical treatment of and approaches to all languages and situations. On the contrary, measures to promote equality must be targeted to meet the specific needs of the speakers of various minority languages. Separate provisions may be necessary for the speakers of languages of numerically smaller minorities to ensure the revitalisation of the language in public life, while other, more widely spoken minority languages, may require other methods of promotion.

28. A variety of methods may be applied by states to promote equality and supervise the implementation of equality legislation, including the creation of specific anti-discrimination bodies, ombudspersons, or other specialised institutions. Persons belonging to national minorities must have access to information, where possible in their own language, about their rights, the work of the anti-discrimination institutions and the remedies against any form of discrimination available to them, including indirect forms of discrimination, as well as cases of multiple discrimination.

29. In addition, the Advisory Committee considers that in order to achieve equal protection before the law, discriminatory treatment should also be considered punishable by law and sanctioned in all States Parties. Criminal legislation should include provisions that expressly provide for discriminatory motivations based on language, culture, ethnicity or religion to be taken into account by courts as an aggravating circumstance for all offences.³⁰ Hate speech and incitement to any form of hostility based on ethnic, cultural, linguistic or religious identity must also be included in criminal law provisions to ensure adequate sanctioning for such offences.

30. The Advisory Committee has often observed particular forms of prejudice and discrimination faced by persons belonging to vulnerable groups, such as Roma communities. In order to help combat such discrimination, specific measures to promote full and effective equality for persons belonging to vulnerable groups should be developed, implemented and monitored regularly in close co-operation with representatives of the groups concerned. Since

³⁰ See, among others, First Opinion on Albania.

obstacles to the enjoyment of full and effective equality normally stretch far beyond language, the Advisory Committee invites the authorities to address comprehensively the propagation of stereotypes, discriminatory treatment and factual inequality of persons belonging to vulnerable groups, such as the Roma, in all fields of life in order to attempt to alter social attitudes vis-à-vis such groups. Such efforts may include, for instance, the promotion of the use of Romani where appropriate.

31. Language requirements stipulated by some States Parties to gain access to public employment, or in some cases even citizenship, may constitute a disproportionate obstacle for persons belonging to national minorities to the enjoyment of equal opportunities, and may thus have an indirect discriminatory effect. Efforts must be made to ensure that such requirements are designed and implemented in a non-discriminatory and transparent way and include mechanisms for their periodic review and evaluation, including as regards their impact on equal opportunities for persons belonging to national minorities. In this context, the Advisory Committee considers that easy access to quality language training in the official language(s) for persons belonging to national minorities can serve as a useful instrument for reducing disparities and for promoting more effective equality.³¹

2. TOLERANCE, INTERCULTURAL DIALOGUE AND NON-DISCRIMINATION

32. Article 6 of the Framework Convention is applicable to all persons living on the territory of a State Party. This provision addresses societies as a whole, calling for policies that reflect and promote diversity, eliminate barriers, and encourage contacts and co-operation between persons belonging to different groups, particularly in the fields of education, culture and the media. The obligation to promote tolerance and mutual understanding and to combat any form of discrimination thus underpins all linguistic rights. Consequently and in line with the general spirit of individual bilingualism and plurilingualism found in the Framework Convention,³² the work of the Advisory Committee is based on the recognition and appreciation of the benefits of multilingualism to promote tolerance and respect for diversity in societies.

33. Language policies should ensure that all languages that exist in society are audibly and visibly present in the public domain so that every person is aware of the multilingual character of society and recognises him- or herself as an integral part of society. In order to create respect for lesser-used languages, language policies should encourage the use of different languages in public places, such as local administrative centres, as well as in the media. In addition, it is not only important for speakers of minority languages to learn majority languages but also vice versa. In line with the principles contained in Article 6 of the Framework Convention, inclusive language policies should cater for the needs of everybody, including persons belonging to national minorities living outside their traditional areas of settlement, immigrants and non-citizens.³³

2.1. Reflecting cultural and linguistic diversity

34. The Advisory Committee has repeatedly criticised situations in which minority cultures and languages are not being promoted as an integral part of mainstream society but rather presented as “marginal”. This can lead to the isolation of minority cultures and languages and can result in the assimilation of persons belonging to minorities into the majority culture, which may be perceived as more ‘advanced’. The Advisory Committee therefore recommends including minority cultures as an integral part of general cultural development with due regard to their specific characteristics and positive contribution to

³¹ First Opinion on Latvia.

³² See First Thematic Commentary on Education, part 2.1.2.

³³ See, for instance, Third Opinion on Austria.

society. In particular, the Advisory Committee has called on the authorities to take measures to improve public awareness of the languages and cultures of persons belonging to national minorities through school curricula. This should be done throughout the territory of the State Party rather than only in areas of traditional minority settlement. The Advisory Committee urges authorities to continue awareness-raising efforts developed through the media and in schools in order to promote and highlight the cultural and linguistic diversity of societies.³⁴ This should include training of teachers and public officials, including the police, through the offer of inter- and multicultural as well as human-rights related training.³⁵

2.2. Inter-relations between majority and minority language speakers

35. The Advisory Committee is concerned by increasing tensions and divisions on language-related issues, which can occur even in societies that are generally characterised by peaceful relations between persons belonging to different groups. The Advisory Committee finds it particularly worrying when linguistic divisions are used for political purposes and presented as a root cause for cleavages in society, and when intolerance based on linguistic affiliation is stirred up in political discourse. Such developments can harm good community relations for decades.³⁶

36. Discriminatory policies and measures, namely in the field of education, are frequently justified by insufficient knowledge of the official language(s). In this context the Advisory Committee has condemned racially-motivated discrimination and segregation of Roma, and has called for measures that promote equal access to the learning of Romani as well as the majority languages for persons belonging to the Roma minority. The Advisory Committee also invites the authorities to take a more flexible approach with regard to persons belonging to the Roma minority who do not hold the citizenship of the state. They should consider, as relevant, allowing them to benefit from measures taken in respect of persons belonging to the Roma minority who are citizens, especially in the field of education.³⁷

37. Special attention should be paid to the linguistic obstacles of persons belonging to some minorities regarding access to services which can in some instances amount to indirect discrimination. This can be the case for numerically small groups of speakers of languages with official status, for national minorities within the scope of the Framework Convention outside of their traditional settlement areas, as well as for speakers of languages without legal protection.

38. The Advisory Committee welcomes measures taken by the authorities in favour of the integration of migrant and refugee children in schools, particularly the promotion of mother tongue learning and inter-cultural teaching, and has encouraged them to step up such measures.³⁸ The Advisory Committee notes that migrant children, due, *inter alia* to language barriers, can face difficulties in accessing education; this often leads to an over-representation in lower-level secondary schools and an under-representation in advanced levels of secondary and higher education. To improve the access and effective integration of these children in school, additional support measures are needed, such as intensive language classes, extra tuition and information, as well as awareness-raising measures for families. The Advisory Committee also welcomes the support of migrant families, and in particular of women with migrant background, through the provision of courses in the official language, counselling services and information.

³⁴ Third Opinion on Hungary.

³⁵ First Opinion on Liechtenstein.

³⁶ Third Opinion on Moldova; Third Opinion on the United Kingdom; Third Opinion on the “former Yugoslav Republic of Macedonia.”

³⁷ Third Opinion on Germany; Third Opinion on Italy. Such practice was welcomed by the Advisory Committee in its third Opinions on Norway and Austria.

³⁸ Third Opinion on Finland.

39. The Advisory Committee also notes that some states have introduced integration contracts with foreign-language migrants. While acknowledging the importance of language as a tool for integration, it stresses that integration involves both the majority and the minority communities and should not rely disproportionately on efforts made by the migrants.³⁹ In this regard, the Advisory Committee has criticised in particular the use of sanctions in the context of integration contracts, such as the cutting of social benefits or the non-renewal of residence permits and the threat of expulsion, as it considers coercion an inappropriate measure to promote integration.⁴⁰ In addition, all steps taken must allow the individual to preserve and develop his or her entire linguistic repertoire, including the native language. The preservation and development of the identity and culture of a person – including multiple identity affiliation and multilingual repertoires – must be respected and supported not only because of their significant cognitive benefits for the individual concerned but as an important pre-condition to successful integration of society.

³⁹ Third Opinion on Liechtenstein.

⁴⁰ Third Opinion on Austria.

PART IV: LANGUAGE RIGHTS AND MEDIA

40. The media play an important role with regard to the linguistic rights of national minorities. The right to receive and impart information and ideas in a minority language, as stipulated in Article 9 of the Framework Convention, depends on effective opportunities for access to the media. Furthermore, the possibility to receive and impart information in a language one can fully understand and communicate in, is a precondition for equal and effective participation in public, economic, social, and cultural life. Moreover, in order for the language to develop in all domains and serve the speaker as an all-encompassing means of communication, it needs to be present in the public sphere, including in public media. The presence of minority languages in public media further strengthens social cohesion, as it reflects an overall inclusive policy towards minorities, based on recognition and the encouragement of self-recognition.

1. PUBLIC SECTOR MEDIA

41. In order for public service broadcasting to reflect the cultural and linguistic diversity existing within society, it must guarantee an adequate presence of persons belonging to minorities and their languages, including numerically smaller national minorities. This entails granting support to the media and programmes for, by, and about national minorities in minority and majority languages, as well as in bi- or multilingual formats. Minority interests and concerns should also be mainstreamed into regular broadcasts rather than singled out in occasional programmes and mainstream media should engage in broader political discourse of interest to persons belonging to minorities.⁴¹ To this end, efforts should be made to recruit and retain journalists with minority backgrounds into mainstream media programmes, and to ensure that minorities are also represented in broadcasting councils. In addition, persons belonging to national minorities should participate in the development of minority language broadcasts to ensure that these programmes adequately reflect the interests and concerns of minority communities. Care should be taken to produce quality minority language programmes that are attractive to a wide audience, and to ensure that they are broadcast at convenient times.⁴²

42. As broadcasting in minority languages often requires supplementary efforts for translation and the development of adequate terminology, budget allocations for such programmes must be adjusted.⁴³ Access of minority organisations and media outlets to public funding must be facilitated by ensuring that exemptions from general criteria may apply, such as minimum area of distribution or broadcast, or specific conditions for participation in tenders.⁴⁴ Special attention should be paid to the needs of numerically smaller minorities or particularly vulnerable groups such as Roma communities that usually have very limited access to media in their own languages and suffer from a lack of qualified journalists trained to work in a minority language. When the media play a central role in an ongoing process of linguistic revitalisation, resolute public support is needed. Authorities should provide increased funding to organisations or media outlets representing these minorities in order to bring their identity, language, history and culture to the attention of the majority.

43. The Advisory Committee notes that several countries have adopted substantial quotas for broadcasting in the official language(s). While acknowledging the legitimacy of the aim of promoting the official language(s), the Advisory Committee has consistently underlined in its findings that special provisions should be put in place to ensure that the linguistic rights of

⁴¹ Third Opinion on Croatia.

⁴² Second Opinion on Romania.

⁴³ Third Opinion on Hungary.

⁴⁴ Third Opinion on the Russian Federation and Third Opinion on Austria.

persons belonging to national minorities are guaranteed, for instance, through the flexible implementation of such quotas and or through exemptions of regions where minority communities live in substantial numbers.⁴⁵ The imposition of language quotas must never imply regulation of content and must fully respect the freedom of the media. Costs for translation or subtitling in order to adhere to such quotas should be taken into account when allocating public funds to minority language media.

44. Moreover, it is important to note that Article 6 of the Framework Convention explicitly calls for action in the media field to promote tolerance and intercultural dialogue in society, and to promote social cohesion. The Advisory Committee has repeatedly underlined the important role of the media in promoting tolerance and respect for diversity, and has criticised media for fuelling inter-ethnic hostilities through biased reporting.⁴⁶ It is important in this context to ensure that regulatory bodies are established to promote ethical journalism, including through targeted training and awareness-raising activities, and that such bodies also include minority representatives and regularly consult with minority communities.

2. PRIVATE SECTOR MEDIA

45. The Advisory Committee values the significant role played by private and community media for the realisation of linguistic rights of persons belonging to national minorities, and has welcomed the contribution made by the private sector media in the areas of integration and the general appreciation of cultural diversity in society.⁴⁷ Given the competitiveness of the private media sector, the authorities should consider the creation of incentives for private and community media providers, for instance through funding and the allocation of frequencies, to increase access to and presence in the media especially of numerically smaller minorities and their languages. Special attention should be paid in this regard to the particular needs of rural and remote areas where persons belonging to national minorities live traditionally or in substantial numbers.

46. As regards the application of official language quotas in the private media sector, the Advisory Committee finds that particular attention must be paid to ensuring that private initiative is not unduly limited and that language quotas do not hinder the creation or continuation of minority language media.⁴⁸ The Advisory Committee has held that the application of an official language quota of 75% to the private media sector is incompatible with Article 9.3 of the Framework Convention.⁴⁹ Negative consequences facing minority language outlets may include the limitation of broadcasting time, increased costs due to requirements for translation or the production of subtitling in the official language, and even, in some instances, fines for infringements of legal provisions in this domain.

3. PRINT MEDIA

47. While Article 9.3 contains mainly a negative obligation *not to hinder* the creation and use of print media, the Advisory Committee has underlined in a number of country-specific Opinions its particular significance for persons belonging to national minorities.⁵⁰ Serving as an important and traditional means of receiving information and news in particular for the elderly members of the minority community concerned, minority language print editions also have a considerable symbolic and ‘emblematic’ value for the community as a whole, as they confirm the existence of the language in the public sphere. In addition, the Advisory

⁴⁵ Second Opinion on Ukraine.

⁴⁶ See, for instance, Third Opinion on Ukraine; Third Opinion on the Russian Federation.

⁴⁷ See for instance, Third Opinion on Austria.

⁴⁸ Third Opinion on Moldova.

⁴⁹ Second Opinion on Ukraine.

⁵⁰ See, for instance, Third Opinion on Finland.

Committee has repeatedly observed that minority communities consider their minority language print media as an important means to preserve and develop their specific culture and language within mainstream society. The Advisory Committee has therefore emphasised the need to uphold support for such editions which, due to their small size, are often not commercially viable, as their particular significance for the minority community cannot be substituted with modern and electronic media. It has encouraged states to ensure that their general rules relating to press subsidies, which often contain conditions such as a minimum number of prints or state-wide distribution, should not be applied to minority language print media that are unlikely ever to meet these conditions.⁵¹ When subsidies and support for minority language print media is provided, this should be allocated in line with clear and transparent procedures and with full respect for freedom of expression.

4. TECHNOLOGICAL ADVANCES IN THE MEDIA AND IMPACT ON MINORITIES

48. Like the offer of programmes in minority language in the private media sector, the offer of minority language publications on the Internet is steadily increasing. Electronic media often play an important role in the circulation of information in minority languages. While not replacing the traditional print media, they must still be taken into account when support is granted to the production of media in minority languages. Importantly, there is a need for professional and financial support for the maintenance of websites and increased training of journalists working for minority language electronic media.⁵²

49. Technical and technological developments in the media field, including social media, offer opportunities but can also become obstacles in accessing media in minority languages, depending on how these changes are introduced and how their reception by the interested groups is supported. Special needs and interests of minority communities must be taken into account, for instance, when frequencies are changed.⁵³ As there is limited availability of terrestrial frequencies, the number of broadcasting channels can be multiplied through digitalisation. It is, however, essential that advances in the digitalisation of the media do not restrict the ability of persons belonging to national minorities to receive media in their languages. The introduction of new technologies can also facilitate the reception of programmes in the languages of minorities produced in other, often neighbouring, countries, as encouraged by Article 17 of the Framework Convention. This should, however, not be seen as a substitute for locally-produced programmes, which normally better meet the needs and interests of minority communities.⁵⁴

5. FILM/MUSIC INDUSTRY AND MINORITY LANGUAGES

50. Domestically-produced films or music in minority languages can also play an important role in promoting the prestige and presence of the minority language in public life and are equally protected by the provisions of Article 9 of the Framework Convention. The Advisory Committee held, for instance, that authorities must not create excessive requirements in terms of dubbing, post-synchronisation or sub-titling into the official language, as these could disproportionately hinder the production and projection of films in minority languages.⁵⁵

⁵¹ See, for instance, Third Opinion on Austria; Third Opinion on Finland.

⁵² Third Opinion on Cyprus.

⁵³ Third Opinion on the Slovak Republic.

⁵⁴ Third Opinion on Germany; Third Opinion on Moldova.

⁵⁵ Second Opinion on Ukraine.

PART V: PUBLIC AND PRIVATE USE OF MINORITY LANGUAGES

1. USE OF MINORITY LANGUAGES IN PUBLIC, IN THE ADMINISTRATION AND IN THE JUDICIAL SYSTEM

51. Language rights are effective only if they can be enjoyed in the public sphere. Article 10 of the Framework Convention contains the main principles relating to the right to use minority languages orally and in writing, in private and in public, including – under certain conditions - in relations with administrative authorities. Given the importance of this right, it is essential that any decision related to language policies and the enjoyment of language rights is made in close consultation with minority representatives to ensure that the concerns of persons belonging to national minorities are effectively duly taken into account.

1.1. Official language laws or ‘state language’ laws

52. The right to use one’s language in private and in public, orally and in writing, freely and without interference, is considered one of the principal means to assert and preserve linguistic identity. While the right to use a minority language must never be interfered with, Article 10.1 also limits state interference in the public use of a minority language, such as in public places and in the presence of others. Language legislation may restrict the sole use of minority languages only in cases where the activities of private undertakings, organisations or institutions affect a legitimate public interest, such as public security, health, protection of consumer and employment rights, or safety in the workplace. The necessity and proportionality of any such measure must be established and the rights and interests of the individuals concerned taken into account in each case. The concept of legitimate public interest must thus be interpreted narrowly. As regards consumer rights, for instance, health and safety implications (such as those related to medication) shall prevail over questions of mere preference of the majority of consumers for the official language.

53. States may adopt laws aimed at strengthening and protecting the official language(s).⁵⁶ This legitimate aim, however, must be pursued in a manner that is in line with the rights contained in Articles 10 and 11 and other relevant provisions of the Framework Convention and its general spirit of encouraging tolerance and mutual understanding within society. Given the explicit right, contained in Article 10.1, of persons belonging to national minorities to use their language freely and without interference, state language laws must in particular not infringe on the private sphere of a person. Measures aimed at promoting official languages must be implemented in a way that respects the identity and the linguistic needs of persons belonging to national minorities. Authorities must thus seek to strike an appropriate balance between the protection of the official language(s) and the linguistic rights of persons belonging to national minorities. In this regard, promotional and incentive-based measures are a much more effective approach towards strengthening knowledge and use of the official language(s) by all members of the population than any form of coercion.

54. Some states have established and implement punitive measures such as the imposition of fines or the withdrawal of professional licenses in order to impose the use of the official language.⁵⁷ The Advisory Committee considers that sanctions of whatever nature for not complying with the provisions of state language laws must strictly respect the limit of proportionality and the existence of a clearly demonstrated, legitimate and overriding public interest. In this regard, the Advisory Committee has held that the mere legal possibility of imposing fines, whether on legal persons or self-employed natural persons, for using their

⁵⁶ In a number of countries, the official language (as referred to in Article 14.3 of the Framework Convention and the Explanatory Report) is termed as ‘state language’ and implies an important state identification function of language.

⁵⁷ Third Opinion on the Slovak Republic; First and Second Opinion on Estonia.

minority languages in the private sphere is not compatible with the provisions of the Framework Convention. Equally incompatible with the Framework Convention is the imposition of language inspection systems in the private sector, as they may disproportionately intrude in the private sphere of the individual.⁵⁸

1.2. Use of minority languages in relations with administrative authorities in areas inhabited by national minorities traditionally or in substantial numbers

55. Article 10.2 provides the conditions under which minority languages may also be used in relations with administrative authorities. This use is without detriment to the official language(s). While states enjoy a margin of discretion with regard to the identification of areas where minorities live “in substantial numbers”, they have a duty to provide clear criteria as to what constitutes “sufficient numbers” or a “sufficiently large number.”⁵⁹ The possibility of using minority languages in dealings with the administration in all areas where the criteria established by Article 10.2 of the Framework Convention are met may not be left solely to the discretion of the local authorities concerned. It is therefore important to set up clear and transparent procedures on how and when to institute the use of minority languages, including in written form, to ensure that the right is enjoyed in an equal manner.

56. As the rights of Article 10.2 are triggered by one of the two main criteria (substantial number *or* area traditionally inhabited), they apply also to areas where only a relatively small percentage of persons belonging to national minorities reside, provided that persons belonging to national minorities *traditionally* inhabit the areas concerned, that there is a request by these persons, and that such a request corresponds to a real need. States should carefully study the demand and assess existing needs in the geographical areas where there is substantial or traditional settlement of persons belonging to minorities, taking also into account the specific local situation.⁶⁰ ‘Need’ in this context does not imply the inability of persons belonging to national minorities to speak the official language and their consequent dependence on services in their minority language. A threat to the functionality of the minority language as a communication tool in a given region is sufficient to constitute a ‘need’ in terms of Article 10.2 of the Framework Convention.⁶¹ Protective arrangements must be in place to maintain services in the minority language, even if it is not widely used, as it may otherwise disappear from the public sphere. In addition, states should not take decisions on the existence of sufficient demand based on discussions held in bodies where persons belonging to national minorities are not effectively represented.⁶²

57. Numerical thresholds must not constitute an undue obstacle to the official use of certain minority languages in areas inhabited by persons belonging to national minorities either traditionally or in substantial numbers. In particular, a requirement that the minority group represents at least half of the population of a district in order to admit use of the minority language contacts with local administrative authorities is not compatible with the Framework Convention.⁶³ Where thresholds exist, they must not be applied rigidly and flexibility and caution should be exercised.⁶⁴ The Advisory Committee has welcomed the flexibility shown by some local administration officials in applying rigid legal provisions concerning the use of minority languages where, in practice, communication and correspondence in minority languages are still accepted, even if written replies are produced in the official language.⁶⁵ Overall, the Advisory Committee encourages states to give careful

⁵⁸ First Opinion on Latvia.

⁵⁹ First Opinion on Armenia.

⁶⁰ First Opinion on Bulgaria.

⁶¹ First Opinion on the Netherlands.

⁶² First Opinion on Italy.

⁶³ Second Opinion on Bosnia and Herzegovina.

⁶⁴ See Third Opinion on the Slovak Republic with regard to a 20% threshold.

⁶⁵ Third Opinion on Estonia.

consideration to the setting up of thresholds for determining the areas inhabited by persons belonging to national minorities in substantial numbers and welcomes measures taken by the authorities to lower any such thresholds as appropriate.

58. The Advisory Committee encourages maximum implementation of the possibilities provided by law to allow the use of minority languages in contacts with administrative authorities at local level and in education. Authorities should support and actively encourage such measures by creating an environment that is conducive to the use of minority languages, including through the allocation of necessary financial and human resources.⁶⁶ In this context, authorities are also invited to consider carefully the situation of those national minorities and linguistic communities whose members live in substantial numbers outside of their traditional territories (often in capital cities). The Advisory Committee has reiterated in this regard that the conditions of Article 10.2 are met as long as there is demand and persons belonging to national minorities live in substantial numbers.⁶⁷

1.3. Right to be informed in criminal proceedings

59. According to Article 10.3 of the Framework Convention, every person belonging to a national minority has the right during criminal proceedings to be informed of the reasons of the arrest and of the nature and cause of any accusation brought against him or her in a language he or she understands. These rights are also guaranteed by Articles 5 and 6 of the European Convention on Human Rights. However, the Advisory Committee has repeatedly noted that, while adequate legal provisions may exist, this right is often not systematically implemented because of inadequate financial resources and/or a lack of qualified interpreters. This is particularly the case for the languages of numerically smaller minorities. The Advisory Committee has consistently encouraged the authorities to take all necessary measures to ensure that minority language rights in the judicial system are fully safeguarded, including as regards investigative and pre-trial stages.⁶⁸ In addition, the Advisory Committee has welcomed the guarantee of the right to interpretation into a minority language not only in the context of criminal proceedings, but also in that of civil and administrative proceedings.⁶⁹

1.4. Alphabet of minority languages

60. Article 10 does not address the issue of choice of an alphabet separately from the right to use a minority language. The Advisory Committee considers the alphabet as an integral part of language and thus urges states not to draw a distinction between the two concepts nor to create separate rules. Furthermore, the Advisory Committee finds that in cases where the use of a language does not concern relations with public authorities, the choice of the alphabet should as a rule be left to the discretion of the individuals concerned, and not be subject to any normative limitations.⁷⁰

2. MANIFESTATIONS OF MINORITY LANGUAGES: PERSONAL NAMES, PLACE NAMES AND TOPOGRAPHICAL INDICATIONS

2.1. Personal names and patronyms

61. The right to use one's personal name in a minority language and have it officially recognised is a core linguistic right, linked closely to personal identity and dignity, and has been emphasised by the Advisory Committee in a number of country-specific Opinions.⁷¹

⁶⁶ Third Opinion on Slovenia; Second Opinion on Switzerland.

⁶⁷ Third Opinion on Finland; First Opinion on Norway.

⁶⁸ First Opinion on the Czech Republic.

⁶⁹ First Opinion on Georgia; Second Opinion on Romania.

⁷⁰ Second and Third Opinion on the Russian Federation.

⁷¹ See, for instance, Second Opinion on Lithuania; Third Opinion on Finland.

States Parties must make sure that individuals are free from obstacles or pressure on the use and recognition of their names in their own language. This means that relevant civil servants, such as those issuing birth certificates, must be aware of their obligations. While the provision is worded in a way that allows States Parties to apply it in light of their own particular circumstances and legal system, a clear legislative framework in line with international standards should exist and be implemented in an equal manner.

62. In cases where persons have been obliged to change or give up their names, Article 11 of the Framework Convention requires that it should be possible for the original form of the name to be added to passports, identity documents or birth certificates. Registration should occur at the request of the person concerned or his/her parents.⁷² The requirement to produce documentary evidence thereof should not, in practice, unduly restrict the right to have the original form of the names added to identity documents, nor must costs be prohibitive.⁷³ Authorities may, in line with Article 11, require that personal identity documents contain a phonetic transcription of the personal name into the official alphabet, if it contains foreign characters. However, the transcription should be as accurate as possible and should not be disconnected from the essential elements of the minority language, such as its alphabet and grammar. In addition, the Advisory Committee expects that the right to official recognition of names in minority languages is always fully respected.⁷⁴ New technologies facilitate the use of diacritic signs and alphabets of national minorities. States are therefore encouraged to make use of all available technical opportunities in order to offer full and effective guarantees to the rights provided by Article 11 of the Framework Convention.⁷⁵

63. Problems may arise from a conflict of language traditions, for instance, in determining the suffix of female names after marriage, which may extend to the names of children. The Advisory Committee welcomes legislation which provides for the possibility of surnames to be entered in registers without the feminine suffix required by some Slavic language grammar rules, and, conversely, legislation that allows for a Slavic suffix in countries that do not usually have such practice, following the rule about gender declension of names.⁷⁶

2.2. Information of a private nature visible to the public

64. Provisions unduly limiting the use of a minority language (alone or as an addition to the official language) in advertisements and announcements, signs and other information of a private nature visible to the public are not compatible with Article 11.2 of the Framework Convention. In this connection, the Advisory Committee recalls that the expression “of a private nature” in Article 11 of the Framework Convention refers to all manifestations of a minority language which are not official, including for example signs, posters or advertisements. The Advisory Committee also welcomes measures to raise the profile of minority languages and history in maps.⁷⁷

2.3. Public signs

65. Article 11.3 of the Framework Convention states that provision must be made for topographical indications to be displayed also in minority languages in areas traditionally inhabited by “substantial numbers of persons belonging to a national minority”. The conditions are stricter, thus, than those contained in Article 10.2, as settlement must be both traditional and in substantial numbers. Like in Article 10.2, a minimum percentage for the latter is not fixed. Transparent procedures, entailing clear criteria of what constitutes

⁷² First Opinion on Lithuania; First Opinion on Ukraine.

⁷³ First Opinion on Latvia.

⁷⁴ First Opinion on Azerbaijan; See in this context also the UN HRC decision *Raihman vs. Latvia*, where the Committee considered the transformation of a personal name in accordance with the Latvian grammar rules as a breach of the ICCPR.

⁷⁵ Third Opinion on Finland; Second Opinion on Poland.

⁷⁶ First Opinion on the Czech Republic; Third Opinion on Germany.

⁷⁷ Third Opinion on Germany.

‘substantial’ must be established by States Parties, such as for instance in the form of thresholds. While states have a margin of appreciation in determining the threshold, this must not be exercised in such a manner as to constitute a disproportionate obstacle with respect to certain minority languages. For instance, the Advisory Committee found that the requirement of an absolute or relative majority in urban, municipal or local communities raised concern in terms of its compatibility with Article 11 of the Framework Convention.⁷⁸ The relatively flexible wording of this provision stems from a desire to be able to take due account of the specific circumstances prevailing in the various States Parties. In addition, Article 11.3 also takes into account, where applicable, existing agreements with other states, without, however, establishing an obligation for states to enter into such agreements.⁷⁹

66. The Advisory Committee always welcomes the lowering of thresholds. Since Article 11.3 of the Framework Convention refers to areas which have been “traditionally inhabited” by substantial numbers of persons belonging to a national minority, the demographic structure of the area in question should be considered over a certain period in order to ensure that more recent assimilation tendencies do not work against the preservation of the minority language.⁸⁰ Therefore, authorities should interpret and apply legislation in a flexible manner without relying too strictly on the threshold requirement.

67. Article 11.3 of the Framework Convention requires that the display of signs in minority languages be given a clear and unambiguous legislative basis. It is not sufficient if this practice is granted as a matter of fact but unsupported by law.⁸¹ Road traffic safety or the use of different alphabets may not be used as arguments against bilingual signposts.⁸² On the contrary, bilingualism in signposts should be promoted as it conveys the message that a given territory is shared in harmony by various population groups.⁸³

⁷⁸ First Opinion on Bosnia and Herzegovina; Second Opinion on Poland.

⁷⁹ See Framework Convention for the Protection of National Minorities and Explanatory Report, H(1995)010, February 1995, paragraph 70.

⁸⁰ Third Opinion on Austria.

⁸¹ First Opinion on Georgia.

⁸² First Opinion on Denmark.

⁸³ Third Opinion on Italy.

PART VI: LANGUAGE RIGHTS AND EDUCATION

1. ACCESS TO EDUCATION

68. Article 12 of the Framework Convention requires the commitment of States Parties to promote equal access to education at all levels for persons belonging to national minorities.⁸⁴ Language may, however, constitute a significant ‘gate-keeping factor’ and is thus considered a crucial element in access to all levels of education. Disadvantages and discrimination can result from the exclusion of minority languages from education, from a lack of adequate possibilities to learn (in) minority language(s), and from segregation that is language-based, or justified as language-based, into ‘special schools’ or ‘special classes’.⁸⁵ The curriculum in such classes may often be significantly reduced in scope, volume and quality, as compared to the officially prescribed teaching programme. Disadvantages are visible in high illiteracy rates, low enrolment, high drop-out rates, school exclusion, as well as considerable under-representation in secondary and higher education of persons belonging to national minorities. While the Advisory Committee is particularly concerned, in this regard, by the situation of the Roma, the development of inclusive education policies requires general attention.

69. Authorities must also take demographic developments into account, as persons belonging to national minorities may migrate outside their areas of traditional settlement (see comments related to Article 10.2 above). The preservation of local minority language school networks should be guaranteed, and persons living outside the areas of traditional settlement should, where feasible and where living in substantial numbers, be given opportunities to be taught their language or in their language.⁸⁶ As the fulfilment of the conditions set out in Article 14 with regard to demand for minority language education and substantial numbers of persons belonging to national minorities in certain areas may vary, the measures taken by states to offer minority language education should be flexibly designed in order to adapt well to a given situation.⁸⁷ For minority languages that are only spoken by small numbers of people, there may be a particular need to revitalise the language, for instance through the creation of separate classes or through language immersion. The functions and needs of the different languages and language speakers must thus be assessed to establish ‘demand’ in line with Article 14.2. In addition, requests for minority language teaching must be accommodated in an equitable manner and refusals made subject to the possibility of legal challenge.⁸⁸ Linguistic skills within the community of minority language speakers may vary. It is unacceptable, however, to bar pupils from having access to minority language education solely on the basis of their insufficient language skills.

2. ADEQUATE OPPORTUNITIES FOR TEACHING AND LEARNING OF AND IN MINORITY LANGUAGES

2.1. Open and inclusive approach to minority languages in education

70. Authorities are encouraged to adopt detailed legislative guarantees for the protection and promotion of minority languages in formal and informal education and to monitor regularly the implementation of legal provisions in practice. The Advisory Committee welcomes measures that extend the guarantees contained in Article 14 to other groups, as well

⁸⁴ The Advisory Committee devoted its first Thematic Commentary to Education under the Framework Convention, see Footnote 3.

⁸⁵ Third Opinion on Croatia. See also *D.H. and Others v. the Czech Republic*, Application no. 57325/00, Judgment 13 November 2007, <http://www.echr.coe.int/echr>.

⁸⁶ See, for instance, Third Opinion on Germany; Third Opinion on Austria,

⁸⁷ See also ACFC First Thematic Commentary on Education.

⁸⁸ Second Opinion on Ukraine.

as legislation that includes additional minority languages. Special attention must be paid to the languages of numerically smaller minorities, such as those of indigenous groups, as their languages are often particularly threatened.⁸⁹ States should also consider extending guarantees to geographically dispersed minorities and their languages, such as Romani.⁹⁰

71. The Advisory Committee appreciates the fact that minority language teaching is often offered in response to local demand and therefore encourages the regular monitoring of such demands. A purely passive approach on the part of the authorities is therefore not an adequate response; demands for education in a minority language should actually be stimulated through awareness-raising among parents and young people, and the promotion of existing possibilities for minority language teaching. Parents belonging to national minorities must be enabled to make informed choices about the language education of their children.

72. The right to learn and to develop one's minority language, as contained in Article 14.1 of the Framework Convention, is not only linked to the preservation of individual identity, but also forms an important basis for the development of the individual linguistic repertoire and the acquisition of additional languages.⁹¹ The possibility of being taught in a minority language can also be an important factor in ensuring equal access to education and contributing towards full and effective participation in society. Nevertheless, it is equally important, as stressed in Article 14.3, that proper knowledge of the official language(s) is acquired, as the lack thereof seriously restricts opportunities for persons belonging to national minorities to effectively participate in public life, and may inhibit their access to university education.⁹² There should be no mutually exclusive choice between the learning of a minority language or the official language(s) and authorities should encourage multilingual and dual medium education models, which attract children from majority and minority backgrounds and cater for children who grow up bilingually, or in 'mixed' families.⁹³ Bi- or multilingual education open to students from all linguistic groups, including minorities and the majority, can, apart from having significant cognitive benefits for the individuals, contribute to intercultural comprehension and co-operation.

73. The possibilities for teaching and learning of and in minority languages vary according to the specific parameters of local situations: bi- or multilingual schools may offer minority language education in parallel to that in the official language; minority language classes may be included in the public education system; or there may be private minority language schools or 'Sunday classes' organised by communities, with or without support from neighbouring states or the State Party.⁹⁴ The Advisory Committee encourages the inclusion of minority languages in the public school system and in the mandatory curriculum, including languages of numerically smaller minorities. Schools should also offer education in and of Romani where appropriate.⁹⁵ Special attention is drawn in this context to the Curriculum Framework for Romani developed by the Council of Europe.⁹⁶ In addition, the Advisory Committee also welcomes private or community initiatives which are supported by the authorities.

74. A number of particular problems may be encountered as regards opportunities for minority language learning, including the insufficient number of teaching hours of or in a minority language or the organisation of classes outside normal school hours, high numerical thresholds for establishing minority language classes, lack of teachers and teaching or learning materials, or insufficient availability of classes due to the closure or merger of village

⁸⁹ Third Opinion on the Russian Federation.

⁹⁰ Second Opinion on Spain.

⁹¹ OSCE HCNM, The Hague Recommendations, 1996.

⁹² See, for instance, First Opinion on Georgia.

⁹³ First Opinion on Serbia and Montenegro; First Opinion on Norway.

⁹⁴ See also ACFC First Thematic Commentary on Education.

⁹⁵ Third Opinion on Hungary; Third Opinion on Cyprus; Third Opinion on Croatia; Second Opinion on Poland.

⁹⁶ *A Curriculum Framework for Romani*. Language Policy Division, Council of Europe, Strasbourg, 2008, prepared in co-operation with the European Roma and Travellers Forum.

schools. This raises questions of compatibility with Article 14.2, even in cases where transport to alternative schools is organised and financed by the authorities.⁹⁷ In particular, minority representatives must be effectively consulted on all changes related to education reforms or decentralisation, as they often affect directly and negatively the opportunities for minority language teaching. In cases of school mergers, efforts can be made, for instance, to maintain different language classes in one school or develop bi- or multilingual teaching methodologies to reduce negative impacts on minority communities.

75. In order to develop minority language skills as an added value for their speakers, whether belonging to a minority or not, 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. Particular weaknesses in the offer of minority language education are often observed at pre-school as well as at secondary school level. Lack of incentives or insufficient possibilities at pre-school, secondary or higher level can seriously reduce the attractiveness of minority language learning at primary level. A specific obstacle is also represented by high school graduation or university entry exams provided in the official language only, since they may reduce the chances of persons belonging to national minorities to gain access to higher education and thereby negatively impact on their subsequent professional opportunities. As university entrance exams are usually not developed for multilingual purposes and are not adapted to the needs and skills of minority language speakers, they may discourage the academic learning of minority languages at the highest level of proficiency. This further reduces the acceptance and functionality of a minority language in public life. Conversely, the Advisory Committee has repeatedly welcomed the provision of access to university education in minority languages as an important contribution to the development and prestige of minority languages in the country.⁹⁸

2.2. Means to enable the full enjoyment of educational rights

76. In order to ensure the quality of education in and of minority languages, adequate school curricula and standards must be developed and teaching methodology, as well as material, adapted. A particularly important aspect in ensuring the quality of education in and of minority languages, however, is teacher training. It is essential that teachers working in minority languages are trained in sufficient numbers and that such training is of adequate quality, preparing teachers for all levels of education, including at pre-primary or nursery levels. In many situations, these teachers are required to work in bilingual or trilingual contexts. Bearing in mind the difficulties in recruiting and training minority language teachers able to work in such environments, the Advisory Committee welcomes and encourages the development of modern and interactive methodologies that are suited to multilingual teaching environments.

77. The Advisory Committee considers the availability of textbooks in minority languages a prerequisite for raising interest among students and parents in minority language learning and an indispensable element for providing quality education. While aware of the high cost of producing materials with low level distribution, the Advisory Committee considers that such materials should be free of charge or at least not more expensive than materials in majority languages. Especially on the level of secondary education, there is often a more general lack of teaching material. As it is important that the content and language use are tailored to the specific needs of the minority groups concerned, including as regards specific minority language terminology of technical subjects, priority should be placed on materials produced in the country. Materials developed in neighbouring states may also be approved and made available where appropriate.⁹⁹ Co-operation of this form is explicitly encouraged in Article 17

⁹⁷ Third Opinion on Germany.

⁹⁸ See, for instance, Third Opinion on Romania.

⁹⁹ Third Opinion on Cyprus; Third Opinion on Croatia.

of the Framework Convention. However, attention must be paid to the risk this may entail with regard to the emergence of parallel education systems, which can threaten social cohesion.¹⁰⁰

78. In addition, measures to attract students to study minority languages or study in minority languages, such as for example the reservation of university places or the abolition of restrictive quotas are encouraged.¹⁰¹ Research on minority languages and linguistic practices has a specific role to play with a view to developing quality teaching as well as learning methods and materials. It is equally important for terminology development, interpretation and translation. In this field, authorities are encouraged to pay special attention to the languages of numerically small or dispersed minorities, which are in the process of codification.¹⁰² In this context, attention must be paid to the fact that the process of codification does not ‘freeze’ the language and that the speakers’ opinions remain central to the understanding of the language.

2.3. Striking a balance between majority and minority languages in education

79. Article 12 of the Framework Convention calls for concrete measures to promote knowledge about minority and majority languages. Language plays an important role in promoting integration, mutual respect among groups, and social solidarity. This implies not only providing language education for members of national minority communities, but also education about and of minority languages for the benefit of the majority language speakers and society as a whole. The possibility for majority language speakers to learn minority languages and especially possibilities of attending bi- and multilingual education for all can enhance intercultural understanding and co-operation.¹⁰³ Within the meaning of life-long learning, this also includes adult education. Where states have introduced measures to promote the official language(s), it is particularly important that these go hand in hand with measures to protect and develop the languages of minorities, as otherwise such practices may lead to assimilation rather than integration.

80. On the other hand, lack of knowledge of the official language(s) can limit possibilities of equal participation in society, of access to higher education and access to employment. Parents may as a result opt for enrolling their children in mainstream schools as these seem to offer better opportunities to integrate into society and obtain gainful employment. Therefore, minority language schools must provide an adequate development of the speakers’ proficiency in the official language(s). However, care must be taken in this regard to prevent a lowering of general education standards as a result of policies that suddenly introduce more official language learning. This can be a risk when minority language teachers are called upon to teach in the official language, without proper support and preparation.¹⁰⁴ Education reforms that aim at promoting increased official language teaching in minority language schools must be implemented gradually and flexibly to allow for adaptation to the needs of the teachers and the students concerned. In this context, it is important to monitor regularly the quality of education provided throughout the reform process. This should be carried out in close consultation with representatives of the school board, teacher and parents’ organisations.

81. The Advisory Committee encourages the development of bi- or multilingual teaching models as part of the mandatory school curriculum.¹⁰⁵ Ideally, if the situation so allows, dual-medium approaches may be adopted in which minority and majority languages are present in equal proportions. In specific situations, however, it can also be useful to promote one or

¹⁰⁰ Second Opinion on Bosnia and Herzegovina.

¹⁰¹ Third Opinion on Germany.

¹⁰² Third Opinion on Norway.

¹⁰³ See also ACFC First Thematic Commentary on Education.

¹⁰⁴ Third Opinion on Estonia.

¹⁰⁵ Third Opinion on Hungary; First Opinion on Sweden; Second Opinion on Switzerland.

another language in order to counterbalance differentials in language prestige, to guarantee the rights of speakers of numerically small minority languages, and to meet the legitimate needs of parents and children as protected under the Framework Convention. Dual-medium approaches can achieve their aim by alternating the languages, based on weekdays or subject, or by applying the one-teacher-one-language model. When languages are determined by subject, minority languages should not be limited to cultural or historical subjects. The Advisory Committee recommends that the authorities, in close consultation with persons belonging to national minorities, develop a comprehensive long-term strategy in order to promote multiple language development in education policies.¹⁰⁶

2.4. The promotion of linguistic diversity and intercultural education

82. School education should offer a fair reflection of the linguistic and cultural diversity of society and thereby promote the values of tolerance, intercultural dialogue and mutual respect. In addition to teaching in and of minority languages, the mandatory curriculum should therefore also include information on the history and contribution of minorities to the cultural heritage and the society of the State Party. Such teaching should not be limited to areas traditionally inhabited by national minorities, so that awareness of and respect for the linguistic diversity of society is promoted throughout the country from an early age onwards. In this context, the Advisory Committee welcomes the use of maps for history and geography teaching that indicate the areas of historical importance to national minorities and mark the local names in minority languages. In addition, it has underlined the importance of introducing multiple perspectives into history teaching.¹⁰⁷

83. In terms of social cohesion, initiatives to attract children from other communities to enrol in schools with minority languages as a medium of teaching and learning are welcomed by the Advisory Committee, as are measures that encourage intercultural and trans-border contacts and promote language learning through partial or total immersion programmes. When developing such inter-cultural approaches, it is important that not only the structure of the education system (such as through diversified classes, schools, and school administration boards) but also the content of the education itself promote the values of mutual respect and inter-ethnic understanding, whilst taking into account other elements of identity such as religion, geographical location, or gender.¹⁰⁸

¹⁰⁶ See also ACFC First Thematic Commentary on Education.

¹⁰⁷ Third Opinion on Estonia.

¹⁰⁸ See also ACFC First Thematic Commentary on Education.

PART VII LANGUAGE RIGHTS AND PARTICIPATION

84. The right of persons belonging to national minorities to effective participation in public affairs, as contained in Article 15, is considered a central provision of the Framework Convention, to which the Advisory Committee devoted its second thematic commentary.¹⁰⁹ Effective participation is key to the full enjoyment of other rights protected by the Framework Convention, facilitates intercultural dialogue and promotes social cohesion. All of these aspects of participation, however, may be problematic for persons belonging to national minorities due to language barriers. This Chapter on language rights and participation therefore touches upon considerations that are also of relevance in other chapters of this thematic commentary, such as the issues of equality and non-discrimination, the use of minority languages in public, as well as the learning in and of minority and official languages.

85. The issues of language and language legislation are often central to minority communities and may provoke tension within society. Therefore, two equally important goals must be negotiated: guarantees and respect for the use of minority languages, on the one hand, and social cohesion, on the other. This latter concept often contains references to one main official language. The Advisory Committee has reiterated in a number of relevant country-specific Opinions the legitimacy of the goal of promoting the official language, as it plays a very important role in achieving cohesive societies and encouraging the effective participation of persons belonging to national minorities in public life. Knowledge of the official language facilitates identification as resident and active citizen of a state and is therefore indispensable for persons belonging to national minorities to take part effectively in public life. On the other hand and as mentioned above, proficiency in the official language and enjoyment of the specific linguistic rights of persons belonging to national minorities are not mutually exclusive. All plans or measures to strengthen the official language must be discussed in timely and public consultation processes. These must include the active participation of national minority representatives in order to ensure that minority language rights are effectively protected.

1. LANGUAGE RIGHTS AND EFFECTIVE PARTICIPATION IN CULTURAL, SOCIAL AND ECONOMIC LIFE

86. Persons belonging to national minorities frequently face more significant difficulties than others in accessing the labour market, education and training, housing, health care and other social services. These difficulties are, among others, often due also to language barriers, related to insufficient command of the official language.¹¹⁰ The situation can be even worse for persons belonging to national minorities who, due to low-quality minority language learning possibilities, graduate with only limited minority language skills and without proficiency in the official language. In most cases, high quality teaching and proficiency in the official language is a precondition for effective participation in cultural, social and economic life. Official language learning for persons belonging to national minorities should thus be facilitated for all age groups, including for those already engaged in public or private sector employment. Particularly in states where new official languages have been introduced, the authorities should make it attractive for persons belonging to national minorities to learn the new official language, for instance, by offering career opportunities for persons who speak official and minority languages.

¹⁰⁹ ACFC Second Thematic Commentary to the Effective Participation of Persons belonging to National Minorities in Cultural, Social and Economic Life and Public Affairs, see Footnote 4.

¹¹⁰ See, for instance, First Opinion on Georgia.

87. Excessive requirements of proficiency in the official language(s) in order to access certain positions or obtain specific goods and services may, however, unduly restrict access to employment and social protection of persons belonging to national minorities.¹¹¹ States Parties should therefore take effective measures to remove any disproportionate restrictions in access to the labour market. Regarding positions where proficiency in the official language is a legitimate condition, language proficiency requirements must in each case be proportionate to the public interest pursued and not go beyond what is necessary to achieve that aim. Moreover, language training courses and, where necessary, targeted support should be made available before language requirements are enforced, in order to facilitate the learning of the official language and prevent discrimination or insufficient participation of staff or applicants belonging to national minorities.¹¹²

88. Access to social benefits and to certain public services and utilities must not be hampered by undue language or residency requirements.¹¹³ Information and advice on public services and welfare institutions should be made easily accessible and available, where appropriate, in the languages of national minorities.¹¹⁴ Medical and administrative staff employed in health services and care of the elderly in areas inhabited in substantial numbers by persons belonging to national minorities should be able to provide services in minority languages, and should also receive training on the cultural and linguistic background of national minorities, so that they can adequately respond to their specific needs. The Advisory Committee has observed in this context that local authorities should actively seek to recruit appropriately qualified staff with the necessary linguistic competencies.¹¹⁵ In addition, the employment of health mediators or assistants belonging to national minorities (or at least interpreters speaking the minority language) can contribute to improved communication.¹¹⁶

89. Moreover, States Parties should promote the recruitment, promotion and retention in the administration and public services of persons belonging to national minorities and/or speaking the language(s) of national minorities, both at national and local levels. It is essential that the effective participation of persons belonging to national minorities and/or speaking minority language(s) is ensured within the administration, including the police, and the judicial system, in order to make effective the right to use minority languages in dealings with authorities. Furthermore, the adequate presence of minority languages in public and official life helps to ensure that the minority language develops or maintains sufficient prestige to present an attractive learning goal for young people belonging to national minorities as well as the majority. To this end, proficiency in the minority language should always be considered an asset and, in areas of traditional settlement, even a requirement in recruitment proceedings for the civil service.

2. LANGUAGE RIGHTS AND EFFECTIVE PARTICIPATION IN PUBLIC AFFAIRS

90. The Advisory Committee recognises that a federal structure, decentralisation and various systems of autonomy can be beneficial to persons belonging to minorities.¹¹⁷ Cultural autonomy arrangements, for instance, may aim to delegate to national minority organisations important competences in the area of minority culture, language or education. Where such arrangements exist, constitutional and legislative provisions must clearly specify the nature and scope of the autonomy system. The relations between relevant state institutions, as well as their system of funding, should be clarified by law.¹¹⁸ Division of responsibilities among

¹¹¹ See, for instance, First Opinion on Azerbaijan.

¹¹² See ACFC Second Thematic Commentary on Effective Participation.

¹¹³ Ibid.

¹¹⁴ Ibid. Third Opinion on Denmark.

¹¹⁵ Third Opinion on Estonia; Third Opinion on Sweden.

¹¹⁶ See ACFC Second Thematic Commentary on Effective Participation.

¹¹⁷ See also the OSCE HCNM Lund Recommendations, 1999.

¹¹⁸ See ACFC Second Thematic Commentary on Effective Participation.

different levels of government cannot be invoked as a justification for the non-implementation of policies aimed at promoting the conditions for persons belonging to national minorities to develop their culture and language, as the central government remains fully responsible for the respect of its international obligations in this field, including those contained in the Framework Convention.¹¹⁹

91. When considering reforms which aim to modify administrative boundaries, the authorities should consult persons belonging to national minorities so that they can consider the possible impact of such reforms on the enjoyment of their linguistic rights. In any case, no measures should be adopted that aim to reduce the proportion of the population in areas inhabited by persons belonging to national minorities or to limit the rights protected by the Framework Convention. In a small number of countries, the Advisory Committee has considered the situation of persons belonging to the majority population who reside in areas of the country where they constitute a minority. The linguistic rights of these so-called 'majority in a minority' situations require, in the opinion of the Advisory Committee, similar safeguards to those of persons belonging to national minorities.¹²⁰ It found for instance, that reduced thresholds as to the minimum number of pupils per class should apply in these situations, as they do in minority language schools, so that teaching in and of the 'factual' minority language can be effectively provided.¹²¹

92. States Parties should ensure that political parties representing or including persons belonging to national minorities have equal opportunities in election campaigning. This may imply the display of electoral advertisements in minority languages. The authorities should also consider providing opportunities for the use of minority languages in public service television and radio programmes devoted to election campaigns and on ballot slips and other electoral material in areas inhabited by persons belonging to national minorities traditionally or in substantial numbers. Language proficiency requirements imposed on candidates for parliamentary and local elections may raise issues of compatibility with Article 15 of the Framework Convention as they negatively affect the participation of persons belonging to national minorities in public affairs.¹²² In particular, within locally-elected bodies, the possibility to use minority languages can allow persons belonging to national minorities to participate more effectively in decision-making. The Advisory Committee has welcomed efforts to allow for minority languages to be used internally in public administration in areas that are inhabited substantially by persons belonging to national minorities.¹²³

93. The right to use minority languages freely, orally and in writing, in private and in public, as well as in relations with administrative authorities, is also a significant factor which promotes the participation in public affairs of persons belonging to national minorities, particularly in areas where persons belonging to national minorities reside traditionally or in substantial numbers. The possibility of using minority languages in relations with administrative authorities can often contribute to more effective communication on issues directly affecting national minorities, while the exclusive use of the official language(s) may seriously hamper their effective consultation and participation. It is therefore important to ensure that minority communities are provided with the necessary interpretation or translation services when, for instance, relevant legislative drafts are being discussed in order to ensure that they have an effective opportunity to reflect their concerns. In addition, guarantees must be in place to ensure that consultative mechanisms for persons belonging to national minorities, such as Advisory Councils, adequately process contributions made by minority representatives and effectively take them into account in the decision-making process.

¹¹⁹ Third Opinion on Italy.

¹²⁰ A similar approach should be used also with regard to the so-called 'minority in a minority' situations.

¹²¹ Third Opinion on Finland; Third Opinion on Estonia; Third Opinion on Romania.

¹²² First Opinion on Georgia.

¹²³ Third Opinion on Estonia; Second Opinion on Ukraine.

PART VIII CONCLUSIONS

94. By ratifying the Framework Convention, States Parties have agreed to “promote the conditions necessary for persons belonging to national minorities to maintain and develop their culture and to preserve the essential elements of their identity”, including language. This Commentary takes stock of the Advisory Committee’s interpretation of language-related provisions of the Framework Convention with a view to providing long-term guidance for improving the implementation of the principles of the Framework Convention. It is addressed to authorities, decision-makers, minority representatives, public officials, non-governmental organisations, academics and other relevant stakeholders. It offers advice and practical recommendations in order to assist the development of a cohesive society when drafting legislation and policies affecting the language rights of persons belonging to minorities.

95. Minority rights, as conceived by the Framework Convention, and developed further through the monitoring process, require inclusive language policies. This implies that everyone has the right to express differences and that such differences must be recognised. However, such recognition must not result in creating fixed identities. As language is closely linked to ideology and hierarchic relations, the categorisation of persons belonging to national minorities can lead to denying an equal status in social interaction. Recognition of difference shall be based on full and effective equality of all members of society, irrespective of their identity and language affiliation. Promotion of such equality requires the adoption of measures that enable an equal access to resources and rights despite differences, and allow for social interaction across differences.

96. The Framework Convention, as an individual rights instrument, is focused on the individual speaker and his or her rights and freedoms when interacting in social contexts. Policies implementing the Framework Convention must thus take into account that language affiliation is based on free self-identification, and is neither static nor exclusive. In addition, while specific provisions target groups of individuals, such as in order to promote their effective equality, comprehensive promotional policies for the full development of language rights must also address society as a whole.

97. Apart from the general principles related to full and effective equality and the promotion of tolerance and mutually respectful inter-ethnic relations, the Framework Convention offers a catalogue of special provisions on sectors that are key for the balanced development of language rights of persons belonging to national minorities on one hand, and the advancement of diverse societies, on the other. These include the media (both public and private, traditional and web-based), the private and public use of languages, education and effective participation. This Commentary therefore deals in particular with these fields.

98. In order to contribute to the overall goal of promoting social cohesion by guaranteeing the rights and freedoms of persons belonging to national minorities, solutions must be tailor-made to the situation of each national minority within the specific context in the State Party. As there is constant evolution, measures identified by States Parties in response to certain circumstances will not necessarily ensure compliance with the standards of the Framework Convention in the future. Therefore, policies, legislative framework and implementation mechanisms directly or indirectly affecting the language rights of persons belonging to minorities must be continuously monitored, evaluated and amended, in close consultation with the groups concerned. Accordingly, the Advisory Committee will also, in subsequent monitoring cycles, reassess state measures affecting language rights, and will further develop its findings. As already mentioned in the Introduction, the Commentary is to be seen as a living instrument, whose interpretation should be developed as monitoring under the Framework Convention evolves. ***

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

COMMENTARY
ON THE EFFECTIVE PARTICIPATION OF PERSONS
BELONGING TO NATIONAL MINORITIES
IN CULTURAL, SOCIAL AND ECONOMIC LIFE
AND IN PUBLIC AFFAIRS

Adopted on 27 February 2008

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CONTENTS

Executive summary	5
Part I	
Introduction	9
Part II	
Preliminary remarks.....	11
1. International standards for effective participation of persons belonging to national minorities: the Framework Convention and other international instruments.....	11
2. Core considerations on Article 15 of the Framework Convention.....	12
a. Effective participation, full and effective equality and promotion of national minorities' identity and culture.....	12
b. Effective participation on "issues affecting national minorities"	13
c. "Effectiveness" of participation.....	13
d. Effective participation of national minorities and intercultural dialogue.....	13
Part III	
Key findings on participation of persons belonging to national minorities in cultural, social and economic life and in public affairs.....	15
1. Participation in economic and social life.....	15
a. Availability of statistical data on the socio-economic situation of persons belonging to national minorities	16
b. Legislation prohibiting discrimination in socio-economic life	16
c. Capacity of public service to deal with socio-economic needs of persons belonging to national minorities	17
d. Participation of persons belonging to national minorities in socio-economic life in depressed regions	17
e. Participation in socio-economic life of persons belonging to disadvantaged national minorities	18
f. Access to land and property as a condition for participation in socio-economic life	18
g. Residency, language and other requirements as a condition for participation in socio-economic life.....	19
h. Housing standards and participation in socio-economic life	19
i. Health care and participation in socio-economic life.....	20
2. Participation in cultural life.....	21

3. Participation in public affairs.....	21
a. Participation of persons belonging to national minorities in legislative process.....	22
i. Political parties	22
ii. Design of electoral systems at national, regional and local levels.....	23
iii. Administrative and constituency boundaries.....	24
iv. Reserved seats system	24
v. Parliamentary practice.....	25
vi. 'Veto' rights.....	25
vii. Citizenship requirements	25
viii. Language proficiency requirements	26
b. Participation of persons belonging to national minorities through specialised governmental bodies.....	26
c. Participation of persons belonging to national minorities through consultative mechanisms.....	26
i. Setting-up consultative mechanisms	26
ii. Representativeness of consultative mechanisms	27
iii. Types of consultative mechanisms	27
iv. Role and functioning of consultative bodies	28
d. Representation and participation of persons belonging to national minorities in public administration, in the judiciary and in the executive	28
e. Participation of persons belonging to national minorities through sub-national forms of government.....	29
f. Participation of persons belonging to national minorities through autonomy arrangements	30
g. Availability of financial resources for minority-related activities	30
h. Media as a source for the effective participation of persons belonging to national minorities in public affairs.....	31
i. Participation of persons belonging to national minorities in the monitoring of the Framework Convention	31
Part IV	
Conclusions	33
Appendix	
Relevance of other articles of the Framework Convention for the interpretation of Article 15.....	35



EXECUTIVE SUMMARY

ARTICLE 15 of the Framework Convention for the Protection of National Minorities stipulates that State Parties “shall create the conditions necessary for the effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs, in particular those affecting them”.

The purpose of this Commentary is to set out the Advisory Committee’s interpretation of the provisions within the Framework Convention relating to the effective participation of persons belonging to national minorities, drawing on the Advisory Committee’s country-specific Opinions adopted between 1999 and 2007. The Commentary aims to provide a useful tool for State authorities and decision-makers, public officials, organisations of minorities, non-governmental organisations, academics and other stakeholders involved in minority protection.

While the Commentary primarily focuses on participatory mechanisms at the domestic level, it is crucial that persons belonging to national minorities are also involved at all stages of the monitoring and implementation process of international instruments, and in particular the Framework Convention, in order to achieve a balanced and quality outcome.

PARTICIPATION IN ECONOMIC AND SOCIAL LIFE

Effective participation of persons belonging to national minorities encompasses their economic and social life as well as their engagement in the political and public sphere

Effective participation requires States not only to remove the barriers preventing minorities’ equal access 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.

Reliable and easily accessible data is an essential precondition for developing effective measures to address socio-economic discrimination and encourage effective equality. Therefore, State Parties should regularly collect up-to-date data on the socio-economic and educational situation of persons belonging to national minorities in order to compare it with the situation of the majority population. The collection of such data should be made in accordance with international standards on personal data protection.

Effective participation in socio-economic life requires the existence of comprehensive legislation prohibiting discrimination on ethnic grounds, by public and private actors. This legislation should extend to employment, housing, health care and social protection. It is also important that appropriate legal remedies are available in cases of discrimination, and that particular attention is paid to multiple discrimination against women belonging to national minorities.

The participation of national minorities in socio-economic life is sometimes hampered by administrative obstacles, and by an institutional lack of sensitivity to their cultural background and specific needs. State Parties should develop training programmes for public service staff to enable them to adequately respond to the needs of national minorities.

Information on public services and welfare institutions needs to be easily accessible and, where appropriate, available in the languages of national minorities. Public institutions should promote the recruitment and retention of persons belonging to national minorities.

Those persons belonging to national minorities living in economically depressed regions, e.g. rural, isolated and border areas, war-damaged areas or regions affected by de-industrialisation, should be the target of specific measures to enable effective socio-economic participation. Such measures could be promoted through bilateral and cross-border co-operation where appropriate.

Furthermore, specific social and economic measures are often required for persons belonging to disadvantaged minority groups to ensure their effective equality.

In order to promote effective integration of Roma and Travellers in socio-economic life, comprehensive and long-term strategies should be designed and effectively implemented. The implementation of these strategies should be monitored, and the effects evaluated in close co-operation with those concerned.

State Parties should remove undue obstacles and excessive regulations hindering the practice of economic activities specific to certain minority groups, and which are under threat.

In order to guarantee full and effective equality for persons belonging to national minorities in privatisation processes, the authorities should not only ensure transparency, but also set up monitoring and evaluation mechanisms. Following armed conflicts, State Parties should ensure that property claims made by persons belonging to national minorities are processed and implemented in an efficient, transparent and non-discriminatory manner.

Land traditionally used by persons belonging to certain groups, such as indigenous peoples, should be given particular and effective protection. Representatives of these groups should be closely involved in any decision-making on land rights and land usage in their traditional areas of residency.

Access to the labour market, basic social benefits and public services should not be restricted by undue residency or language requirements, which particularly affect persons belonging to some national minorities. At the same time, State Parties should ensure that residency registration processes are easily accessible and do not discriminate – directly or indirectly – against persons belonging to national minorities and that they are regularly monitored.

In the housing sector, State Parties should take resolute measures to put an end to discriminatory practices that lead to segregation and marginalisation of persons belonging to certain national minorities. Moreover, they should develop comprehensive sectoral policies to remedy problems of substandard housing and lack of access to basic infrastructure, which particularly affect persons belonging to some minorities.

In the health care sector, State Parties should ensure the effective involvement of persons belonging to the minorities concerned, in the design, implementation and evaluation of measures taken to address health care issues, so as to better respond to their specific needs. Medical and administrative staff employed in health services should receive adequate training, and the recruitment of health care mediators belonging to national minorities should be encouraged.

Moreover, policies promoting equal opportunities should not be limited to access to health care only. They should also aim at the provision of quality services to persons belonging to national minorities, which have the same impact as the provisions for the rest of the population.

PARTICIPATION IN CULTURAL LIFE

When designing and implementing cultural policies that affect persons belonging to national minorities, it is essential that the authorities adequately consult those national minorities and involve them in the decision-making process to meet their needs effectively. This applies equally in the allocation of public support for minority cultures.

Processes of decentralisation, and the delegation of competences to cultural autonomies, can play an important role in enabling national minorities to participate effectively in cultural life.

The media play a pivotal role in cultural life; with this in mind, persons belonging to national minorities need to be able to create and make use of their own media. It is equally important that they are represented in the mainstream media, in order to present their views on issues of interest to the society at large.

PARTICIPATION IN PUBLIC AFFAIRS

Persons belonging to national minorities can be involved in public affairs through a number of arrangements, such as representation in elected bodies and public administration at all levels, consultative mechanisms or cultural autonomy arrangements. Particular attention should be paid to the balanced representation of women and men belonging to national minorities.

Notwithstanding that minority representation in elected bodies can be achieved by means other than the formation of specific political parties, legislation prohibiting the formation of political parties on an ethnic or religious basis can lead to undue limitations of the right to freedom of association. Any limitation should be in line with the principles embedded in the norms of international law. Parties representing, or promoting the interests of persons belonging to national minorities should have adequate opportunities to campaign during elections.

Following due consultation, constitutional guarantees should be coupled with effective implementation of legislation to ensure the effective participation of persons belonging to national minorities. Whatever the arrangements chosen, it is advisable to carry out a periodical review in order to ensure that they adequately reflect developments in society.

As a rule, measures facilitating the representation of persons belonging to national minorities in elected bodies should be supported. Exemptions from threshold requirements, reserved seats or veto rights have often proved useful to enhance their participation in elected bodies. However, the mere introduction of such arrangements does not automatically provide persons belonging to national minorities with a genuine and substantial influence on decision-making. In certain specific circumstances, a system of 'veto' or 'quasi veto' rights can even lead to a paralysis of State institutions. In such cases, alternative ways of enabling persons belonging to national minorities to take part in the decision-making should be identified.

The introduction of parliamentary committees overseeing minority issues can contribute to keeping the concerns of persons belonging to national minorities high on the parliamentary agenda. These concerns should also, however, be highlighted in other parliamentary committees.

The way in which constituency or administrative boundaries are drawn may have an impact on minority participation. States should ensure that constituency changes do not reduce the opportunities for election of persons belonging to national minorities.

Citizenship is an important element which can influence minority participation in public affairs. While it is legitimate to impose certain restrictions on non-citizens concerning their right to vote and to be elected, they should not be applied more widely than is necessary. States are encouraged to provide non-citizens with an opportunity to vote

and to stand as candidates in local elections. Language proficiency requirements imposed on candidates for parliamentary and local elections are not compatible with Article 15 of the Framework Convention, in so far as they have a negative impact on the effective participation of persons belonging to national minorities in public affairs.

Consultation mechanisms are an additional way to enable persons belonging to national minorities to take part in decision-making processes. However, just as representation in elected bodies alone may be insufficient to ensure substantial influence on the decision-making, mere consultation does not constitute a sufficient mechanism for ensuring effective participation of persons belonging to national minorities. Bearing in mind the need to take into account national circumstances, States should be encouraged to design a system that provides for both representation of and consultation with national minorities.

Consultative bodies should have a clear legal status and the obligation to consult them should be entrenched in law. Furthermore, the involvement in decision-making processes should be of a regular and permanent nature. Due attention should be paid to ensuring that consultative bodies are inclusive and representative. Appointment procedures should be transparent and designed in close consultation with national minority representatives. They should be periodically reviewed to ensure that the bodies concerned represent a wide range of views amongst persons belonging to national minorities. Consultative bodies should also regularly address issues of concern to numerically smaller minorities and persons belonging to national minorities living outside areas with traditional or substantial minority populations.

Public administration, judiciary, law-enforcement agencies and executive bodies should, to the extent possible, reflect the diversity of society. The recruitment of persons belonging to national minorities in the public sector should therefore be promoted. Measures aimed at reaching a rigid, mathematical equality in the representation of various groups should, however, be avoided. State language proficiency requirements placed on public administration personnel should not go beyond what is necessary for the post or service at issue. Increased attention should be given to Roma and Travellers and numerically smaller national minorities, who are often strongly under-represented in public administration.

States are encouraged to establish governmental structures dealing with national minorities. The role of these structures should be to initiate and co-ordinate governmental policy in the field of minority protection. Co-ordination between these structures on the one hand, and minority consultative mechanisms and other governmental structures on the other, is essential. Such arrangements can help ensure that minority concerns are prioritised in governmental policies.

The constitutional design of a State can have a decisive impact on the effective participation of persons belonging to national minorities in public life. Bearing in mind the need to take account of national circumstances, sub-national forms of government and minority autonomous self-governments can be valuable tools to foster effective participation of persons belonging to national minorities in many areas of life. Irrespective of the constitutional design of a State, the central authorities should remain committed to their responsibility towards persons belonging to national minorities resulting from the international and national legislative framework.

Adequate human and financial resources should be made available to enable bodies involved in minority issues to effectively carry out their work.

It is essential that the public is adequately informed, both by mainstream and minority media, about political issues relevant to persons belonging to national minorities. Hence it is important to ensure adequate participation of persons belonging to national minorities in various media-related bodies, such as supervisory boards and independent regulatory bodies, public service broadcast committees and auditors' councils.



PART I INTRODUCTION

1. The effective participation of persons belonging to national minorities in various areas of public life is essential to ensure social cohesion and the development of a truly democratic society. The Framework Convention for the Protection of National Minorities¹ (hereinafter ‘the Framework Convention’) therefore stipulates in its Article 15 that State Parties “shall create the conditions necessary for the effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs, in particular those affecting them”.

2. In view of the importance of effective participation for the protection of persons belonging to national minorities, the Advisory Committee on the Framework Convention (hereinafter ‘the Advisory Committee’) decided to devote its second thematic commentary to the participation of persons belonging to national minorities in social, economic and cultural life and in public affairs. The main objective of this commentary is to highlight the interpretation given by the Advisory Committee, mainly in its country-specific Opinions adopted between 1999 and 2007, to the provisions of the Framework Convention relating to effective participation of persons belonging to national minorities. The commentary aims to provide a useful tool for State authorities and decision-makers, public officials, organisations of minorities, non-governmental organisations, academics and other stakeholders involved in minority protection.

3. The Preliminary Remarks to the Commentary introduce a reflection on the importance of participation and its relevance for the effective enjoyment of other rights guaranteed by the Framework Convention. The Commentary itself analyses a number of key findings on effective participation of persons belonging to national minorities, as identified in particular in the country-specific Opinions under various Articles of the Framework Convention (Part III). In its Conclusions, the Commentary highlights the main challenges which remain in this field and identifies areas which will need to be given further attention by the Advisory Committee in the future country-by-country monitoring. The Appendix contains an analysis of the relations between Article 15 and other articles of the Framework Convention. This Commentary is to be understood as a living document, which will need to be further developed as monitoring under the Framework Convention progresses.

4. In elaborating this Commentary, the Advisory Committee carried out extensive consultations with national minority representatives and organisations, academics and other stakeholders in order to ensure that the Commentary be as comprehensive as possible and that it adequately reflects the main challenges facing national minorities.

1. The Framework Convention for the Protection of National Minorities, which was adopted in 1994, is the main Council of Europe instrument to protect persons belonging to national minorities. It entered into force in 1998 and it has so far been ratified by 39 Member States.



PART II PRELIMINARY REMARKS

1. INTERNATIONAL STANDARDS FOR EFFECTIVE PARTICIPATION OF PERSONS BELONGING TO NATIONAL MINORITIES: THE FRAMEWORK CONVENTION AND OTHER INTERNATIONAL INSTRUMENTS

5. The protection of national minorities and of the rights and freedoms of persons belonging to national minorities, as embedded in the Framework Convention for the Protection of National Minorities, forms an integral part of the international protection of human rights.² Hence the right to effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs, as spelled out in Article 15 of the Framework Convention, forms also part of the international protection of human rights.

6. Although the Framework Convention protects the rights of individual persons belonging to national minorities,³ the enjoyment of certain rights, including the right to effective participation, has a collective dimension. This means that some rights can be effectively enjoyed only in community with other persons belonging to national minorities.⁴

7. Besides the Framework Convention, there are other international documents that are relevant for the participation of persons belonging to national minorities. The Advisory Committee has taken into account the standards contained in these international texts when preparing this Commentary. They range from legally binding standards to recommendations and guidelines. Legally binding standards include those contained in the European Convention for the Protection of Human Rights and Fundamental Freedoms and the related case-law of the European Court of Human Rights, the revised European Social Charter or the European Charter for Regional or Minority Languages. The Lund Recommendations on the Effective Participation of National Minorities in Public Life published by the OSCE High Commissioner on National Minorities, have also been carefully considered by the Advisory Committee in its analysis of Article 15 of the Framework Convention. The United Nations also contributed to developing norms in the field of participation, notably through the Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities (adopted in 1992), the Declaration on the Rights of Indigenous Peoples (adopted in 2007) and, on a more general level, in the International Convention on the Elimination of all forms of Racial Discrimination.

2. See Article 1 of the Framework Convention.

3. See Explanatory report to the Framework Convention on Article 1 of the Framework Convention, paragraph 31.

4. See Article 3 paragraph 2 of the Framework Convention: "Persons belonging to national minorities may exercise the rights and enjoy the freedoms flowing from the principles enshrined in the present Framework Convention individually as well as in community with others".

2. CORE CONSIDERATIONS ON ARTICLE 15 OF THE FRAMEWORK CONVENTION

8. Article 15 is a central provision of the Framework Convention in many respects. The degree of participation of persons belonging to national minorities in all spheres of life can be considered as one of the indicators of the level of pluralism and democracy of a society. Creating the conditions for effective participation of persons belonging to national minorities should, therefore, be considered by the State Parties as forming an integral part of the implementation of the principles of good governance in a pluralistic society.

9. Effective participation of persons belonging to national minorities is also crucial for enhancing social cohesion, as keeping national minorities on the periphery of society can lead to social exclusion and tensions among groups. Marginalising persons belonging to national minorities in socio-economic life also has implications for the country as a whole, with the risk of losing their contribution and additional input to society.

10. Article 15, like other provisions contained in the Framework Convention, implies for the State Parties an obligation of result: they shall ensure that the conditions for effective participation are in place, but the most appropriate means to reach this aim are left to their margin of appreciation. This Commentary aims to provide the State Parties with an analysis of existing experiences so as to help them to identify the most effective options.

11. Promoting the effective participation of persons belonging to national minorities in the society requires continuing and substantive dialogue, both between persons belonging to national minorities and the majority population and between persons belonging to national minorities and the authorities. These two dimensions of dialogue can be achieved only if effective channels for communication are in place.

12. The Advisory Committee considers that the monitoring mechanism set up under the Framework Convention is in itself a valuable process to facilitate dialogue between persons belonging to national minorities and the authorities.

a. Effective participation, full and effective equality and promotion of national minorities' identity and culture

13. While Article 15 is the Framework Convention's central provision devoted to the right to effective participation, participation is also key to the full enjoyment of other rights protected under the Convention.⁵ The relation between Article 15 and Articles 4 and 5 is, in this context, particularly important. In fact, Articles 15, 4 and 5 can be seen as the three corners of a triangle which together form the main foundations of the Framework Convention.

14. Article 4 requires States to promote full and effective equality for persons belonging to national minorities in all areas of life. This implies the right of equal protection of the law and before the law and the right to be protected against all forms of discrimination based on ethnic origin and other grounds. Furthermore, full and effective equality also implies the need for the authorities to take specific measures in order to overcome past or structural inequalities and to ensure that persons belonging both to national minorities and to the majority have equal opportunities in various fields. Article 5 implies for State Parties an obligation "to promote the conditions necessary for persons belonging to national minorities to maintain and develop their culture and to preserve the essential elements of their identity, namely their religion, language, traditions and cultural heritage" in order to guarantee *effectively* their right to identity.

5. See Appendix to the Commentary.

15. The right to effective participation, as enshrined in Article 15, makes it possible that the concerns of persons belonging to minorities regarding full and effective equality, and regarding their right to preservation and development of their specific identity, are heard and effectively taken into account.

b. Effective participation on “issues affecting national minorities”

16. Article 15 requires States to create the conditions necessary for the effective participation of persons belonging to national minorities on various issues, *in particular those affecting them*. This part of Article 15 requires that State Parties pay specific attention to the involvement of persons belonging to national minorities in decision-making processes on issues of particular relevance to them. The Advisory Committee has made extensive comments on the various mechanisms which have been established by States to involve national minorities’ representatives in consultative and decision-making processes on issues of relevance to them. These comments focus on mechanisms for involving national minorities in decision-making on specific cultural, social and economic policies as well as in public affairs.

17. At the same time, the Advisory Committee has often underlined that persons belonging to national minorities should also have a say on issues which are not of exclusive concern to them but affect them as members of the society as a whole. Participation in public affairs is indeed essential not only to ensure that the particular concerns of persons belonging to national minorities are taken into account, but also to make it possible for them to influence the general direction of development in society.

c. “Effectiveness” of participation

18. Another central issue in relation to Article 15 is the meaning of “effectiveness” in the context of minority participation. “Effectiveness” of participation cannot be defined and measured in abstract terms. When considering whether participation of persons belonging to national minorities is effective, the Advisory Committee has not only examined the means which promote full and effective equality for persons belonging to national minorities: it has also taken into account their impact on the situation of the persons concerned and on the society as a whole. This impact has qualitative and quantitative dimensions and may be viewed differently by different actors, depending on their engagement in the processes.

19. Hence it is not sufficient for State Parties to formally provide for the participation of persons belonging to national minorities. They should also ensure that their participation has a substantial influence on decisions which are taken, and that there is, as far as possible, a shared ownership of the decisions taken.

20. Similarly, measures taken by the State Parties to improve participation of persons belonging to national minorities in socio-economic life should have an impact on their access to the labour market as individual economic actors, their access to social protection and, ultimately, their quality of life. Full and effective equality may, in this context, be seen as a result of effective participation.

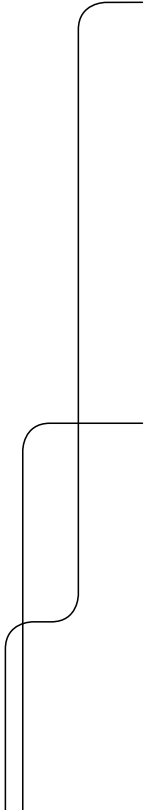
21. It may be a challenge for representatives of national minorities to participate effectively in decision-making. It implies the allocation of time and resources, not only to participate, but also to try to reflect accurately the variety of views among persons belonging to their national minority. Consequently, national minorities require both capacity building and resources to ensure that their representatives can contribute effectively.

d. Effective participation of national minorities and intercultural dialogue

22. Article 15 is also intended to facilitate intercultural dialogue by making it possible for national minorities to be visible, have their voice heard and participate effectively in decision-making, including participation on issues of relevance to the society at large. In fact, dialogue should not be limited to representatives of the national minorities

and the authorities, but it should be extended to all segments of society. The Framework Convention intends to provide persons belonging to national minorities with increased possibilities to participate in the mainstream society and at the same time for the majority population to become better acquainted with the culture, language and history of the national minorities, in a spirit of intercultural dialogue.⁶

6. See also Article 6.1 of the Framework Convention.



PART III
KEY FINDINGS
ON PARTICIPATION OF PERSONS
BELONGING TO NATIONAL MINORITIES
IN CULTURAL, SOCIAL AND ECONOMIC LIFE
AND IN PUBLIC AFFAIRS

1. PARTICIPATION IN ECONOMIC AND SOCIAL LIFE

23. The Advisory Committee has frequently pointed out that *effective* participation of persons belonging to national minorities cannot be restricted only to their participation in public affairs, and that effective participation in economic and social life is of equal importance to their participation in public affairs, in conformity with the principles of the European Social Charter and the Revised European Social Charter.

24. Participation in social and economic life covers a wide range of issues, from access to adequate housing, health care, social protection (social insurance and social benefits), to social welfare services and access to work. Participation of persons belonging to national minorities in economic life implies both access to the labour market, public and private, and access to business and other self-employment opportunities. These are, in turn, closely linked to property rights and privatisation processes.

25. It is also important to recall that persons belonging to different minority groups face different obstacles to their participation in socio-economic life. Persons belonging to some groups, such as the Roma and Travellers or indigenous peoples, are more at risk of suffering forms of exclusion from socio-economic life than persons belonging to other national minorities or the majority population. These groups may require specific measures to address their needs.

26. Effective participation in social and economic life requires, *inter alia*, that State Parties remove barriers which prevent persons belonging to national minorities from having equal access to various spheres of economic life and social services and to promote their equal access to employment and market opportunities and to a range of public services, including social housing and health care.

27. Moreover, equal opportunities should not be limited to giving equal access to markets and services. Effective participation also requires that State Parties promote participation of persons belonging to national minorities in economic and social life and in benefits and outcomes in the social and economic spheres, which includes, among others, the right to benefit from economic development, health services, social security and other forms of benefits.

28. Therefore, the Advisory Committee findings which are presented below are the result of a combined analysis of findings in respect of Article 15 (effective participation) and Article 4 (equal treatment).

29. Some of the findings are relevant for most of the State Parties; these include the lack of statistical data on the socio-economic situation of national minorities and the

sometimes inadequate response of public service to the needs of persons belonging to national minorities. Others specifically relate to some countries or regions or minority groups, such as difficulties resulting from land privatisation processes, obstacles in pursuing traditional activities by persons belonging to some national minorities.

a. Availability of statistical data on the socio-economic situation of persons belonging to national minorities

30. State Parties should regularly collect data and gather up-to-date information on the socio-economic and educational situation of persons belonging to national minorities in order to compare the latter with the situation of the majority population. The availability of reliable data, disaggregated by age, sex and geographical distribution, is an important condition for the development of well-targeted and sustainable measures, which meet the needs of the persons concerned. It is also crucial for the formulation of effective policies and measures to tackle discrimination in areas such as access to employment and housing. Data collected as a result of population census are, in general, insufficient to serve as a sound basis for these policies and measures.

31. The collection of data on the situation of national minorities should be made in accordance with international standards of personal data protection,⁷ as well as respecting the right for persons belonging to a national minority freely to choose to be treated or not to be treated as such. Wherever possible, representatives of the national minorities concerned should be involved throughout the process of data collection, while the methods of collection of such data should be designed in close co-operation with them.

b. Legislation prohibiting discrimination in socio-economic life

32. The Advisory Committee has frequently observed that some national minorities have proportionally higher unemployment rates, sometimes lower employment rates, and a generally lower participation in the labour market than the majority population. They can be faced with direct and indirect discrimination, inequalities in career development and often with structural obstacles (e.g. a ceiling to the level of their promotion within an organisation).

33. The existence of comprehensive legislation prohibiting discrimination on grounds of belonging to a national minority, covering the fields of employment, housing, health care and social protection by public and private actors, is a precondition in any policy aimed at promoting participation of persons belonging to national minorities in various spheres of socio-economic life.

34. The Advisory Committee has, therefore, repeatedly insisted on the fact that anti-discrimination legislation should be enacted or, as appropriate, further developed and fully implemented with a view to eliminating discrimination against persons belonging to national minorities, especially in the labour market, in the field of housing and by health care providers. This also implies that adequate measures should be taken to raise awareness in the society at large and provide training for all stakeholders, including law-enforcement bodies.

35. It is also important that appropriate legal remedies are available in cases of discrimination. State Parties should raise awareness among persons belonging to national minorities on existing remedies and ensure that these are easily accessible.

36. Moreover, the Advisory Committee has often underlined that racism and discrimination can have a disproportionate impact on women and girls belonging to some minority groups in particular. They can experience multiple discrimination because of

7. See for instance the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS 108) and the Committee of Ministers Recommendation (97) 18 on the protection of personal data collected and processed for statistical purposes.

their ethnic origin and gender. Targeted measures should, therefore, aim to remedy specific forms of discrimination faced by women belonging to national minorities.⁸

c. Capacity of public service to deal with socio-economic needs of persons belonging to national minorities

37. Participation of persons belonging to national minorities in socio-economic life is sometimes hampered by administrative obstacles and by a lack of sensitivity to the specific needs and difficulties encountered by these persons on the part of administrations and public services. In some cases, difficulties arise from the insufficient capacity of the administrations concerned to cater for the specific needs of persons belonging to national minorities. Administrations and public services include education and social institutions, such as employment services, social services and social benefits providers, health and housing services, public transports and utilities, sports and recreation services.

38. State Parties should therefore take measures to better prepare the staff of public services and welfare institutions to provide adequate responses to the needs of persons belonging to national minorities. Specialised training may be required on the specific needs of persons belonging national minority communities as well as on the specific social and economic problems which may affect persons belonging to some national minorities in particular. In fact, persons belonging to some minority groups are more at risk of social exclusion and their integration in socio-economic life often requires targeted approaches, which fully take into account cultural and other specific circumstances.

39. Public services and welfare institutions need to be made easily accessible and available to national minorities. This may require a range of outreach activities and an adaptation of these services and institutions to ensure that they meet the specific needs of national minorities in practice as effectively as they meet the needs of the general population.

40. Information and advice on public services and welfare institutions need to be made easily accessible and available, where appropriate, in the languages of national minorities.

41. Moreover, State Parties should promote the recruitment, promotion and retention in the administration and public services of persons belonging to national minorities, both at national and local levels.

d. Participation of persons belonging to national minorities in socio-economic life in depressed regions

42. Persons belonging to national minorities often live in border areas and other regions at a distance from political and economic centres of activity. Hence they can be confronted with more difficult socio-economic situations than the majority population. State Parties should take specific measures to increase the opportunities for persons belonging to minorities living in peripheral and/or economically depressed areas, such as rural, isolated and border areas, war-damaged areas or regions affected by de-industrialisation, to participate in socio-economic life.⁹

43. Where appropriate, this could result from bilateral or cross border co-operation. Trade and other economic activities across borders can be an important factor of economic and social development for persons belonging to national minorities. State Parties should, therefore, ensure that cross border co-operation is not limited by any undue obstacle.

8. See for example 2nd Opinion on Ireland, adopted on 6 October 2006, paragraphs 50 and 51.

9. See for example 1st Opinion on Ukraine, adopted on 1 March 2002, paragraph 73 and 2nd Opinion on Estonia, adopted on 24 February 2005, paragraph 160.

44. State Parties should ensure that economic rehabilitation programmes and regional development initiatives targeting depressed regions, including some inner city areas, are designed and implemented in a manner that also provides benefits to those in need among persons belonging to national minorities who live in such regions. In order to ensure this, studies should be undertaken to assess the possible impact of development projects on persons belonging to national minorities. Particular attention should be paid to the situation of women and youth from national minority backgrounds.

45. The authorities should ensure that persons belonging to national minorities are fully involved in the planning, implementation, monitoring and evaluation of policies and projects likely to have an impact on their economic situation and the situation of the regions where they live in substantial numbers.

46. In post-conflict situations, particular attention should be paid to the socio-economic situation of persons belonging to minorities who have been discriminated against on account of their national minority background and were barred from employment. Specific measures should be taken to redress the consequences of past discrimination and promote these persons' participation in socio-economic life.¹⁰

e. Participation in socio-economic life of persons belonging to disadvantaged national minorities

47. Persons belonging to certain minority groups, among others the Roma and Travellers and indigenous peoples, often face more significant difficulties than others in accessing the labour market, education and training, housing, health care and social protection. Difficulties in the various sectors are often connected and mutually reinforcing and they can lead to a spiral of exclusion from socio-economic participation. Women belonging to these groups are often particularly vulnerable to poverty and social exclusion.

48. Furthermore, a certain number of persons belonging to these groups continue to occupy specific economic niches and pursue traditional activities and trades, which are sometimes difficult to maintain in a rapidly changing economic context. State Parties should remove undue obstacles, including excessive regulations, which hinders the practice of economic activities which are specific to certain minority groups. This concern should be borne in mind when new regulations in this area are developed.

49. In order to promote effective integration of persons belonging to disadvantaged minority groups in socio-economic life, comprehensive and long-term strategies should be designed and implemented. Where such strategies are in place, particular attention should be paid to their effective implementation. Adequate resources need to be provided in a timely manner at all levels of operation, especially locally. Furthermore, the implementation of such policies should be carefully monitored and their impact evaluated, in close co-operation with representatives of the minorities concerned, with a view to adapting and strengthening them over time. Effective co-ordination of measures undertaken by the various bodies involved should be a key concern.

f. Access to land and property as a condition for participation in socio-economic life

50. Obstacles to obtaining access to property (whether residential, commercial or agricultural) can have a disproportionate effect on persons belonging to national minorities, aggravating their economic difficulties and unemployment.

51. The unequal access to property, including land property, is sometimes connected with privatisation processes and processes of property restitution which, in some cases, have had a disproportionate impact on persons belonging to vulnerable minority groups. State Parties should therefore ensure equal and fair access to privatisation and property restitution processes, as these have long-term implications for the effective participation of persons belonging to national minorities in economic life. In order to

10. See for example 2nd Opinion on Croatia, adopted on 1 October 2004, paragraphs 60 to 62.

enhance full and effective equality for persons belonging to national minorities, the authorities should, in particular, ensure that the privatisation process is transparent and set up mechanisms to monitor and, in due course, evaluate the impact of privatisation. Moreover, persons belonging to national minorities should participate effectively in these monitoring and evaluation processes.¹¹

52. Substantial difficulties in gaining access to property can also result from armed conflicts and the subsequent displacements of populations. State Parties should ensure that property claims by persons belonging to national minorities are processed and implemented in an efficient and transparent manner and do not result in discriminatory outcomes.¹²

53. Violations of land rights or limitations imposed on the use of land by certain groups such as indigenous peoples, whose economic situation is closely connected to land usage, can significantly undermine their participation in socio-economic life. Therefore, land traditionally used by them should be given particular and effective protection. Furthermore, the representatives of indigenous peoples should be closely involved in any decision-making affecting the use of land in their traditional areas of residency.

g. Residency, language and other requirements as a condition for participation in socio-economic life

54. In some State Parties, residency requirements are imposed by some employers or by the State as a prerequisite for recruitment,¹³ or for registering and running private business; these practices can affect in a disproportionate manner persons belonging to certain national minorities. They can face specific difficulties in registering their residency, due to administrative or other obstacles. Residency requirement problems can also hinder their access to basic social rights, such as healthcare, unemployment services and pension entitlements. Persons belonging to national minorities which have a nomadic lifestyle also face obstacles to participation in socio-economic life when residency-related requirements are not adapted to their lifestyle.

55. Moreover, undue or disproportionate language proficiency requirements in order to access certain jobs or in the provision of goods and services, especially in the private sector, can hamper access to employment and social protection of persons belonging to national minorities.¹⁴ State Parties should therefore take effective measures to remove any undue restrictions in the access to the labour market, which particularly affect persons belonging to certain national minorities. In situations where language proficiency requirements are a legitimate condition for access to certain jobs, notably in the public service, language training courses should be made available to prevent discrimination of persons belonging to national minorities. Access to basic social benefits and to certain public services should not be hampered by undue language or residency requirements.

56. At the same time, State Parties should ensure that residency registration processes are accessible and do not discriminate, directly or indirectly, against persons belonging to national minorities. Where needed, assistance for registration should be available for persons belonging to national minorities and, finally, regular monitoring of the registration processes should be carried out by the authorities.

h. Housing standards and participation in socio-economic life

57. Substandard housing conditions, often coupled with the physical/spatial separation of persons belonging to certain national minorities, in particular Roma and

11. See for example Opinion on Kosovo (UNMIK), adopted on 25 November 2005, paragraph 115.

12. See for example Opinion on Kosovo (UNMIK), paragraph 116.

13. See for example 2nd Opinion on the Russian Federation, paragraphs 59, 272 and 273.

14. See for example 1st Opinion on Azerbaijan, adopted on 22 May 2003, paragraph 79.

Travellers, considerably affect their ability to participate in socio-economic life and can result in their further poverty, marginalisation and social exclusion. This is frequently made more acute by the lack of legal provisions securing their residency rights and by their vulnerability to forced evictions, including as a consequences of processes of property restitution.¹⁵

58. State parties must take effective measures to put an end to discriminatory practices which lead to segregation and marginalisation of persons belonging to certain national minorities.¹⁶ Particular attention should be paid to ensuring full respect for the human rights of persons belonging to national minorities in housing matters.

59. Moreover, State Parties should develop comprehensive sectoral policies to address problems of substandard housing and lack of access to basic infrastructure, which affect persons belonging to certain minorities. State Parties should also promote their equal access to adequate housing, in particular by improved access to subsidised housing.

60. In doing so, the authorities should provide for adequate participation of the persons concerned in decision-making on housing and related programmes designed to improve their socio-economic situation, in order to ensure that the needs of these persons are adequately catered for. Such policies should be adequately funded. It is equally important for State Parties to ensure that local authorities comply with existing anti-discrimination legislation in housing matters as measures which perpetuate segregation are often taken locally.

i. Health care and participation in socio-economic life

61. Persons belonging to certain national minorities face particular difficulties in their access to health care, a situation which results from different factors, such as discrimination, poverty, geographical isolation, cultural differences or language obstacles. Difficulties in the access to health care have a negative impact on the participation of persons belonging to national minorities in socio-economic life.

62. State Parties should ensure the effective involvement of persons belonging to the minorities concerned in the design, implementation, monitoring and evaluation of measures taken to address problems affecting their health care. These are necessary to enable health services to respond more effectively to their specific needs.

63. Medical and administrative staff employed in health services should receive training on the cultural and linguistic background of national minorities, so that they can adequately respond to the specific needs of persons belonging to national minorities.¹⁷ The employment of health mediators or assistants belonging to national minorities can contribute to improved communication and more appropriate approaches.¹⁸

64. Particular emphasis should be put on providing equally effective services to persons belonging to national minorities in the health care system.¹⁹ Equal opportunity policies should not be limited to access to health care only. They should also aim at the provision of quality services to persons belonging to national minorities, which have the same impact as the provisions for the rest of the population.

15. See for example 2nd Opinion on Romania, adopted on 24 November 2005, paragraphs 80 and 82.

16. See for example 2nd Opinion on the Czech Republic, adopted on 24 February 2005, paragraphs 52 and 57, 2nd Opinion on the Slovak Republic, adopted on 26 May 2005, paragraph 46 and 2nd Opinion on Slovenia, adopted on 26 May 2005, paragraphs 67 and 68.

17. See also remarks in part c) above.

18. See for example 2nd Opinion on the Czech Republic, adopted on 24 February 2005, paragraph 55, and 2nd Opinion on the Slovak Republic, adopted on 26 May 2005, paragraphs 56 and 57.

19. See for example 2nd Opinion on the Slovak Republic, adopted on 26 May 2005, paragraphs 56 and 57.

2. PARTICIPATION IN CULTURAL LIFE²⁰

65. The effectiveness of the participation of persons belonging to national minorities in cultural life is in most State Parties closely connected to their level of participation in public affairs and in social and economic life. The Framework Convention protects both the right for persons belonging to minorities to preserve and develop their own cultural heritage and identity and the right for them to take part effectively and interact in mainstream cultural life, in a spirit of tolerance and intercultural dialogue. Therefore, the findings presented in this chapter result from a combined analysis of Articles 5, 6 and 15.

66. When designing and implementing cultural policies affecting persons belonging to national minorities, it is important that the authorities carry out adequate consultations with them so as to meet their needs effectively. National minorities, through their representatives, should also be effectively involved in processes of allocation of public support for their cultural initiatives. Moreover, when specific institutions exist for channelling such support, persons belonging to national minorities should be adequately represented and should be able to take part in the corresponding decision-making.²¹

67. Processes of decentralisation can play an important role in creating the conditions necessary for persons belonging to national minorities to participate effectively in cultural life. In particular, cultural autonomy arrangements, whose aim is inter alia to delegate competences to persons belonging to national minorities in the sphere of culture and education, can result in increased participation of minorities in cultural life.²²

68. Additionally, when analysing the participation of minorities in cultural life, it is important to assess their level of participation in the media. It is important that minorities have the possibility to create and use their own media. It is, however, equally important that they have access to and are present in mainstream media so as to be able to present their views on issues of interest to the society at large.

3. PARTICIPATION IN PUBLIC AFFAIRS

69. The Advisory Committee, while considering whether persons belonging to national minorities effectively participate in public affairs, has examined their overall involvement in decision-making. It has not only examined their representation and participation in various mechanisms, but also devoted particular attention to the effectiveness of their influence on decision-making processes. The different decision-making arrangements which exist in the State Parties should take into account the composition of society and reflect its diversity.

20. See also other Council of Europe reference texts on cultural diversity and on the media, such as:

– *The Faro Declaration on the Council of Europe's Strategy for Developing Intercultural Dialogue*, adopted by the Ministers responsible for Cultural Affairs of the States parties to the European Cultural Convention, meeting in Faro on 27 and 28 October 2005.

– *The Declaration on Intercultural Dialogue and Conflict Prevention*, adopted by the Conference of the European Ministers of Culture on 22 October 2003.

– 7th European Ministerial Conference on Mass Media Policy: *Integration and diversity: the new frontiers of European media and communications policy*. Texts adopted (MCM(2005)005).

– Recommendation No. R (97) 21 of the Committee of Ministers *on the media and the promotion of a culture of tolerance and its Explanatory Memorandum*.

– Parliamentary Assembly of the Council of Europe: Recommendation 1773 (2006): *The 2003 guidelines on the use of minority languages in the broadcast media and the Council of Europe standards: need to enhance co-operation and synergy with the OSCE*.

– Parliamentary Assembly of the Council of Europe: Recommendation 1277 (1995) *on migrants, ethnic minorities and media*.

21. See for example 2nd Opinion on Norway, adopted on 5 October 2006, paragraphs 60 and 69.

22. See also paragraphs from 133 to 137 below on autonomy arrangements.

70. Effective participation includes a wide range of possible forms, such as an exchange of information, dialogue, informal and formal consultation and participation in decision-making. It can be ensured through different channels, ranging from consultative mechanisms to special parliamentary arrangements. Particular attention should be paid to equal participation of women and men belonging to national minorities.

71. Whatever the mechanisms chosen, persons belonging to national minorities should be given real opportunities to influence decision-making, the outcome of which should adequately reflect their needs. According to the Advisory Committee, mere consultation is, as such, not a sufficient means to be considered effective participation.

72. Representation and participation of persons belonging to national minorities in elected bodies, public administration, judiciary and law-enforcement agencies is an essential but not sufficient condition for effective participation. Their inclusion in elected bodies at different levels largely depends on the constitutional traditions and guarantees provided for by electoral legislation. The choice and modalities of the electoral system often has a direct impact on the effectiveness of minority participation in decision-making. Besides the possibilities provided for by the two main types of electoral systems (majoritarian and proportional), special mechanisms, such as reserved seats, quotas, qualified majorities, dual voting or 'veto' rights, may be introduced. In addition, cultural autonomy arrangements can reinforce minority participation in public affairs.

73. Specialised governmental structures dealing with minority issues contribute to ensuring that the needs of minorities are consistently integrated into governmental policies. Minority-related issues should, however, not remain exclusively in the domain of specialised governmental bodies. The minority perspective needs to be mainstreamed in general policies at all levels and procedural steps by the actors involved in policy-making.

74. The media should inform the society at large of minority-related issues with a view to promoting a spirit of tolerance and intercultural dialogue.

a. Participation of persons belonging to national minorities in legislative process

i. Political parties

75. The right of every person belonging to a national minority to freedom of peaceful assembly and freedom of association as stipulated in Article 7 of the Framework Convention implies, *inter alia*, the right to form political parties and/or organisations. Legislation which prohibits the formation of political parties on an ethnic or religious basis can lead to undue limitations of this right. Any limitation should, in any case, be in line with the norms of international law and the principles embedded in the European Convention on Human Rights.²³

76. The registration of national minority organisations and political parties may be subject to certain conditions. Such requirements should, however, be designed so that they do not limit, unreasonably or in a disproportionate manner, the possibilities for persons belonging to national minorities to form such organisations and thereby restrict their opportunities to participate in political life and the decision-making process. This concerns, *inter alia*, numerical and geographical conditions for registration.²⁴

23. Article 11 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), which guarantees the right to freedom of peaceful assembly and of association, provides that no restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others.

24. See for example 2nd Opinion on Moldova adopted on 9 December 2004, paragraphs 74 to 77, 2nd Opinion on the Russian Federation adopted on 11 May 2006, paragraph 261 and 1st Opinion on Bulgaria, adopted on 27 May 2004, paragraphs 61 to 63.

77. State Parties should ensure that parties representing or including persons belonging to national minorities have adequate opportunities in election campaigning. This may imply the display of electoral advertising in minority languages. The authorities should also consider providing opportunities for the use of minority languages in public service television and radio programmes devoted to election campaigns and on ballot slips and other electoral material in areas inhabited by persons belonging to national minorities traditionally or in substantive numbers.²⁵

78. Political parties, both mainstream and those formed by persons belonging to national minorities, can play an important role in facilitating participation of persons belonging to national minorities in public affairs. Internal democratic processes of selection of their candidates by mainstream parties are crucial in ensuring participation of persons belonging to national minorities. Inclusion of minority representatives in mainstream political parties does, however, not necessarily mean the effective representation of the interests of minorities.

79. In countries where prominent minority parties exist, it is important to ensure that other minority parties or political organisations wishing to represent the interests of other persons belonging to the same national minorities have opportunities to do so.

ii. Design of electoral systems at national, regional and local levels

80. The participation of persons belonging to national minorities in electoral processes is crucial to enable minorities to express their views when legislative measures and public policies of relevance to them are designed.

81. Bearing in mind that State Parties are sovereign to decide on their electoral systems, the Advisory Committee has highlighted that it is important to provide opportunities for minority concerns to be included on the public agenda. This may be achieved either through the presence of minority representatives in elected bodies and/or through the inclusion of their concerns in the agenda of elected bodies.

82. The Advisory Committee has noted that when electoral laws provide for a threshold requirement, its potentially negative impact on the participation of national minorities in the electoral process needs to be duly taken into account.²⁶ Exemptions from threshold requirements have proved useful to enhance national minority participation in elected bodies.

83. Constitutional guarantees for the representation of persons belonging to national minorities in elected bodies need to be coupled with effective implementing legislation and accompanying measures within reasonable time.²⁷ The Advisory Committee considers it essential that persons belonging to national minorities participate or are consulted in the process of drafting such legislation and monitoring its implementation.

84. State Parties are encouraged to strengthen the participation of persons belonging to national minorities, including those in a disadvantaged position, in local elected councils. In this respect, the Advisory Committee has underlined that due attention should be paid to the possible negative impact of certain residency requirements on the participation of persons belonging to national minorities in local elections.²⁸

85. Electoral provisions aimed at promoting a balanced presence of women in elected bodies can be designed to have a positive impact on the participation of women belonging to national minorities in public affairs.

25. See for example 1st Opinion on Estonia adopted on 14 September 2001, paragraphs 55 and 56.

26. See for example 2nd Opinion on the Russian Federation adopted on 11 May 2005, paragraph 262 and 1st Opinion on Serbia and Montenegro, adopted on 27 November 2003, paragraph 102.

27. See for example 1st Opinion on Hungary adopted on 9 December 2004, paragraph 48.

28. See for example 2nd Opinion on Ireland, adopted on 6 October 2006, paragraph 104.

86. Whatever the arrangements chosen, it is in general advisable to carry out a periodical review in order to ensure that they adequately reflect developments in the society and the needs of persons belonging to national minorities.

87. Where possibilities for persons belonging to national minorities to be represented in elected bodies are in practice limited, alternative channels, such as specific arrangements to facilitate minority representation, need to be considered in order to enhance their participation.²⁹

iii. Administrative and constituency boundaries

88. Changes of electoral constituencies may affect efforts to ensure effective participation of persons belonging to national minorities in public affairs, including in elected bodies. When considering reforms leading to constituency changes, State Parties should ensure that they do not undermine the opportunities of persons belonging to national minorities to be elected.³⁰

89. When considering reforms which aim to modify administrative boundaries, the authorities should consult persons belonging to national minorities and carefully consider the possible impact of such reforms on their participation in public affairs.³¹

90. In any case, State Parties should not adopt measures which aim to reduce the proportion of the population in areas inhabited by persons belonging to national minorities or to limit the rights protected by the Framework Convention.³² On the contrary, administrative reforms in such areas should aim, *inter alia*, to increase opportunities for minority participation.

iv. Reserved seats system

91. Arrangements involving reserved and/or shared seats for representatives of national minorities have in a number of cases proved to be a useful means to enhance participation of persons belonging to national minorities in decision-making. The provision of reserved seats, whether shared between various national minorities or designed for one group, is one of the ways in which the representation of persons belonging to national minorities can be ensured in elected bodies.

92. The 'shared seats' system is particularly adapted to the needs of numerically small minorities. For such an arrangement to have a significant impact on the participation of all the national minorities represented through the shared seat(s), it is important that the minorities concerned agree on a common strategy and shared goals to be reached through the representation in the electoral body at stake. Elected representatives occupying shared seats should take due care to represent the concerns of all persons belonging to national minorities in the constituency. A rotation of the representatives of the different national minorities may help create the sense of a shared seat.

93. In order to ensure that a guaranteed seat arrangement contributes substantially to effective participation, it is important that the minority representatives elected are effectively involved in decision-making processes. Moreover, they should have a real possibility to influence decisions taken by the elected body, including those not strictly related to national minorities. It is therefore important that they have speaking and voting rights in the elected body and that their role is not limited to a mere observer status.³³

29. See 2nd Opinion on Denmark adopted on 9 December 2004, paragraph 154.

30. See for example 2nd Opinion on the Slovak Republic adopted on 26 May 2005, paragraph 115 and 1st Opinion on Ukraine adopted on 1 March 2002, paragraph 69.

31. See for example 1st Opinion on "the former Yugoslav Republic of Macedonia" adopted on 27 May 2004, paragraph 103.

32. See Article 16 of the Framework Convention.

33. See 1st Opinion on Cyprus adopted on 6 April 2001, paragraph 41.

94. However, the Advisory Committee is of the opinion that the mere establishment of such arrangements does not automatically provide persons belonging to national minorities with a genuine and substantial influence in decision-making.³⁴

v. *Parliamentary practice*

95. In those State Parties where there are special parliamentary committees to address minority issues, these bodies have, in a number of cases, helped take into account concerns of national minorities in decision-making processes. The possibility of using minority languages in these committees has proved particularly effective. Nonetheless, the importance of effective participation in other parliamentary committees also involved in aspects of minority protection should not be neglected. Co-operation across party lines within the parliamentary committees strengthens efforts conducive to mainstreaming minority issues into policies.

96. For the work of such committees to be effective, it is essential that appropriate attention be given to their recommendations, particularly when drafting or amending legislation concerning national minorities. In addition, regular dialogue should be pursued between the committees and the relevant authorities as well as between them and minority associations.

vi. *'Veto' rights*

97. In some State Parties, members of parliaments representing national minorities have a 'veto-type' right over draft legislation directly affecting them. This mechanism, which may constitute a valuable tool in certain circumstances, has been introduced by some State Parties in order to ensure that minority representatives have a possibility to accept or reject legislation on matters directly affecting them.

98. The Advisory Committee has noted, however, that 'veto' rights can usually be invoked only in relation to legal acts concerning *exclusively* the rights and status of persons belonging to national minorities.³⁵ Hence, it might not be sufficient to guarantee the proper involvement of minority representatives in issues which do not concern them directly or exclusively.

99. There are also concerns that such a system of "veto" right or a "quasi veto" right on some matters can, in specific circumstances, lead to a paralysis of State institutions.³⁶ In such cases, other and/or additional ways of enabling persons belonging to national minorities to voice their views in legislative processes can be identified as a substitute or a complement to the 'veto' system.

vii. *Citizenship requirements*

100. Citizenship is an important element that can substantially influence participation in public affairs. Experience has shown that citizenship requirements can hamper effective participation in certain fields of public affairs. When examining the personal scope of application of the Framework Convention, the Advisory Committee has, in a number of cases, called for flexibility and inclusiveness in the approach taken by the State Parties.³⁷ Moreover, the Advisory Committee has consistently emphasised the fact that the application of the Framework Convention to non-citizens belonging to national minorities can enhance a spirit of tolerance, intercultural dialogue and co-operation.

101. Although it is legitimate to impose certain restrictions on non-citizens concerning their right to vote and to be elected, such restrictions should not be applied more widely

34. See for example Opinion on Kosovo (UNMIK) adopted on 25 November 2006, paragraph 110.

35. See 1st Opinion on Slovenia adopted on 12 September 2002, paragraph 71.

36. See 1st Opinion on Bosnia and Herzegovina adopted on 27 May 2004, paragraphs 100 and 101.

37. See also remarks in respect of Article 3 of the Framework Convention in the Appendix to this Commentary.

than is necessary. While citizenship requirements can be applied in relation to parliamentary elections, State Parties are encouraged to provide non-citizens belonging to national minorities with a possibility to vote and to stand as candidates in local elections and governing boards of cultural autonomies.³⁸ Citizenship should not be a condition for persons belonging to national minorities to join trade unions and other civil society associations. This is particularly important in State Parties where citizenship policy has been in a state of flux.

viii. Language proficiency requirements

102. Language proficiency requirements imposed on candidates for parliamentary and local elections are not compatible with Article 15 of the Framework Convention. They negatively affect the effective participation of persons belonging to national minorities in public affairs.³⁹

b. Participation of persons belonging to national minorities through specialised governmental bodies

103. The establishment of specialised governmental structures dealing with national minorities within national, regional or local authorities can help improve minority participation in public affairs. Where such bodies have not been set up, State Parties are encouraged to establish them or, at a minimum, to identify contact points for minority issues within public services.

104. Specialised bodies should not substitute but complement national minorities' consultative mechanisms. Their effectiveness depends to a great extent on the level of co-ordination and complementarity with consultation bodies. The recruitment and retention of staff with national minority background and/or minority language skills in these specialised bodies can contribute to their effective functioning.

105. Specialised governmental bodies should not substitute the work of mainstream government institutions on minority-related issues. The main role of specialised bodies is to initiate and co-ordinate governmental policy in the field of minority protection. They are therefore seen as important channels of communication between the Government and minorities. It is essential that the relevant governmental institutions be aware of the needs of persons belonging to national minorities and that minority issues be mainstreamed in the work of other governmental services.⁴⁰

c. Participation of persons belonging to national minorities through consultative mechanisms

i. Setting-up consultative mechanisms

106. Consultation of persons belonging to national minorities is particularly important in countries where there are no arrangements to enable participation of persons belonging to national minorities in parliament and other elected bodies. Consultation alone does not, however, constitute a sufficient mechanism for ensuring *effective* participation of persons belonging to national minorities.

107. It is important to ensure that consultative bodies have a clear legal status, that the obligation to consult them is entrenched in law and that their involvement in decision-making processes is of a regular and permanent nature. While there are various models as regards the functioning of such structures,⁴¹ it is important to ensure that relevant regulations are detailed enough to provide for efficient and consistent consultation.

38. See for example 1st Opinion on Estonia, adopted on 14 September 2001, paragraph 55.

39. See 1st Opinion on Estonia, paragraph 55.

40. See for example 2nd Opinion on Armenia adopted on 12 May 2006, paragraph 122.

41. See also the DH-MIN Handbook on minority consultative mechanisms (www.coe.int/minorities).

108. The authorities may also organise joint consultations with representatives of different national minorities and/or enter into a direct dialogue with representatives of individual national minorities. While the former is an important method to address common issues and to enhance dialogue between various national minorities, the latter is appropriate, for example, to consider those issues which concern only a specific national minority. The Advisory Committee has noted that, in some cases, consultation with umbrella bodies of national minorities only is not sufficient to adequately take into account the concerns of individual national minorities.

ii. Representativeness of consultative mechanisms

109. Appropriate attention should be paid to the 'inclusiveness' and 'representativeness' of consultative bodies. This implies, *inter alia*, that where there are mixed bodies, the proportion between minority representatives and officials should not result in the latter dominating the work. All national minorities should be represented, including numerically smaller national minorities.⁴²

110. Representativeness of consultative bodies also depends on minority organisations and their appointment procedures. Moreover, when specific consultative mechanisms in respect of an individual national minority are set up, due regard should be paid to the diversity within this group.⁴³

111. For the credibility of consultative bodies, it is essential that their appointment procedures be transparent and designed in close consultation with national minorities. State Parties are encouraged periodically to review the appointment procedures to make sure that the bodies concerned are as inclusive as possible, maintain their independence from governments, and genuinely represent a wide range of views amongst persons belonging to national minorities. It is important to ensure that women belonging to national minorities are involved in consultative bodies.

112. Consultation should not be limited to the concerns of persons belonging to national minorities who live in areas with traditional or substantial minority population. This also implies that the agenda should not only reflect the concerns of the numerically largest minorities.

iii. Types of consultative mechanisms

113. While *ad hoc* consultations can be useful to address a particular issue, State Parties are encouraged to establish regular consultative mechanisms and bodies with a view to institutionalising dialogue between the governments and minority representatives.⁴⁴

114. Consultative mechanisms with persons belonging to national minorities should not exclude, where appropriate, parallel consultation with independent experts. The Advisory Committee has noted in some cases that expertise is a useful complement to the consultation procedure.

115. In addition to national structures, regional and local consultative mechanisms have, in some circumstances, proved to be a useful additional channel for the participation of persons belonging to national minorities in decision-making, especially in areas of competencies where decision-making powers have been decentralised. In such situations, it is important that local and regional authorities regularly involve these consultative bodies in their decision-making processes, when dealing with minority issues.⁴⁵

42. See for example 2nd Opinion on Ireland adopted on 6 October 2006, paragraph 112.

43. See for example 2nd Opinion on Germany adopted on 1 March 2006, paragraph 152.

44. See for example 2nd Opinion on Finland adopted on 2 March 2006, paragraphs 148 to 151.

45. See for example 2nd Opinion on the Czech Republic adopted on 24 February 2005, paragraphs 171 and 172.

iv. Role and functioning of consultative bodies

116. It is essential that the legal status, role, duties, membership and institutional position of consultative bodies be clearly defined. This includes the scope of consultation, structures, rules governing appointment of their members and working methods. It is important to ensure that consultative bodies have a legal personality, as a lack of this may undermine their effectiveness and their capacity to fulfil effectively their mission. Working methods of consultative bodies should be transparent and their rules of procedures clearly defined. Publicity of the work of the consultative bodies should be promoted so as to enhance transparency.

117. State Parties are invited to take measures to enable persons belonging to national minorities to be aware of the existence, mandate and activities of such consultative bodies. In addition, it is important that the meetings of these bodies are convened frequently and on a regular basis.⁴⁶

118. Consultative bodies need to be duly consulted in the process of drafting new legislation, including constitutional reforms that directly or indirectly affect minorities. State Parties should also consult persons belonging to national minorities and their consultative structures in relation to obligations arising under international treaties, including in respect of reporting obligations of interest to them.

119. Adequate resources should be made available to support the effective functioning of consultative mechanisms.⁴⁷

d. Representation and participation of persons belonging to national minorities in public administration, in the judiciary and in the executive

120. Public administration should, to the extent possible, reflect the diversity of society. This implies that State Parties are encouraged to identify ways of promoting the recruitment of persons belonging to national minorities in the public sector, including recruitment into the judiciary and the law enforcement bodies. Participation of persons belonging to national minorities in public administration can also help the latter better respond to the needs of national minorities.⁴⁸

121. One way of pursuing this aim is to provide a legal basis for promoting the recruitment of persons belonging to national minorities in public administration. It is important that such guarantees are coupled with adequate implementation measures.

122. It is also important to promote participation of persons belonging to national minorities in the judiciary and the administration of justice. Measures in this respect should be implemented in a way which fully guarantees the independence and the effective functioning of the judiciary.⁴⁹

123. Measures which aim to reach a rigid, mathematical equality in the representation of various groups, which often implies an unnecessary multiplication of posts, should be avoided. They risk undermining the effective functioning of the State structure and can lead to the creation of separate structures in the society.

124. Roma and Travellers, indigenous peoples and numerically small national minorities are often particularly under-employed in public administration and this issue requires specific attention from the authorities. Their employment in public administration can contribute to a better image and increased awareness of such minorities in the society at large, which in turn is likely to improve their participation at all levels.

46. See for example 1st Opinion on Ukraine adopted on 1 March 2002, paragraph 72 and 1st Opinion on Azerbaijan adopted on 22 May 2003, paragraphs 73 and 74.

47. See also remarks in paragraphs 137 and 138 below.

48. See for example 1st Opinion on the United Kingdom adopted on 30 November 2001, paragraphs 96 to 99.

49. See for example 2nd Opinion on Croatia adopted on 1 October 2004, paragraphs 154 to 159.

125. Targeted measures can be designed to address the specific circumstances of past inequalities in employment practices of some national minorities, including the most marginalised. This implies that all employees need to be sufficiently trained and competent to perform their work effectively.⁵⁰

126. State language proficiency requirements placed on public administration personnel should not go beyond what is necessary for the post or service at issue. Requirements, which unduly limit the access of persons belonging to national minorities to employment opportunities in public administration, are not compatible with the standards embedded in the Framework Convention.⁵¹ Where necessary, targeted support should be provided to facilitate the learning of the official language for applicants or personnel from national minorities.

127. Comprehensive data and statistics are crucial to evaluate the impact of recruitment, promotion and other related practices on minority participation in public services. They are instrumental to devise adequate legislative and policy measures to address the shortcomings identified. The collection of data on the situation of national minorities should be made in accordance with international standards of personal data protection,⁵² as well as the right for persons belonging to a national minority freely to choose to be treated or not to be treated as such. Representatives of the national minorities concerned should be involved in the entire process of data collection and the methods of collection of such data should be designed in close co-operation with them.

128. Attention should also be paid to the participation of persons belonging to national minorities in the executive. Effective participation can be advanced by various means such as the introduction of posts assigned for minority representatives in the executive at all levels. Measures excluding persons belonging to national minorities from accessing public posts are potentially discriminatory.⁵³

e. Participation of persons belonging to national minorities through sub-national forms of government

129. Sub-national forms of government can play an important role in creating the necessary conditions for effective participation of persons belonging to national minorities in decision-making. This is particularly relevant for regions where persons belonging to national minorities live compactly.

130. In order to ensure that, in practice, decentralisation and devolution processes have a positive effect on the participation of persons belonging to national minorities in public life, it is crucial to clearly define the respective competencies of sub-national and central authorities. Lack of clarity in this respect can reduce the level of participation of persons belonging to national minorities and may also hamper minority access to the public funds needed for their activities. It is also important to provide local authorities with appropriate resources to enable them to carry out their tasks effectively.⁵⁴

131. Where reforms relating to sub-national forms of government are considered, it is essential that their impact on the protection of persons belonging to national minorities be carefully analysed. To this end, State Parties are encouraged to provide ways of involving regional institutions as well as minority representatives in reform processes. Attention should be paid, in particular, to the potentially negative consequences of

50. See also remarks in paragraphs 36 and 37 above.

51. See for example 1st Opinion on Azerbaijan adopted on 22 May 2003, paragraph 79.

52. See Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS 108) and the Committee of Ministers' Recommendation (97) 18 concerning the protection of personal data collected and processed for statistical purposes.

53. See for example 1st Opinion on Bosnia and Herzegovina adopted on 27 May 2004, paragraph 98.

54. See also remarks in paragraphs 138 and 139 below.

these measures for the protection of national minorities, notably as regards minority access to decision-making processes and financial resources.⁵⁵

132. Irrespective of the territorial structure adopted by State Parties, the central authorities should remain committed to their general responsibility resulting from their international obligations and the national legal framework regarding participation of persons belonging to national minorities in various spheres. In this respect, State Parties are encouraged to ensure that sub-national authorities respect the obligations arising from the Framework Convention. Specific awareness-raising at the local and regional level is often needed to ensure this outcome.

f. Participation of persons belonging to national minorities through autonomy arrangements

133. The Framework Convention does not provide for the right of persons belonging to national minorities to autonomy, whether territorial or cultural. Yet, the Advisory Committee has examined the functioning and impact of territorial and cultural autonomy arrangements on participation of persons belonging to national minorities in State Parties where they exist.

134. The Advisory Committee found that, in the State Parties in which territorial autonomy arrangements exist, as a result of specific historical, political and other circumstances, they can foster a more effective participation of persons belonging to national minorities in various areas of life.

135. The Advisory Committee commented more extensively on cultural autonomy arrangements in those State Parties in which they have been established. These cultural autonomy arrangements are granted collectively to members of a particular national minority, regardless of a territory. They aim, *inter alia*, to delegate to national minority organisations important competences in the area of minority culture, language and education and can, in this regard, contribute to the preservation and development of minority cultures.

136. Where State Parties provide for such cultural autonomy arrangements, the corresponding constitutional and legislative provisions should clearly specify the nature and scope of the autonomy system and the competencies of the autonomous bodies. In addition, their legal status, the relations between them and other relevant State institutions as well as the funding of the envisaged autonomy system, should be clarified in the respective legislation. It is important that persons belonging to national minorities be involved and that their views be duly taken into account when legislation on autonomy arrangements is being prepared or amended.

137. When designing electoral systems for autonomous bodies, the representativeness of the national minority concerned should be a key consideration. Electoral systems for self-government arrangements should entail protection against possible abuse.⁵⁶

g. Availability of financial resources for minority-related activities

138. Availability of financial resources for bodies involved in minority protection is essential to enable them to carry out their mission. This implies the availability of funding for consultative mechanisms, cultural autonomy arrangements and government bodies involved in minority issues at all levels.

139. The resources allocated should be proportionate to the responsibilities of the bodies in question. Funding and budgetary arrangements for minority autonomy bodies should be designed so that they do not undermine their operational autonomy.⁵⁷ Consultative bodies also need to be provided with adequate resources, including staff

55. See for example Opinion on Kosovo (UNMIK) adopted on 25 November 2005, paragraph 113.

56. See 1st Opinion on Hungary adopted on 22 September 2000, paragraph 52.

57. See 2nd Opinion on Hungary adopted on 9 December 2004, paragraphs 116 to 119.

and financial means, to support their effective functioning. Resources are also needed to enable them to communicate effectively with their constituencies and to monitor and evaluate the implementation of legislation and policies which affect them.

h. Media as a source for the effective participation of persons belonging to national minorities in public affairs

140. It is essential that the public be adequately informed about issues relevant to persons belonging to national minorities, which should also be part of mainstream media reporting. It is essential that both mainstream and minority media play a key role in this process, not only by means of transmitting information, but also by promoting tolerance.⁵⁸ At the same time, excessive politicisation of minority issues through the media should be avoided. Moreover, the media, in particular electronic media, can facilitate consultation processes with persons belonging to national minorities.

141. The participation of persons belonging to national minorities in supervisory boards of public service broadcasts, auditors' councils and other media-related bodies, as well as in production teams, is essential to ensure adequate dissemination of information on national minorities. In the private sector, providing incentives for broadcasting in minority languages or on minority-related issues can contribute to increasing participation of persons belonging to national minorities in the media.

i. Participation of persons belonging to national minorities in the monitoring of the Framework Convention

142. Participation of persons belonging to national minorities in the monitoring process of the Framework Convention is crucial for achieving a balanced and quality outcome. When preparing State Reports or other written communications required under the Framework Convention or other international treaties pertaining to minority issues, State Parties should respect the principles enshrined in Article 15 of the Framework Convention and consult persons belonging to national minorities. In this and other contexts, it is important that interlocutors, such as consultative bodies, be not perceived as exclusive interlocutors but that State authorities also include other actors, especially minority or/and non-governmental organisations in the consultation process. The Advisory Committee welcomes the inclusion of comments made by minorities and civil society in State Reports, as well as in the Comments on the Advisory Committee's Opinions.

143. The Advisory Committee also welcomes alternative reports prepared by non-governmental actors. They often constitute a valuable additional source of information. They are also an evidence of a desire of non-governmental actors to engage in a constructive dialogue based on international human rights norms.

144. It is essential that transparency of the consultation process be ensured and that State Parties make the full text of the Opinions of the Advisory Committee and the Resolutions of the Council of Europe Committee of Ministers available to persons belonging to national minorities and to the public at large as early and as widely as possible. The authorities should ensure that these, and other monitoring documents, including the State Report, are made available in local languages so that minorities can take part in the process in an inclusive manner.

145. The Advisory Committee has encouraged State Parties to set up a system of regular consultation providing an opportunity for minority representatives to discuss their concerns between the monitoring cycles of the Framework Convention, be it follow-up seminars or other modalities. This dialogue is crucial to respond to specific concerns and also to build trust and confidence in the implementation of the Framework Convention. It creates a climate of tolerance and dialogue which enables diversity to be a source and a factor, not of division, but of enrichment for each society.

58. See also paragraphs 68 and 74 above.



PART IV CONCLUSIONS

146. This Commentary is the result of the Advisory Committee's effort to provide a summary of its interpretation of Article 15 and related articles of the Framework Convention for those involved in the implementation of this Convention. The ultimate aim is to help advance participation of persons belonging to national minorities in various areas of life, to improve the implementation of the principles of the Framework Convention and to help State authorities build up a more integrated and better functioning society.

147. Based directly and indirectly on the country-specific work of the Advisory Committee, the Commentary is providing decision-makers, public officials, non-governmental organisations, academics and other stakeholders, not least among minorities themselves, with an analysis of possible options to enable them to make adequate and informed choices when designing legislation and policies to improve minority participation. Choices to be made should be agreed upon by the authorities and the national minorities if they are to be sustainable. It is also important that they take into account the views of the majority population and the type of relations prevailing among various groups in society.

148. It is obvious that different solutions can be applied to different national minorities as well as to different situations prevailing in the State Parties. Measures taken in some State Parties have been considered by the Advisory Committee as an adequate implementation of Article 15 of the Framework Convention in given circumstances. Yet, it is important to recall that a measure that leads to effective participation in one State Party does not necessarily have the same impact in another context. State Parties therefore need to assess, in the light of their own domestic situation, the applicability and effectiveness of measures that have, elsewhere, resulted in increased participation of national minorities. The Advisory Committee's objective, in this Commentary, is to highlight those experiences out of which meaningful conclusions can be drawn for the benefit of all State Parties.

149. Additionally, the fact that actions taken by State Parties may be considered satisfactory in given circumstances and at a given stage of the monitoring process does not mean that they will be sufficient to ensure compliance with the standards of the Framework Convention in the future. This Commentary, therefore, also attempts to help State Parties set up conditions enabling them to comply, in a sustainable way, with the provisions of the Framework Convention in the future and adopt longer-term perspectives on minority protection and the type of relations in society they want to achieve.

150. Moreover, the situation of minorities and majorities alike is in constant evolution and new issues will develop or arise over time. Some of the issues mentioned in this Commentary, notably in the field of participation in socio-economic life, have not yet been fully explored and analysed, neither by the Advisory Committee in its country-by-country work nor by other actors involved in the protection of minority rights. Further attention needs to be given to a range of such issues, in particular concerning effective participation in economic, social and cultural life. Examples of issues to be further explored range from the impact of environmental problems on participation of persons belonging to vulnerable minorities, to access by persons belonging to national minorities to credit and banking services.

151. Other issues will have to be reassessed by the Advisory Committee in subsequent cycles of monitoring, when a longer term perspective on their impact on participation will be available. As already mentioned in the Introductory Remarks, this document is to be seen as a living instrument, which should be developed as monitoring under the Framework Convention progresses.



APPENDIX RELEVANCE OF OTHER ARTICLES OF THE FRAMEWORK CONVENTION FOR THE INTERPRETATION OF ARTICLE 15

Article 3⁵⁹

152. In its Article 3, the Framework Convention stipulates the right of persons belonging to national minorities to freely choose to be treated or not to be treated as such. Inclusion in the personal scope of application of the Framework Convention is important for the enjoyment of the minority rights contained in the Framework Convention, including the right to effective participation in all areas of life. In its examination of the personal scope of application of the Framework Convention, the Advisory Committee has consistently recommended that State Parties avoid arbitrary or unjustified exclusions from the protection of the Framework Convention and that they opt for an 'inclusive' approach. On many occasions, it has invited State Parties to review and consider extending the personal scope of application of the Framework Convention as circumstances have changed over time.

Article 6⁶⁰

153. Article 6(1) of the Framework Convention invites State Parties to encourage 'a spirit of tolerance and intercultural dialogue' and promote 'mutual respect and understanding' among all persons living on their territory. As already mentioned above,⁶¹ effective participation of persons belonging to national minorities in various spheres of life is an important tool to enhance intercultural dialogue.

154. At the same time, the effectiveness of the participation of persons belonging to national minorities depends on the existence of a climate of mutual respect, tolerance and recognition in the society. It is therefore essential that State Parties take measures to encourage intercultural dialogue between the majority and minorities, as well as between various minorities and, more generally, among all persons living on their territory. In this context, the Advisory Committee has often stressed the importance of integration policies, both as a way of promoting equal opportunities and preventing tensions in society.

59. 3(1) Every person belonging to a national minority shall have the right freely to choose to be treated or not to be treated as such and no disadvantage shall result from this choice or from the exercise of the right which are connected to that choice.

3(2) Persons belonging to national minorities may exercise the rights and enjoy the freedoms flowing from the principles enshrined in the present framework Convention individually as well as in community with others.

60. 6(1) The Parties shall encourage a spirit of tolerance and intercultural dialogue and take effective measures to promote mutual respect and understanding and co-operation among all persons living on their territory, irrespective of those persons' ethnic, cultural, linguistic or religious identity, in particular in the fields of education, culture and the media.

6(2) The Parties undertake to take appropriate measures to protect persons who may be subject to threats or acts of discrimination, hostility or violence as a result of their ethnic, cultural, linguistic or religious identity.

61. See paragraph 21.

155. Furthermore, the Advisory Committee has often underlined the importance of the participation of persons belonging to national minorities in decision-making concerning activities to promote a better knowledge of minority cultures in the society at large. This includes the field of education, particularly when deciding on the inclusion of elements concerning national minorities in educational material, the media and the design and implementation of cultural policies.

Article 7⁶²

156. State Parties are requested to ensure that the right of every person belonging to a national minority to freedom of peaceful assembly and of association, as embedded in Article 7 of the Framework Convention, is respected. This includes the right to form minority associations and political parties, which are important forms of participation. State Parties should refrain from any unjustified interference with the exercise of this right, and create conditions allowing minority associations and parties to acquire and enjoy legal personality, and to operate freely. The right to freedom of assembly and association is a prerequisite to the enjoyment of the provisions of Article 15, even though it is not sufficient in itself to ensure effective participation.

Article 9⁶³

157. Article 9 (1) protects the right of persons belonging to national minorities to freely receive and impart information and ideas in the minority language, and therefore, the possibility for them to participate in public debates and public affairs in general, notably through the media. Moreover, Article 9 (1) requires that State Parties ensure respect for the prohibition of discrimination in minorities' access to the media. Under Article 9 (4) of the Framework Convention, the authorities are required to adopt appropriate measures to facilitate access to the media of persons belonging to national minorities.

158. The access to and participation in the media of persons belonging to national minorities involves various dimensions: they should have access to the media as part of the audience, as owners of media outlets and as representatives of minorities in the mainstream media.

159. Adequate access to mainstream and minority media by persons belonging to national minorities considerably contributes to their effective participation in society, in particular in cultural life. It facilitates awareness-raising of the society at large about minorities' culture and identity. Moreover, the possibility for national minorities to create and use their own media is in itself an effective form of participation, in particular in public affairs and cultural life. This may also have direct and indirect social and economic benefits for persons belonging to national minorities.

Article 10⁶⁴

160. The right to use freely minority languages orally and in writing, in private and in public, as well as in relations with administrative authorities is a significant factor enhancing the

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

63. 9(4) In the framework of their legal systems, the Parties shall adopt adequate measures in order to facilitate access to the media for persons belonging to national minorities and in order to promote tolerance and permit cultural pluralism.

64. 10(2) In areas inhabited by persons belonging to national minorities traditionally or in substantial numbers, if those persons so request and where such a request corresponds to a real need, the Parties shall endeavour to ensure, as far as possible, the conditions which would make it possible to use the minority language in relations between those persons and the administrative authorities.

10(1) The Parties undertake to recognise that every person belonging to a national minority has the right to use freely and without interference his or her minority language, in private and in public, orally and in writing.

participation of persons belonging to national minorities. This is particularly relevant for persons belonging to national minorities who live in areas inhabited traditionally or in substantial numbers by national minorities.⁶⁵ For example, policies of recruitment of civil servants favouring those with minority language proficiency are a positive way of promoting and enhancing minority participation in public administration. Likewise, the possibility of using minority languages in relations with administrative authorities can contribute to more effective communication with the authorities by persons belonging to national minorities. In local elected bodies, the possibility to use minority languages can allow persons belonging to national minorities to participate more effectively in decision-making. In contrast, strict language requirements may seriously hamper participation of national minorities in certain areas of life, in particular in socio-economic life and electoral processes. Yet, the importance of proficiency in the official language should not be underestimated as it also contributes to the effective participation of persons belonging to national minorities.⁶⁶

Article 12, 13 and 14

161. Articles 12, 13 and 14 of the Framework Convention encapsulate wide-ranging provisions in the field of education, which have been extensively analysed by the Advisory Committee in its Commentary on Education adopted in 2006.⁶⁷

162. Article 12 (1) requires that State Parties take measures to foster knowledge of the culture, language, history and religion of national minorities and of the majority population. Together with Article 6 (1),⁶⁸ Article 12 thus sets the objective for State Parties to promote a climate of mutual understanding and intercultural dialogue, which is a precondition for effective participation of persons belonging to national minorities. In order to meet this objective, there is a need for adequate teaching and other material to be made available, for teachers to be adequately trained and for exchanges between students and teachers to be promoted, as highlighted under Article 12 (2). Moreover, under this Article, the Advisory Committee has often recommended that the authorities provide for the participation of persons belonging to national minorities in the preparation of legislation on education, as well as in the monitoring and evaluation of educational policies and programmes, in particular those concerning them.

163. Article 12 (3) of the Framework Convention is of particular relevance when analysing Article 15 as it requests State Parties to promote equal opportunities for persons belonging to national minorities in access to education at all levels, including in vocational training and adult education.

164. Article 14 (1) and (2),⁶⁹ on the one hand, sets the right for persons belonging to national minorities to learn their minority language and provide that State Parties should, under certain conditions, endeavour to provide adequate opportunities for receiving instruction or for being

65. 10(2) In areas inhabited by persons belonging to national minorities traditionally or in substantial numbers, if those persons so request and where such a request corresponds to a real need, the Parties shall endeavour to ensure, as far as possible, the conditions which would make it possible to use the minority language in relations between those persons and the administrative authorities.

66. See also the remarks below concerning Article 14.

67. See Commentary on education under the Framework Convention for the Protection of National Minorities, adopted by the Advisory Committee on 2 March 2006.

68. See paragraph 152 above.

69. 14 (1) The Parties undertake to recognise that every person belonging to a national minority has the right to learn his or her minority language.

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

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

taught in a minority language. This is an important means to preserve and develop their identity and culture, as also stipulated in Article 5.⁷⁰ Article 14 (3) on the other hand, specifies that this should be implemented without prejudice to the learning of the official language. Adequate knowledge of the official language by persons belonging to national minorities is indeed essential for their participation in various spheres of life and their integration in mainstream society.⁷¹ Therefore, the main foundations underlying the Framework Convention, already described in paragraphs 13 to 15 above on the connection between Articles 4, 5 and 15, are also fully reflected in Article 14.

165. The Advisory Committee has in many cases stressed the importance of effective participation of persons belonging to national minorities for the implementation of the rights contained in Article 14. It is, in particular, crucial to involve persons belonging to national minorities in decisions taken with regard to the organisation of minority language education⁷² to ensure that this type of education caters for the needs of national minorities.

Article 17 and Article 18⁷³

166. Article 17 (1) of the Framework Convention stipulates that State Parties shall not prevent persons belonging to national minorities from establishing and maintaining free and peaceful contacts across frontiers, in particular with persons belonging to the same national minorities. Article 17 (2) aims to ensure that persons belonging to national minorities can make an active contribution to civil society, at the national and international levels.

167. Like Article 17, Article 18 (2) encourages a proactive approach to transfrontier co-operation, but between States. Cross-border co-operation can significantly contribute to developing participation of persons belonging to national minorities in public affairs and in social, economic and cultural life.

70. See paragraphs 13 and 14 above.

71. See also remarks under Article 10 above.

72. See also the Commentary on Education under the Framework Convention for the Protection of National Minorities, adopted by the Advisory Committee on 2 March 2006.

73. 17 (1) The Parties undertake not to interfere with the rights of persons belonging to national minorities to establish and maintain free and peaceful contacts across frontiers with persons lawfully staying in other States, in particular those with whom they share an ethnic, cultural, linguistic or religious identity, or a common cultural heritage.

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

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

COUNCIL OF EUROPE



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

**Commentary on Education under the
Framework Convention for the Protection of National Minorities**

The Commentary was adopted by the Advisory Committee at its 25th session on 2 March 2006. The Commentary was prepared by Ms Athanasia Spiliopoulou Åkermark, Second Vice-President of the Advisory Committee. Consultations with independent experts were held by the Advisory Committee on several occasions.

TABLE OF CONTENTS

Summary.....	4
Part I Introduction	5
1.1 Purpose of the Commentary	5
1.2 The Framework Convention as an integral part of International Human Rights Instruments.....	6
1.3 Aims of Education	8
1.4 Importance of Articles 4 - 6 of the Framework Convention	9
Part II Specific Provisions of the Framework Convention concerning Education.....	13
2.1 Article 12 of the Framework Convention	13
2.1.1 Explanatory Report.....	13
2.1.2 Main Issues.....	13
The scope of education.....	13
Promotion of multicultural and intercultural elements in education.....	15
Teacher training, access to textbooks and multicultural contacts.....	18
Equal opportunities for access to education	20
Summary of points on Article 12 (3).....	21
2.2 Article 13 of the Framework Convention	22
2.2.1 Explanatory report	22
2.2.2 Main Issues	22
2.3 Article 14 of the Framework Convention	23
2.3.1 Explanatory report	23
2.3.2 Main Issues.....	24
The structure of Article 14.....	24
The languages protected	25
The scope of obligations.....	26
Part III Core considerations influencing minority and intercultural education.....	29
Appendix : Inventory of Educational Issues Addressed by the Advisory Committee in its First Cycle Opinions.....	30

Summary

The Commentary is structured in three parts:

Part I Introduction - The most important part of the Introduction is section 1.4 which discusses the relevance of Articles 4, 5 and 6 of the Framework Convention in the field of minority education. The Commentary recognises thus that the Framework Convention is of relevance not only in guaranteeing the right of persons belonging to minorities to good quality, free primary education as well as general and equal access to secondary education (*right to education*) but also in setting standards on how such education should be shaped in terms of content as well as form (*rights in education*) in order to facilitate the development of the abilities and personality of the child, guarantee child safety and accommodate the linguistic, religious, philosophical aspirations of pupils and their parents.

The provisions of the Framework Convention concerning education are also to be kept in mind in all planning and action in the area of intercultural education, which has the ambition to facilitate mutual understanding, contacts and interaction among different groups living within a society.¹ The effects of the multiple aims of education on minority and intercultural education as well as the importance of the strong links between the Framework Convention and other human rights instruments are also discussed in the introduction.

Part II - The main part of the Commentary is devoted to Articles 12-14 of the Framework Convention. Here, the Commentary follows the structure of the provisions, so that with regard to Article 12, equal access to education comes as third issue, even though it has already been touched upon in relation to Article 4 which guarantees equality before the law and prohibits discrimination in general. The issues covered show that the relevant provisions have been given a substantive normative content that offers considerable guidance to State Parties and decision makers. Footnotes made in the Commentary with reference to specific State Reports or Advisory Committee Opinions are not exhaustive accounts of all cases where a certain issue has appeared. They function as selective illustrations of the points made. This Part concludes with guiding principles developed within different international institutions concerning the planning and implementation of educational efforts intended for persons belonging to national minorities.

Part III offers the Advisory Committee's *list of core considerations influencing minority and intercultural education* that State Parties can use as a reference point in the planning, implementation and evaluation of educational policies and legislation of relevance for persons belonging to national minorities. This section gives a summary of the main issues raised in the Commentary.

The **Appendix** consists of an *Inventory of Education Issues addressed by the Advisory Committee in its first cycle Opinions*. In practice, the Advisory Committee started its overview in the field of minority education by developing this Inventory. It is included as an appendix since it may prove to be a useful tool as a checklist of aspects that need to be considered in discussions on minority and in intercultural education. It can also be a useful tool for non-governmental organisations that plan to write alternative reports in the field of minority education. Readers will find that the Commentary follows in principle the structure developed in the Inventory.

¹ On the concept of 'multicultural' and 'intercultural' education, see below under section 2.1 on Article 12.

PART I INTRODUCTION

1.1 Purpose of the Commentary

1. Education is today considered as a goal in its own right as well as a forceful tool for transmitting knowledge, attitudes and values. No other issue is given such space in the Framework Convention (FCNM), with three specific provisions (out of sixteen operative provisions in its Section II), Articles 12-14, as well as explicit references to education in general provisions concerning equality and intercultural dialogue (Article 6).

2. In recent years, the Advisory Committee on the Framework Convention for the Protection of National Minorities (hereinafter ‘the Advisory Committee’) has repeatedly discussed the need to summarize its experience and views on specific thematic issues. Important input in this debate was given at the Conference to mark the 5th Anniversary of the Entry into Force of the Framework Convention in 2003.² The three themes discussed were participation, media and education. Out of these three themes, the Advisory Committee decided to start by an in depth analysis of its experience in the field of education.

3. The present Commentary aims to cover five distinct but interrelated issues:

- It summarizes the experience of the Advisory Committee in working with and for education rights (mainly Articles 12-14 of the Framework Convention) and with the role of education in promoting a spirit of tolerance and intercultural dialogue as envisaged in Article 6 (1) of the Framework Convention. The present Commentary focuses mainly on Articles 12 and 14 since these two provisions form the core of the monitoring activities of the Advisory Committee in the field of education during the First Monitoring Cycle;
- It underlines the wealth of information existing in State Reports and the broad spectrum of solutions used in different contexts. Such State practice from many different countries around Europe offers a comprehensive image of the implementation of the Framework Convention and allows for further elaboration of the various specific issues raised in this Commentary;
- It identifies issues which require more attention in the future both in the work of the Advisory Committee, in the implementation of the Framework Convention and the reporting by State Parties as well as in the activities of other actors, including non-governmental organisations and academics;
- It makes an effort to situate the work and the views of the Advisory Committee within a broader international discourse;
- It highlights some of the tensions the Advisory Committee has encountered in the field of minority and intercultural education and choices that need to be made consciously by all actors involved, including State Parties and their governments, minorities, parents and students/pupils.

4. The Commentary draws upon the Opinions of the Advisory Committee on specific countries as well as on State Reports submitted to the Advisory Committee and other sources, in order to substantiate the conclusions which are incorporated under each section of the Commentary.

² The report of the Conference was published in 2004 by the Council of Europe “Filling the Frame: Five years of monitoring the Framework Convention for the Protection of National Minorities” ISBN 92-871-5472-2.

5. It is the hope of the Advisory Committee that the Commentary will give practical guidance to State Parties to the Framework Convention and to other actors involved in education related activities. Those actors include educators, pupils or students and their parents,³ minorities and their organisations, central, local and regional authorities. It should, however, be made clear from the very outset that, in view of the multiple aims of education and the multitude of factual situations, there are no ‘one-size-fits-all-solutions’ in this field.

6. The purpose of the present Commentary is not to give an exhaustive analysis of all aspects of minority and intercultural education covered by the Framework Convention. The purpose is to summarise the experience of the Advisory Committee at the first cycle of monitoring and to emphasize some of the most crucial issues the Advisory Committee has encountered in its work. The second monitoring cycle may well include other issues which have not been prominent during the first cycle.⁴

7. Focus in the Commentary is put on the role of the Framework Convention in the task of balancing, on the one hand, the maintenance and development of the culture and the essential elements of the identity of persons belonging to national minorities and, on the other hand, their free integration and participation in the societies where they live. The Advisory Committee hopes that the present Commentary can be used as a tool in the design and implementation of relevant educational policies in State Parties and also as an additional element in the constructive dialogue it has developed during the first cycle of monitoring with State Parties.

1.2 The Framework Convention as an integral part of International Human Rights Instruments

8. The protection of national minorities and of the rights and freedoms of persons belonging to those minorities forms an integral part of the international protection of human rights as provided in Article 1 of the Framework Convention:

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

9. It follows that the *right to education* and the *rights in education* for minorities, as guaranteed by the Framework Convention, are an integral part of education rights as entrenched in a number of specific provisions in international instruments, including the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women, the UNESCO Convention against Discrimination in Education, the European Convention of Human Rights and Fundamental Freedoms and the Revised European Social Charter.

10. A number of different rights are covered in these provisions, including:

- the principle of a free and compulsory primary education;
- equal access to education and equal opportunities within the educational system;

³ The Commentary covers not only the education of children but also of older persons (young students, adults etc.)

⁴ For this reason the Commentary refers only to materials from the first monitoring cycle.

- the liberty of parents to choose the kind of education that shall be given to their children according to their own religious, moral or philosophical convictions;
- the right of individuals and legal entities to establish and direct their own educational institution;
- the right to language education for migrant workers and their families.

11. Much guidance in matters concerning the education rights of national minorities can also be found in the OSCE Hague Recommendations Regarding the Education Rights of National Minorities. With regard to issues of minority languages in education, additional guidance is found in the European Charter for Regional or Minority Languages.

12. The Framework Convention ensures rights to ‘persons belonging to national minorities’. It is clear that these ‘persons’ can be men or women, children or adults. Indeed, the provisions of the Convention do not only refer to formal school activities, but refer to education and education systems in broader terms. In recent years, the Advisory Committee has been increasingly sensitive to the varying implications of rights for persons belonging to different national minorities, or groups within minority groups, for men and women, for citizens and non-citizens.⁵

13. However, the Framework Convention not only deals with the rights of minorities to education and specifically to a certain type of education. It is of equal importance for the promotion of awareness and knowledge amongst the majority population concerning the language, culture and traditions of minorities.⁶ Further, Article 14 (3) provides that the educational rights of persons belonging to national minorities to be taught the minority language or receive instruction in this language should not prejudice the learning and teaching of the official language of the State.

14. As already mentioned, the right to education is a right in itself but it is also instrumental as a precondition for the full enjoyment of many other rights, such as the right to participation, expression, association, etc. For that reason the importance of the place of the Framework Convention in the nexus of human rights provisions is crucial as a guarantee of the full spectrum of human rights of persons belonging to national minorities.

15. Planning and activity in the field of education needs to take into account the work done in those various fora, including the Treaty Monitoring Bodies of the United Nations (UN), the UN Special Rapporteur on the Right to Education, the European Court of Human Rights and bodies of the Council of Europe (such as the Committee of Experts monitoring the European Charter for Regional or Minority Languages, the Directorate of School, Out-of-School and Higher Education and its Language Policy Division). Rights *to* and *in* education need also to be situated

⁵ For instance the Slovak Republic included in its State Report ACFC/SR(99)8 information on special educational efforts for Roma women. In its State Report ACFC/SR(99)13, the United Kingdom noted that the ‘Government is concerned about the disproportionate number of ethnic minority pupils, particularly African-Caribbean boys, who are ... excluded from ... schools’. The Advisory Committee noted in its Opinion on the United Kingdom ACFC/INF/OP/I(2002)006 with regard to access to higher education that ‘while certain ethnic groups are well represented ..., other groups, such as Bangladeshi women and African and African Caribbean men remain seriously under represented’ (paragraph 85).

⁶ See the Advisory Committee Opinion on Cyprus ACFC/INF/OP/I(2002)4, paragraph 30. In other opinions, the need of education of persons belonging to specific professional groups is highlighted. This is the case in the Advisory Committee Opinion on Albania ACFC/INF/OP/I(2003)004 where the Advisory Committee stresses the need for education among professional groups such as law enforcement officers, the judiciary and the media on the situation and needs of Roma and Egyptian communities in order to encourage tolerance (paragraph 94).

within the broader context of States' commitments regarding human rights education, and in particular of the on-going World Programme for Human Rights Education.⁷

1.3 Aims of Education

16. The aims of education in diverse societies allow us to look at education within the Framework Convention as having multiple and occasionally contradictory aims which need to be reconciled and balanced. There are many different stakeholders in education: those educated, the educators, parents, minority groups, local, regional and central authorities. Their needs and aspirations may vary and need to be constantly assessed and accommodated to the extent possible. The Convention on the Rights of the Child has placed in a paramount position the needs and wishes of the child, a dimension which was lacking in earlier documents. This is of great importance in the field of education where other international documents have earlier given preference to the interests and options of parents or educators at the expense of the views of the child.

17. The aims of education are extensively outlined in Article 29 of the Convention on the Rights of the Child. It provides:

- '1. State Parties agree that the education of the child shall be directed to:
- (a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;
 - (b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;
 - (c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;
 - (d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;
 - (e) The development of respect for the natural environment [...]

18. Some of these aims, such as the development of the linguistic capabilities of a child, are understood as primarily instrumental. In these cases education is seen as a tool for the achievement of other goals (e.g. finding employment, or participating in decision-making).

19. Other aims of education are perceived as primordial in that they are felt as important *per se* even if there is no other rational or economic justification for this. This is the case with the development of respect for the child's identity.

20. At the present time, our understanding of the child as an individual with independent needs and capabilities has reshaped our priorities among the needs of different actors involved in education. All education programmes need therefore to take into account both types of aims, but should do this while trying to ensure the best interest of the child as provided in the UN Convention on the Rights of the Child.⁸ Indeed, the distinction between instrumental and primordial aims is to some extent artificial. Respect for a child's linguistic identity is, for instance, a precondition for additive bilingualism and plurilingualism, i.e. one which develops and strengthens the cognitive and emotional capabilities of the child, and the different

⁷ For an update and summary of these efforts see: UN General Assembly, Revised draft plan of action for the first phase (2005-2007) of the World Programme for Human Rights Education, A/59/525/Rev.1 (2 March 2005).

⁸ See further Committee on the Rights of the Child, General Comment No. 1, The Aims of Education (2003).

languages reinforce each other and the linguistic identity is then both instrumental and a goal in itself at the same time.

21. It is worth mentioning that *very few States address the issue of the aims of education in their Reports*. Some States do address the principles of education and educational curricula under Article 6 of the Framework Convention.⁹ The Advisory Committee discussed the aims of minority education also when noting that Sorbian minority schools had existed for over a hundred years and had not only “an educational function but also contribute to the expression of Sorbian identity in the areas traditionally inhabited by this minority”.¹⁰

1.4 Importance of Articles 4 - 6 of the Framework Convention

22. Parents want their children to have a good quality education ensuring them equality of access and treatment and enabling children to develop their capabilities and personalities, to become full members in the societies in which they live and to live decent lives. All States have an interest in and an obligation to encouraging and facilitating such efforts and in ensuring social cohesion in their territory.

23. In addition to the specific provisions (Articles 12-14) guaranteeing the right to education and rights in education, Article 6 of the Framework Convention identifies education as an area of specific importance with regard to the necessity of a spirit of tolerance and intercultural dialogue:

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

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

Articles 4, 5 and 6 form a continuum of core obligations of States.

24. In the field of education, Article 4 guarantees equal access to education and prohibits discrimination. It also explains that State Parties undertake to adopt, where necessary, positive measures to promote full and effective equality for persons belonging to national minorities. This cannot be sufficiently emphasized. The Framework Convention presupposes that States actively pursue the goals embodied in the Convention. A passive attitude may amount to a violation of the obligations provided for under the Convention. Examples of this are the absence of legislation guaranteeing rights to and in education for persons belonging to national minorities, or minority policies that are of an ad hoc and unsystematic character.¹¹ Such - appropriate and necessary - measures introduced in order to promote the full and

⁹ See e.g. State Report of Estonia ACFC/SR(99)16, paragraphs 30-31, discussing the aims of the Estonian Education Act and also the State Report of Switzerland ACFC/SR(2001)2, paragraph 153, on the importance of education for intercultural contact and promotion of tolerance.

¹⁰ See Advisory Committee Opinion on Germany ACFC/INF/OP/I(2002)008, paragraph 59.

¹¹ See for instance the Opinion on Italy ACFC/INF/OP/I(2002)007, paragraph 58, where the Advisory Committee notes that teaching of minority languages should be part of co-ordinated programmes rather than only experimental isolated efforts. In the Opinion on Sweden ACFC/INF/OP/I(2003)006, paragraph 60, the Advisory Committee criticized the absence of legislative guarantees for bilingual education for others than the Sami, in spite of the existence of a clear demand in this regard.

effective equality of persons belonging to minorities are not considered as such to be acts of discrimination of the majority or of other groups (Article 4.3). Equal access to education is also regulated under Article 12(3).

25. Article 5 elaborates on the necessity of promoting adequate conditions for maintaining and developing the culture and the essential elements of the identity of persons belonging to national minorities. Articles 12-14 are further explanation of what this means in the field of education.

26. The importance of Articles 4 and 5 lies, as already mentioned, in that they make clear that an active and coherent educational policy is necessary in order to implement the provisions in the Framework Convention.

27. In addition to the requirement of clear and coherent legislative and institutional guarantees, the existence of basic data in the field of education is a precondition for any active educational policy. In order to implement these provisions (especially Article 5, 12 and 14), all State Parties need to have adequate data on the different groups living within their countries as well as their needs and aspirations in the field of education. The Advisory Committee has been sensitive to the differing needs of different individuals and groups within a single minority group. Concentrated groups and individuals living in urban environments may have different needs and expectations than dispersed minorities or rural populations. For this reason, Article 15 guaranteeing the right of effective participation of persons belonging to minorities needs to be kept in mind, when designing and implementing educational policies, in order to ensure the expression of the multiplicity of needs and wishes of different segments of minority groups.

28. The Advisory Committee has consistently underlined the need to respect the principle of free self-identification of persons belonging to national minorities and the existence of adequate guarantees in the treatment of demographic, ethnic and other personal data in accordance with Article 3 of the Framework Convention. At the same time it is important that, through a combination of quantitative and qualitative tools, States make needs assessments in the field of education in consultation with those concerned.¹² The importance of national baseline data increases as the field of education gets more and more decentralized. The absence of such basic data cannot be used as an excuse for not acting e.g. in the field of minority education.

29. The Advisory Committee has often noted the absence of gender disaggregated information in the State Reports and as a consequence also in many of the Opinions of the Advisory Committee. In some cases this is the result of absence of basic data on education and on minorities as a whole (in some countries due to legal impediments on the collection of data). In other countries such data exists but does not reflect the positions and achievements of girls and boys, men and women in the educational system. Differences between men and women in the educational sphere often result in difference in the access and status in employment and should be monitored vigorously. Negative stereotypes concerning gender roles - among majorities as well as minorities - must be exposed and debated publicly and concerted efforts must be made to eradicate them in accordance with the obligations of State

¹² Also academics and NGOs may be able to assist in the collection and evaluation of such data. See for instance the report 'The Right to Education of Persons Belonging to National Minorities in Voivodina', Voivodina Center for Human Rights, Novi Sad, 2005.

Parties under the Convention on the Elimination of All Forms of Discrimination against Women (Article 5).¹³

30. Article 6 of the Framework Convention requires that State Parties encourage tolerance, dialogue and mutual understanding among different groups living within the State. In the field of education, this poses demands both as regards the content of education and the choice of form, educators, structures and institutions of education. The link between Article 6 and Article 12 is strong in that both provisions support the core ethos of the Framework Convention as one of intercultural dialogue, integration of minorities in the wider society and social cohesion. State Parties need to review regularly the curricula and textbooks of subjects such as history, religion and literature, but such reviews should also cover the entire curriculum in order to ensure that the diversity of cultures and identities is reflected and that tolerance and intercultural communication are promoted.

31. With regard to the teaching of history, the Advisory Committee recalls the long lasting efforts of the Council of Europe in this field. These efforts focus on eliminating stereotypes and prejudices in history textbooks and on the potentials of critical thinking through history. While the introduction of elements of intercultural knowledge and dialogue in curricula as well as the need to review curricula, especially in the field of history and religion, have often been included in the Opinions of the Advisory Committee, it must be noted that the Advisory Committee has not had the occasion to pronounce extensively on the issue of religious education or education offered by religious institutions.¹⁴

32. In international law the established principle requires, on the one hand, that parents may choose the kind of education that shall be given to their children according to their own religious, moral or philosophical convictions (see Article 26, paragraph 3 of the Universal Declaration of Human Rights and Article 2 of Protocol 1 of the European Convention on Human Rights) and on the other, that information and knowledge must be conveyed in an objective, critical and pluralistic manner.¹⁵ In this respect one may also recall the elaborate provisions concerning religion in education in the Vienna Document of the OSCE (1989) including the right of everyone to give and receive religious education in the language of his choice (paragraph 16). All these international documents encourage understanding and dialogue among groups and the suppression of absolutism, intolerance and hatred.

¹³ See also Article 10 of the Convention on the Elimination of All Forms of Discrimination against Women, which deals specifically with equal rights in the field of education, including access to the same curricula, the same examinations, teaching staff with qualifications of the same standard and school premises and equipment of the same quality.

¹⁴ In the State Report of Bulgaria ACFC/SR(2003)001, there is a self-critical evaluation on the lack of sufficient inclusion of intercultural elements in Bulgarian curricula, but also information of the efforts of a non-governmental organisation (The Interethnic Initiative on Human Rights Foundation) to address this need in the field of education. The State Report of Switzerland ACFC/SR(2001)2 accounts for efforts of the Swiss Broadcasting Company – SSR through series of broadcasts on different religions in order to encourage intercultural understanding. This shows as well the role of media, and in particular television, as educational tools. The Advisory Committee Opinion on Armenia ACFC/INF/OP/I(2003)001 notes (under Article 12) that culture, history, religion and the traditions of persons belonging to national minorities are only taught in special Sunday classes and ‘not as part of the general teaching curriculum’.

¹⁵ Case of Kjeldsen, Busk Madsen and Pedersen v. Denmark, ECHR, Ser. A, No. 23, 1976, paragraph 50, and Hartikainen v. Finland, Communication No. 40/1978. In this last mentioned case the Human Rights Committee found that compulsory religious education (or history of religion and ethics) is in conformity with the International Covenant on Civil and Political Rights, Article 18(4) only if such instruction is given in a neutral and objective way and respects the convictions of parents and guardians, including when those do not believe in any religion.

33. Articles 7 and 8 in the Framework Convention guarantee, for persons belonging to national minorities, the freedom of religion as well as the right to manifest religion and establish religious institutions, organisations and associations. This last mentioned right is also found in the right to education in Article 2 of Additional Protocol I to the European Convention for the Protection of Human Rights and Fundamental Freedoms.¹⁶ Pursuant to Article 17 of the European Convention of Human Rights, on the prohibition of abuse of rights, religious teaching or education, or indeed any other kind of education, should not lead to the violation of the rights of others (whether they are of the same or different religious beliefs). In addition to the school subjects discussed above, all school subjects, including mathematics, gymnastics, music and arts will also need to be reviewed and adapted from a multicultural and intercultural perspective.

¹⁶ Article 2 of the additional Protocol states that ‘No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions’. The European Court of Human Rights has had the opportunity to pronounce on this provision on several occasions.

PART II SPECIFIC PROVISIONS OF THE FRAMEWORK CONVENTION CONCERNING EDUCATION

2.1 Article 12 of the Framework Convention

‘12(1). The Parties shall, where appropriate, take measures in the fields of education and research to foster knowledge of the culture, history, language and religion of their national minorities and of the majority.

12(2). In this context the Parties shall *inter alia* provide adequate opportunities for teacher training and access to textbooks, and facilitate contacts among students and teachers of different communities.

12(3). The Parties undertake to promote equal opportunities for access to education at all levels for persons belonging to national minorities.’

2.1.1 Explanatory Report

‘Paragraph 71. This article seeks to promote knowledge of the culture, history, language and religion of both national minorities and the majority population in an intercultural perspective (see Article 6, paragraph 1). The aim is to create a climate of tolerance and dialogue, as referred to in the preamble to the framework convention and in Appendix II of the Vienna Declaration of the Heads of State and Government. The list in the second paragraph is not exhaustive whilst the words "access to textbooks" are understood as including the publication of textbooks and their purchase in other countries. The obligation to promote equal opportunities for access to education at all levels for persons belonging to national minorities reflects a concern expressed in the Vienna Declaration.’

2.1.2 Main Issues

34. Most of the information provided by States as well as most of the comments of the Advisory Committee in the field of education are placed under Article 12. In addition to issues pertaining to the scope of education (in time, place and in content), three core issues are raised in State Reports and in the Opinions of the Advisory Committee. They follow the structure of Article 12:

- a) Promotion of a multicultural and intercultural perspective of education;
- b) Teacher training, access to textbooks and multicultural contacts;
- c) Equal opportunities for access to education.

The scope of education

35. States report on the basis of a *wide understanding of education*. This has also been the approach pursued by the Advisory Committee. The scope of the notion of education covers not only the basic compulsory school system, but also pre-schools, higher education, research, vocational education, adult education, education of professional groups (including the legal profession, police, journalists, government officials and politicians) and educational activities outside regular school hours (such as so-called Sunday schools and summer camps). For instance, in its Comments on the Opinion of the Advisory Committee, the Government of Moldova reported:

The Law "About education" has no term of "the Sunday school", yet in its preamble there is the general definition of the educational system that includes "the network of educational institutions of different types and forms of ownership...". It allows considering "the Sunday school" as a public teaching and

educational institution acting according to Article 34 in the network of additional (out-of-school) institution.

36. In the Resolution ResCMN(2003)4 adopted by the Committee of Ministers on the implementation of the Framework Convention by Moldova on 15 January 2003, the Committee of Ministers noted:

In the field of education, it is essential to consult representatives of the various national minorities, with a view to providing a balanced response to their specific needs and ensuring their equitable access to the resources available. Special attention should be paid to numerically smaller minorities and to those that are not in a position to enjoy the support of a kin-state.

37. With regard to the importance of *pre-school education*, the Advisory Committee noted, in the Opinion on Slovakia, that “a key to reaching this aim is to secure that the education system reflects and also fully takes into account the language and culture of the minority concerned [...] Such an approach would also help to increase mutual understanding between Roma parents and schools. In this connection, experiences gained by minorities at pre-school level are often of central importance. Considering that the proportion of Roma children attending kindergartens has dropped drastically in recent years in Slovakia, the Advisory Committee welcomes the initiatives aimed at improving opportunities for Roma in kindergartens and expresses the hope that they will have a positive impact on the relevant practice at local level”.¹⁷ The issue of pre-school education is also explicitly addressed in the Explanatory Report the Framework Convention in respect of Article 14(2) (see below).

38. While there is relatively rich information with regard to *primary education* in the Reports of most State Parties (including also pre-school education) there is much less detail as regards access of minorities to *higher education* and of availability of higher education in minority languages, history, culture etc.¹⁸ States report on various institutions conducting minority-related research, but give few accounts of the level of involvement of minorities themselves in such research and education. While primary education must be free-of-charge and compulsory, the exact extent of obligations of State Parties with regard to higher education have not been spelled out in international legal documents beyond the principle of equal access as found in Article 12(3) of the Framework Convention.¹⁹

39. The importance of *adult education* is highlighted in many State Reports and States seem to be aware of its role.²⁰ The role of modern technology in education and its specific advantages and potential disadvantages for persons belonging to national minorities have not been fully assessed in many State Parties. In its report, Norway stated that ‘internet-based instruction will, in the near future, enable schools to provide instruction in Finnish at upper

¹⁷ See the Advisory Committee Opinion on Slovakia ACFC/INF/OP/I(2001) 001, paragraph 40.

¹⁸ See for instance State Reports of Croatia ACFC/SR(2003)001 and Lithuania ACFC/SR(2001)7 and Opinions on Albania ACFC/INF/OP/I(2003)004, Estonia ACFC/INF/OP/I(2002)5, and the United Kingdom ACFC/INF/OP/I(2002)6.

¹⁹ In its Opinion on Romania ACFC/INF/OP/I(2002)6, the Advisory Committee welcomed the existence of multicultural institutions of higher education allowing for the use of different languages in university teaching. It also noted that the Babes-Bolyai University now offers instruction in Romanian, Hungarian and German and urged the Romanian authorities to pursue its dialogue with the groups concerned.

²⁰ See for instance the State Report of Estonia ACFC/SR(99)16 reporting on the budget of language training of adults and children and on legislation for adult education. Rich information on adult education can be found in the State Reports of Germany ACFC/SR(2000)1, Italy ACFC/SR(1999)007 and Sweden ACFC/SR(2001)3. It is to be noted that already during the preparatory work for the Framework Convention, the issue of adult education was emphasized, CDCC-BU(94) Rev. 7 (1994).

secondary level without necessitating amendments to provisions regarding the right to instruction'.²¹

Promotion of multicultural and intercultural elements in education

40. Article 12(1) makes clear that State obligations concern not only education available for minorities but also that of majorities. The wording of Article 12(1) is close to that of Article 4(4) in the UN Declaration on the Rights of Persons belonging to National or Ethnic, Religious or Linguistic Minorities (1992). According to the Commentary to the Declaration, *multicultural education* involves educational policies and practices which meet the separate educational needs of groups in society belonging to different cultural traditions, while *intercultural education* involves educational policies and practices whereby persons belonging to different cultures, whether in a majority or minority position, learn to interact constructively with each other.²²

41. With regard to the *multicultural* element of education, State Parties make occasionally critical self-assessments of their implementation of Article 12. For instance, Germany reported that 'knowledge of the culture and language of these minorities in Germany is passed on to a much greater extent in the respective traditional settlement area than in other parts of the national territory'.²³ Crucial fields of action for State Parties are that of *school curriculum* and the provision and revision of *textbooks* with multicultural and intercultural content and form. Measures should not be limited to the geographical areas where national minorities live.²⁴

42. In its first State Report,²⁵ the Czech Republic identified some of the school disciplines needing specific attention:

'Education of the majority population about the culture, history, language and religion of national minorities has traditionally been neglected. In spite of a certain progress made during the last ten years, Czech instruction books remain largely textbooks of the Czech ethnic nation, its history, its culture, its fight for ethnic autonomy and later state sovereignty, always in contrary to the German element. It is as though the Czech Lands have not traditionally been the home of various ethnic, cultural and religious communities, especially the German and Jewish national minorities, and also the perpetually disregarded Romanies.'

43. In order to guarantee the *intercultural* element in education, which includes intercultural dialogue (Article 6 and 12), dissemination of knowledge of minority cultures (Article 12) and the learning of the majority language by persons belonging to minorities (Article 14), State Parties must make assessments of different possibilities for the structuring of teaching. As mentioned earlier this requires as a first step the collection of baseline data on the needs and aspirations of different groups and individuals.

44. State Parties regularly report on *different methods and structures accommodating minority education and, specifically, minority language education*. The examples below are drawn mainly from cases where language is perceived as the crucial element of education.

²¹ The State Report of Norway ACFC/SR(2001)1.

²² A. Eide, Commentary to the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, E/CN.4/Sub.2/AC.5/2001/2 (2001), paragraphs 64-70.

²³ The State Report of Germany ACFC/SR(2000)1, under Article 12. See also State Report of Bulgaria ACFC/SR(2003)001.

²⁴ The Advisory Committee Opinion on Austria ACFC/INF/OP/I(2002)009, paragraph 56.

²⁵ State Report of the Czech Republic ACFC/SR(99)6, under Article 12.

Others concern primarily the longstanding disadvantages Roma pupils face also in the field of education.

45. The effective implementation of the basic principles of tolerance and intercultural dialogue, of dissemination of knowledge to minorities as well as majorities, of equal access to education, and of free and compulsory education requires also that many other elements of identity, such as religion, geographical location, gender, are taken into account.

46. The core task is to organise the education system in a way which allows for interaction between persons from various groups in order to encourage mutual understanding and tolerance, while at the same time ensuring the successful maintenance and development of the elements of the identities of members belonging to various groups. How can the structures and content of education ensure the balance between the two aims outlined above in order to achieve ‘integration in diversity’?

47. The first methods discussed below apply to linguistic minorities for which language teaching and training is a key issue. In practice, a great part of the information in State Reports, and as a consequence also in the Opinions of the Advisory Committee, relates to the role and position of language in education. Among the most common methods and structures reported in primary education with regard to the role and position of language are:

1. Schools where the minority language is dominant and where the majority language is taught only as a subject;
2. Schools where the minority language is dominant and some more or less limited teaching for specific subjects takes place through the medium of majority language (e.g. in addition to language also some other subjects such as history, religion and sometimes geography) are taught in the minority language;
3. Schools where the majority language is dominant and where only some classes are taught in minority language and/or through the medium of minority language;
4. While all the above types can be described as *bilingual schools*, the term should preferably be saved for schools trying to keep both languages (minority and majority) at a similar level of importance, spread across curricula and different classes, and where classes are to the extent possible composed of pupils and teachers from different groups.

48. Some countries, such as Austria, Hungary and Poland, have provided in their Reports extensive information on different types of schools and education, the number of schools, pupils, and in some cases teachers as well as on the regional coverage of such institutions.²⁶ In general, the information available to the Advisory Committee through the first cycle State Reports indicates that the third method dominates (majority schools with few minority-oriented classes or subjects). The fourth method (bilingual schools) is still much less applied in spite of the spirit of bilingualism and even plurilingualism permeating the Framework Convention.

49. The principle position of the Advisory Committee has been that all aspects and elements of education should ensure ‘a climate of tolerance and dialogue’²⁷ Such dialogue is hardly possible if persons belonging to different groups never meet even when they live in the same city, village or region. Nor can tolerance be promoted if majorities and minorities know nothing about the everyday experiences and about the elements of identities of each other.

²⁶ The State Reports of Austria ACFC/SR(2000)3, Hungary ACFC/SR(99)10 and Poland ACFC/SR(2002)2.

²⁷ See above on Article 6 and the wording in the Explanatory Report, paragraph 71.

This is even more evident in some of the separate, or even segregated, methods of education discussed below.

50. Other reported structures address the needs and situation of specific groups which for various reasons are not accommodated, or can - for various real or perceived reasons - not be accommodated, in the ordinary educational system. Some of these structures are legitimate, while others are unacceptable, especially if they impose segregated education and have discriminatory effects, as is often the case for the Roma.

1. So-called “special classes” or even “special schools” (which are sometimes meant for mentally disabled pupils but have often been used disproportionately for Roma children due to an erroneously generalised perception of their inability to follow instruction in the ‘regular’ school system);
2. “Supportive” or “additional” or “remedial” classes in order to permit the integration of minority pupils (often Roma) to other “integrated” classes later on;
3. Sunday-schools (which in a few States, such as Moldova, are seen as an integral part of the public educational system, while in other countries fall completely outside this framework).

51. The Advisory Committee has expressed its appreciation of supportive pre-school classes if they are aimed at enabling Roma pupils or others concerned to follow the regular curriculum, but, at the same time, the Committee has indicated that there is a dangerous grey zone between the first two methods described above (segregating special classes and supportive/remedial classes).

52. In the Opinion on Sweden, the Advisory Committee said that it had received reports according to which in some Swedish municipalities the measures taken with respect to Roma pupils have led to the establishment of specific classes for Roma, often with support from a number of Roma parents. The Advisory Committee considered that ‘even when such initiatives are designed as a way to provide additional support for the pupils concerned, specific classes devoted to one national minority as such (rather than, for example, to the teaching in/of their language and of their culture) risk placing the children concerned at a disadvantage and harming the implementation of Article 12 and the principle of intercultural dialogue contained in Article 6 of the Framework Convention’. Finally, the Advisory Committee urged the authorities to analyse the local situations and take measures, in consultations with the persons concerned, ‘with a view to enabling and encouraging Roma children to stay in the regular classes’.²⁸

53. In other cases, however, a separate teaching, in whole or in part may be more appropriate, or even the only possible solution. Thus in the Opinion on Cyprus, the Advisory Committee noted that “the leaders of the Maronite community repeatedly requested their own schools and housing areas or villages. The Advisory Committee therefore welcomes the recent decision taken by the Government to establish an elementary school for the Maronites”. The Advisory Committee expressed the wish that the authorities in Cyprus will adopt further measures aimed at preserving and developing the culture and the identity of the Maronites.

²⁸ See further under Section 2.1.2 the discussion on equal opportunities for access to education, including access to education for Roma.

54. Such forms of education, however, do not obviate the need for promotion of intercultural dialogue and contact - within and outside educational environments - as prescribed in Articles 6, 12 (1) and 14 (3) of the Convention.²⁹

55. The choice of school structures, teaching methods and educational content should be guided by a broad assessment taking into considerations, *inter alia*:

- The aims of education in a specific region and cultural and political context. In particular in countries that have experienced conflict or are experiencing interethnic tension or aggressive nationalism, the need to ensure contact, dialogue and integration is a compelling priority;
- The collection and availability of gender sensitive data concerning the number, needs, demands and expectations and preferences of minority pupils and teachers;
- The level of language proficiency of children in the minority language as well as in the majority language. In some cases the language proficiency of minority students in their native language is not sufficiently high to enable them to follow education solely in the minority languages. It was noted in some State Reports that the role of the educational system in preserving and developing minority cultures has increased in recent years because parents are unable to pass over to their children the language and traditions of the minority;
- The demographic profile of a certain location or region. Is it possible to have shared schools or classes or streams of study while accommodating specific needs e.g. in teaching of languages? Is it possible to have bilingual schools? Are separate schools the only available method?
- The availability of appropriate textbooks produced in the country concerned or, if appropriate, in kin-states;
- Financial and other resources.

56. Some States provide details about the funding of minority education. The State Report of Poland indicates that local authorities running schools for national minorities receive additional (as compared to non-minority education) state subsidies (20% supplement per pupil in larger schools and 50% in smaller schools).³⁰ In Hungary, a local government operating minority educational institutions receives extra subsidies.³¹ The State Reports received so far provide no information on the participation of minorities in budgetary decision making with regard to education at central, local or school level. The choice of a particular method and structure for the needs of a particular groups and situation generally is often not discussed or reflected upon in State Reports.

Teacher training, access to textbooks and multicultural contacts

57. The training of teachers and access to textbooks of good quality are essential preconditions for ensuring good quality education for all pupils and students. Only some countries report under Article 12 on indicators of *quality of education* such as the pupil/teacher ratio or the maximum number of pupils in a classroom.³² In its Opinion on Hungary, the Advisory Committee points out that “in its contacts with national minority self-

²⁹ See similarly on education for Sorbians in the Advisory Committee Opinion on Germany ACFC/INF/OP/I(2002)008.

³⁰ State Report of Poland ACFC/SR(2002)2.

³¹ State Report of Hungary ACFC/SR(99)10.

³² See e.g. State Reports of Albania ACFC/SR(2001)5 and Germany ACFC/SR(2000)1 (with regard to Roma).

governments, it has learned that there is still, for a number of minorities, a shortage of available textbooks in the minority language and/or a shortage of qualified teachers. In such circumstances, it is difficult to offer an education in bi-lingual schools and native language schools, which is of the *same quality* as that offered in Hungarian”.³³

58. The Advisory Committee has observed that many State Parties refer to the lack of teachers as an excuse for not offering minority or bilingual education. In its Opinion on Norway, the Advisory Committee called (under Article 12) for increased efforts and allocation of adequate resources in order to address to lack of qualified teachers who can teach in Finnish. In the Opinion on Sweden, the Advisory Committee called on the authorities to legal provisions which conditioned the obligation to provide minority language teaching upon the availability of teachers.³⁴

59. The term ‘adequate’ in Article 12(2) – as well as in other similar clauses of the Framework Convention – accentuates once more the need for State Parties to collect baseline data and make needs’ assessments. It should also be noted that bilingual and multilingual societies and schools require teachers with appropriate bilingual, multilingual and intercultural training. Teachers must therefore be recruited actively from both majority and minority groups and be given training equipping them to work in multilingual and intercultural environments. This is particularly important for teachers specialized in the teaching of history and religion.

60. Kin-state support in the field of education consists usually of scholarship schemes, reduction of fees for the use of educational facilities, support to teaching in the kin-language, training for teachers in the kin-language, access to higher education and recognition of diplomas.

61. The Advisory Committee finds useful the guidelines developed by the European Commission for Democracy through Law, of the Council of Europe, better known as the Venice Commission, in its *Report on the Preferential Treatment of National Minorities by the Kin-State* (2001).³⁵ The Venice Commission reminds that kin-state support must respect the principle of friendly neighbourly relations as provided in Article 2 of the Framework Convention. Indeed, Article 18 of the Framework Convention encourages the development of bilateral and multilateral agreements between neighbouring countries as well as transfrontier co-operation in general. Such co-operation can enhance positive developments for both minorities and majorities. The Venice Commission notes also that international law does not accept the exercise of State powers outside the national borders, unless there is specific permission to the contrary. Most importantly from the point of view of persons belonging to national minorities, the Venice Commission observes that differential treatment, including through support by kin-states, may constitute discrimination if it is not objectively and reasonably justified and is proportionate to the aim pursued.

62. The Advisory Committee has dealt with kin-state issues in the field of education under Article 12 of the Framework Convention. Article 4 is also relevant when kin-state support creates differential treatment that may amount to discrimination which enhances the vulnerability of groups with no kin-states. The Advisory Committee has indeed emphasized in

³³ Advisory Committee Opinion on Hungary ACFC/INF/OP/I(2001)004, paragraph 39.

³⁴ Advisory Committee Opinions on Norway ACFC/INF/OP/I(2003)003 and Sweden ACFC/INF/OP/I(2003)006.

³⁵ CDL-INF (2001)19.

several opinions that over-dependence upon kin-state support may place some groups in a disadvantaged position, such as the Yezidis and Assyrians in Armenia and that “the authorities should ensure that all the national minorities, particularly those that are numerically smaller or do not enjoy the support of a kin-state, benefit equitably from the special government programmes for national minorities”.³⁶

63. If used prudently, kin-state support can be an asset both for the minority concerned, other minority groups as well as for the majority population. When discussing kin-state support in the field of textbooks and other teaching materials supplied by kin-states, it needs to be taken into account that such materials may in some cases not reflect adequately and correctly the experiences and aspirations of minorities concerned since they are produced in and by the kin-state by persons who do not live in the country of the minority at issue.

Equal opportunities for access to education

a) Legal and institutional framework of education

64. Rights *to*, and *in* education, need to be institutionalized and safeguarded in clear and coherent legal acts. State Parties must also dedicate the financial resources necessary for the implementation of adopted legislation at national, regional and local level. This is not always the case especially as education budgets in many countries in Europe have faced cuts in recent years. Sometimes there are *contradictions* between educational legal acts on minority education and other legal acts devoted to (such as state language laws).

65. Minority languages are in some cases officially treated as “foreign languages” placed in the same position as foreign languages with no historical or cultural link to the country concerned. The Advisory Committee has emphasized that minority languages should be recognised and treated as part of the linguistic and cultural wealth of a State.³⁷

66. In other cases the *complexity of laws and decrees* in this field is such that those concerned (heads of schools, responsible authorities, teachers, parents and pupils) are unaware of the actual rules, rights and duties, e.g. with regard to threshold requirements for the retention or abolition of a class, or a school. Legal certainty and clarity are preconditions for coherent implementation of the provisions of the Framework Convention, especially since the Framework Convention requires the concretization and contextualization at national, regional and local levels. The issue of complexity of the legal framework is linked to the current trend for decentralization of education, with responsibility delegated to local authorities and further to heads of schools. In order to be able to participate meaningfully in decisions affecting them, teachers, parents and pupils should be aware of who decides on different matters and on the basis of which legal provisions. This also includes decisions on funding of minority education.

67. Another aspect related to the legal framework, is that of *the means of supervision and subsequently of enforcement of legal provisions concerning education*. Since many State Parties have provisions on the right to education in their constitutions as well as in a number of other pieces of legislation, it is remarkable that there is hardly any information in State

³⁶ Advisory Committee Opinion on Armenia ACFC/INF/OP/I(2003)001, paragraph 63; Advisory Committee Opinion on Moldova ACFC/INF/OP/I(2003)002, paragraph 116. See also concerns raised under Article 18 in the Advisory Committee Opinion on Poland ACFC/INF/OP/I(2004)005.

³⁷ Advisory Committee Opinion on Poland ACFC/INF/OP/I(2004)005, paragraphs 68-69.

Reports on the judicial or other means to enforce such provisions, at national as well as at local level, nor about court practice in the field of education. One of the exceptions is the information provided in the State Report of Austria concerning a Constitutional Court Decision on primary education for the Slovene minority.³⁸

b) Access to education for Roma

68. The equal access of Roma children to good quality education and their integration in the societies is a persistent problem in many States Parties to the Framework Convention.

69. Segregated education, often of lower standard than that offered to other students, is one of the most extreme examples of the precarious position of Roma parents and pupils. The Advisory Committee has repeatedly criticized practices of segregation of Roma students and welcomed efforts to end such practices.³⁹ Other problems encountered are the bullying of Roma children by other children or, even by teachers, inappropriate and culturally biased tests used in the educational systems, the lack of recognition of the Romani language in schools, low income and lack of school meals for Roma. The Advisory Committee has observed differences in the treatment of girls and boys. The Advisory Committee has welcomed efforts to tackle such problems, for instance through offering of school meals, introduction of public transportation, training of Roma school assistants and teachers. In its Opinion on Romania, the Advisory Committee was pleased that measures taken had included the appointment of Roma mediators and school inspectors and the reservation of quotas reserved for Roma students in higher education.⁴⁰

Summary of points on Article 12 (3)

70. Ensuring the access of all persons belonging to national minorities to good quality education means that States need to act resolutely in the following three areas:

- Ensuring that all children (including Roma) are duly enrolled in schools and that difficulties encountered by displaced persons or persons belonging to nomadic or semi-nomadic groups are addressed in constructive and active ways. The existence of education or some levels of education exclusively in the official language may be blocking the access to education for children belonging to national minorities or other groups (e.g. recent immigrants and refugees).
- Ensuring and monitoring school attendance by all pupils, including those belonging to national minorities. Shortcomings in the availability of pre-school education, school facilities, in physical access to schools and transportation, or in

³⁸ State Report of Austria ACFC/SR(2000)3. The Decision of the Constitutional Court of 15 December 1989 (Collection VfSlg. 12.245/1989) on the primary school system held that section 10 paragraph 2 of the Minority Schools Act for Carinthia was unconstitutional and, consequently, quashed a phrase in section 11 of that law as well as section 1 paragraph 1 of the pertinent Carinthian implementing law for not being in conformity with the Constitution. It was the understanding of the Constitutional Court that Article 7 (2) of the State Treaty of Vienna was directly applicable. The subjective (public) right of Austrian citizens belonging to the Slovene minority to receive elementary tuition in the Slovenian language, accordingly, applies in the entire Carinthian territory and not just in the "autochthonous Slovenian" region in Southern Carinthia.

³⁹ See e.g. Advisory Committee Opinions on Austria ACFC/INF/OP/I(2002)009, the Czech Republic ACFC/INF/OP/I(2002)2, Hungary ACFC/INF/OP/I(2001)4 and Croatia ACFC/INF/OP/I(2002)003.

⁴⁰ Advisory Committee Opinion on Romania ACFC/INF/OP/I(2002)001, paragraph 57. See also above the section concerning 'the scope of education' including reference to the Advisory Committee Opinion on Slovakia ACFC/INF/OP/I(2001)1.

ensuring safety of children in school, as well as parents socio-economic problems, lack of confidence in the educational system may all result in reluctance of parents to send their children to pre-schools and schools and a lack of willingness by children to attend classes;

- Monitoring school attainments, including absenteeism and drop-out rates, literacy, completion of studies, grades, gender disparities, access to higher educational levels and subsequently access to employment. In some cases, preparatory classes and class or individual assistants/mediators/advisors may be necessary for pupils from disadvantaged environments. Adult education is a necessary complement to the basic education system.

2.2 Article 13 of the Framework Convention

‘13(1) Within the framework of their education systems, the Parties shall recognise that persons belonging to a national minority have the right to set up and to manage their own private educational and training establishments.

13(2) The exercise of this right shall not entail any financial obligation for the Parties. ‘

2.2.1 Explanatory report

‘72. The Parties’ obligation to recognise the right of persons belonging to national minorities to set up and manage their own private educational and training establishments is subject to the requirements of their educational system, particularly the regulations relating to compulsory schooling. The establishments covered by this paragraph may be subject to the same forms of supervision as other establishments, particularly with regard to teaching standards. Once the required standards are met, it is important that any qualifications awarded are officially recognised. The relevant national legislation must be based on objective criteria and conform to the principle of non-discrimination.

73. The exercise of the right referred to in paragraph 1 does not entail any financial obligation for the Party concerned, but neither does it exclude the possibility of such a contribution.’

2.2.2 Main Issues

71. In most of its Opinions, the Advisory Committee has considered that the implementation of Article 13 does not give rise to any specific observations. In many cases this results from the fact that the national minorities concerned do not have the financial means to establish their own educational institutions.

72. The Explanatory Report provides that all educational establishments, public as well as private, are subject to the requirements of each State's educational system. States Parties can therefore implement the Framework Convention by incorporating the education provisions of the Framework Convention as elements of their own educational systems.

73. More extensive comments were provided by the Advisory Committee in a few cases, including the Opinions on Austria, Germany and Switzerland. With regard to Austria, the Advisory Committee discussed the public funding of Czech and Slovak bilingual education in the Komensky School in Vienna and recommended more subsidies to private schools offering education to Hungarians and Croats. With regard to the Komensky School the Advisory Committee said:

‘The Advisory Committee welcomes the fact that the Austrian authorities cover the costs of the teaching staff at the Komensky school on a contractual basis, although the Private School Act does not place them under any obligation to do so. Nonetheless, the Czech and Slovak minorities have drawn the Advisory

Committee's attention to the growing difficulties that they have in covering the ordinary operating costs of the school on their own. The Advisory Committee therefore urges the Austrian authorities to continue their discussions with the representatives of the Czech and Slovak minorities to identify funding solutions that will help to secure the school's long-term future. Because of the school's historical significance and its role in conveying these languages and cultures, the Czech and Slovak minorities regard its preservation and development as a priority.⁴¹

74. In the case of Switzerland, the Advisory Committee recommended a review of the impact of restrictions on the establishment of private schools in minority languages in certain cantons on the basis of the principle of territoriality, e.g. in Bern. The Advisory Committee considered that:

‘... such limitations are problematic from the point of view of Article 13 of the Framework Convention insofar as they seem to prevent the establishment of private schools providing instruction in a minority language outside its area of traditional establishment. While noting that the Federal authorities have indicated to it that they had no knowledge of cases where the setting up of private schools of a minority language has been refused, the Advisory Committee urges the competent authorities to ensure that the legal provisions of the cantons concerned do not constitute a barrier to satisfying any needs in this respect, in particular for Italian-speakers living in large cities such as Bern.’⁴²

75. State Parties must ensure that the implementation of the principle of territoriality does not violate the principle of non-discrimination between minority groups or different sub-groups within minority groups.

76. Issues of quality and supervision of private minority education have not been raised in any opinions of the Advisory Committee.

2.3 Article 14 of the Framework Convention

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

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

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

2.3.1 Explanatory report

‘Paragraph 1

74. The obligation to recognise the right of every person belonging to a national minority to learn his or her minority language concerns one of the principal means by which such individuals can assert and preserve their identity. There can be no exceptions to this. Without prejudice to the principles mentioned in paragraph 2, this paragraph does not imply positive action, notably of a financial nature, on the part of the State.

Paragraph 2

75. This provision concerns teaching of and instruction in a minority language. In recognition of the possible financial, administrative and technical difficulties associated with instruction of or in minority languages, this provision has been worded very flexibly, leaving Parties a wide measure of discretion. The

⁴¹ Advisory Committee Opinion on Austria ACFC/INF/OP/I(2002)009, paragraph 59.

⁴² Advisory Committee Opinion on Switzerland ACFC/INF/OP/I(2003)007, paragraph 66.

obligation to endeavour to ensure instruction of or in minority languages is subject to several conditions; in particular, there must be "sufficient demand" from persons belonging to the relevant national minorities. The wording "as far as possible" indicates that such instruction is dependent on the available resources of the Party concerned.

76. The text deliberately refrains from defining "sufficient demand", a flexible form of wording which allows Parties to take account of their countries' own particular circumstances. Parties have a choice of means and arrangements in ensuring such instruction, taking their particular educational system into account.

77. The alternatives referred to in this paragraph – "opportunities for being taught the minority language or for receiving instruction in this language" – are not mutually exclusive. Even though Article 14, paragraph 2, imposes no obligation upon States to do both, its wording does not prevent the State Parties from implementing the teaching of the minority language as well as the instruction in the minority language. Bilingual instruction may be one of the means of achieving the objective of this provision. The obligation arising from this paragraph could be extended to pre-school education.

Paragraph 3

78. The opportunities for being taught the minority language or for receiving instruction in this language are without prejudice to the learning of the official language or the teaching in this language. Indeed, knowledge of the official language is a factor of social cohesion and integration.

79. It is for States where there is more than one official language to settle the particular questions which the implementation of this provision shall entail.⁷

2.3.2 Main Issues

The structure of Article 14

77. It is significant that Article 14 (1) of the Framework Convention refers explicitly to "*the right*" to learn one's minority language. Article 14 (1) is passive in character in referring to "the 'right to *learn*' as opposed to the active form in Article 14 (2) 'being taught' and 'receiving instruction'. State Parties must then first of all recognise this right in their legal and educational systems, even if this does not automatically entail an economic responsibility for the provision of such education in all circumstances. In some cases, the Advisory Committee has criticized the absence of provisions recognizing a right to be educated in the Roma language in spite of similar provisions existing for many other minority languages.⁴³

78. Article 14 (2) is qualified by a number of clauses, including through phrases such as "in areas inhabited ... traditionally or in substantial numbers", "if there is sufficient demand", "as far as possible", "within the framework of their education systems", "adequate opportunities". The right under Article 14 (2) consists of two elements (instruction *of* or *in* the minority language) which have been seen by the Advisory Committee as *alternatives which are not mutually exclusive*.⁴⁴ Even though Article 14 (2), imposes no obligation upon States to do both, its wording does not prevent the State Parties from implementing the teaching of the minority language as well as the instruction in the minority language. Bilingual instruction may be one of the means of achieving the objective of this provision. The Explanatory Report reminds us that the provision is relevant also to pre-school education.

⁴³ Advisory Committee Opinions on Slovakia ACFC/INF/OP/I(2001)001 and Romania ACFC/INF/OP/I(2002)001.

⁴⁴ Advisory Committee Opinions on Sweden ACFC/INF/OP/I(2003)006 and Norway ACFC/INF/OP/I(2003)003.

79. Notwithstanding the clauses in Article 14 (2) allowing for considerable flexibility for State Parties, the Advisory Committee is of the view that State Parties must actively pursue needs' assessments and involve minorities in the design and implementation of measures to ensure the implementation of Article 14, including the right unequivocally guaranteed under Article 14 (1).

The languages protected

80. The notion of 'minority language' is not as clear as it appears at first sight. It may mean:

- a) the language which is considered as the traditional and historical language of a minority group;
- b) the language which is used in practice by a minority group (e.g. Russian among persons belonging to the Roma minority in several countries of the former Soviet Union);
- c) the language which is used by a majority within a minority group or which is used most of the time by a minority (or a combination of both);
- d) the language which simply differs from the language of the majority.

81. The notion of 'mother tongue' which is sometimes used in legislation and in State Reports is equally unclear as it may mean:

- a) the language transmitted by the mother (with all the gender biases this brings regarding the transmission of cultures and identities);
- b) the language one learned first;
- c) the language one knows best;
- d) the language one uses most freely;
- e) the language with which one is identified by him or herself or by others as a 'native speaker'.

82. It should also be noted that the word 'mother tongue' does not appear at all in Article 14 and it can therefore be argued that, following the principle of self-identification enshrined in Article 3 of the Framework Convention, persons belonging to national minorities and minorities as groups may freely identify themselves on the basis of the language they perceive as being 'their' language.

83. Languages form a continuum and the exact borders (linguistic and geographic) of languages are and will remain flexible and changing. Human beings are capable of mastering several languages. Human beings can also know and use various languages at different levels and within different domains. In our times of globalization and enhanced interaction it is in any case evident that multilingualism gives strong functional, cognitive and emotional assets. The Framework Convention itself presupposes the encouragement and support for bilingualism (through a combined implementation of Articles 12 (1) and 14. For those reasons continuous consultation with the persons and groups concerned (pupils, parents, teachers, minority representatives, authorities at central and local levels) is essential in the design of successful language education programmes. This flows also from the right to participation of persons belonging to national minorities as guaranteed under Article 15 of the Framework Convention.

84. The importance of teaching of and through the medium of the Romani language is increasingly discussed in State Reports and in the Opinions of the Advisory Committee as a necessary element of the efforts to ensure access to education for the Roma. In the Opinion on Romania the Advisory Committee mentioned that there was in practice no instruction in the Roma language in spite of the considerable size of the Roma community living in this country. The Advisory Committee called for measures to ensure adequate opportunities to be taught the Roma language.⁴⁵

85. The Council of Europe and its Language Policy Division possess enormous competence on the necessary preconditions and different modalities of successful language education programmes, including bilingual and multilingual education.⁴⁶ Many European States have also undertaken specific obligations under the European Charter for Regional or Minority Languages.

The scope of obligations

86. In its Opinions, the Advisory Committee has encouraged governments to take a “*proactive approach*” even when the expressed demand appears low (Opinion on the United Kingdom). It has also expressed satisfaction at low *numerical thresholds* for the creation of classes (in e.g. Ukraine 5 pupils in rural areas and 8-10 pupils in non-rural areas; in Sweden 1 pupil for some languages and 5 pupils for others but conditioned upon the availability of teachers, something which was criticized by the Advisory Committee; Austria reported a minimum of 7 pupils for a class (accompanied with detailed provisions) and a maximum number of 20 pupils per class). The Advisory Committee has conversely found that a threshold of 20 pupils for a class in a Sorbian-language school “is very high from the point of Article 14 of the Framework Convention”.⁴⁷

87. States should not introduce further qualifications to the rights enshrined in Article 14, than those contained in the Framework Convention. In its Opinion on Norway the Advisory Committee found:

‘The existing regulations envisage bilingual basic education, as a maximum, for minorities other than Sami and Kven-Finnish (in the designated regions) only until they have acquired a sufficiently good knowledge of Norwegian to be able to follow the ordinary teaching programme. Bearing in mind that the guarantees of Article 14 are not conditioned upon lack of knowledge of the state language, the Advisory Committee considers that the authorities should examine to what extent there is demand amongst the national minorities, and in the regions not covered by the said guarantees, to receive instruction in or of their language and, depending on the results, improve the current legal and practical situation if necessary.’⁴⁸

88. When developing and implementing the concrete modalities for language education, State Parties must reflect and decide upon:

⁴⁵ Advisory Committee Opinion on Romania ACFC/INF/OP/I(2001)1.

⁴⁶ See for instance the report written by Pádraig Ó Riagáin and Georges Lüdi, “Bilingual Education: Some Policy Issues”, Language Policy Division, DG IV, Directorate of School, Out-of-School and Higher Education, Council of Europe, 2003. It includes as an appendix a useful Checklist for decision makers in the context of policies for bilingual education.

⁴⁷ Advisory Committee Opinions on Austria ACFC/INF/OP/I(2002)009, Ukraine ACFC/INF/OP/I(2002)010, the United Kingdom ACFC/INF/OP/I(2002)6, and Germany ACFC/INF/OP/I(2002)008, paragraphs 59-60.

⁴⁸ Advisory Committee Opinion on Norway ACFC/INF/OP/I(2003)003, paragraph 59.

- the scope and volume of the teaching of or in minority languages (including on the levels of education and numbers of hours; public school system or informal/private teaching);
- the optional or compulsory nature of teaching;
- the continuity of teaching of/or in minority language, through the various levels of the educational system.

89. Much guidance in such endeavours can be found in the *Hague Recommendations Regarding the Education Rights of National Minorities* of the OSCE (1996) which is a comprehensive text in this field containing information on some crucial aspects of minority education.⁴⁹ The Hague Recommendations follow the spirit of the Framework Convention and the aims of education as described in the Convention on the Rights of the Child in adopting the basic assumption of the need to balance the goal of the preservation and development of minority identity and language with that of integration of minorities in the societies where they live as well as dialogue between different individuals and groups. As discussed earlier, the Advisory Committee has followed the same line of thought in its own work.

90. The Framework Convention adds to all this the explicit importance of promoting in the field of education the mutual respect, understanding and cooperation among all persons living within a state (Article 6) as well as the need to foster knowledge of the culture, history, language and religion of the different groups and targeting both minorities and majorities (Article 12).

91. The Hague Recommendations offer valuable assistance on the issue of decentralization and participation. Finally, when analyzing the shifting needs at various levels of education (primary, secondary, tertiary and vocational), the Hague Recommendations include specific recommendations with regard to the extent of the use of the minority language in the teaching of the curricula. In sum, the model supports a strong emphasis on minority language teaching at lower levels of education with a gradual increase of teaching through the medium of the majority language in higher levels of education.

92. A number of other tools and documents are already available within and outside the Council of Europe and can be adapted to the specific needs of each country, region and minority as well as majority groups.⁵⁰ A particularly useful tool is the so-called “*Four-A scheme*” developed within the United Nations.⁵¹ The scheme offers some basic quality criteria from a human rights perspective.

93. Planning and evaluation of all education, including minority education, can be guided by reflection on this scheme. While the first two A-factors are of equal relevance to all children and students, the Advisory Committee finds that the notions of acceptability and adaptability are of particular relevance for persons belonging to national minorities.⁵²

⁴⁹ The full text of the Hague Recommendations and the Explanatory Note can be found in different languages at: <http://www.osce.org/hcnm/documents.html?lsi=true&limit=10&grp=45>

⁵⁰ For more elaborate tools on the specifics of language education and plurilingualism, consult the work of the Language Policy Division of the Council of Europe, which has published *inter alia* the *Guide for the Development of Language Education Policies in Europe – From Linguistic Diversity to Plurilingual Education*, 2003 (in a main as well as an executive version, both available at www.coe.int/lang)

⁵¹ *General Comment 13 (1999) on the Right to Education* of the Committee on Economic, Social and Cultural Rights, and *Preliminary Report of the UN Special Rapporteur on Education* E/CN.4/1999/49.

⁵² See also Duncan Wilson, in “Filling the Frame: Five years of monitoring the Framework Convention for the Protection of National Minorities” ISBN 92-871-5472-2.

According to the *Four-A-scheme*, education in all its forms and at all levels shall exhibit the following interrelated and essential features:

Availability: Functioning educational institutions and programmes have to be available in sufficient quantity. The availability of trained teachers and teaching materials, issues of buildings, sanitation facilities for both sexes, safe drinking water are among the most crucial elements under this criterion. The Framework Convention includes different levels of obligations for States with regard to availability in the different levels of education.

Accessibility has three overlapping dimensions: non-discrimination, physical accessibility (appropriate geographic location, transportation, modern technology) and economic accessibility. Primary education must be ‘free to all’ under human rights instruments.⁵³ In Europe, Article 17 (2) of the Revised European Social Charter requires State Parties to provide children and young persons with ‘a free *primary* and *secondary* education’.

Acceptability: the form and substance of education, including curricula and teaching methods, have to be acceptable (e.g. relevant, culturally appropriate and of good quality) to students and parents. Acceptability is thus relevant for the whole physical and social environment of education. While this criterion is of particular importance for national minorities, it does not exempt them automatically from the objectives and standards defined in the educational system of the State.

Adaptability: education has to be flexible so as to adapt to the needs of changing societies and communities and to respond to the needs of students within their diverse social and cultural settings. This must be kept in mind as both minorities and majorities are developing entities as are persons belonging to them. Minority and majority identities need to be constantly discussed and reassessed as they are not frozen. Nor are languages and religion frozen phenomena and this has also been the view of the Advisory Committee in its work.

⁵³ General Comment 11 (1999) on Plans of Action for Primary Education of the Committee on Economic, Social and Cultural Rights elaborates on the notions of ‘compulsory’ and ‘free-of-charge’ education.

PART III CORE CONSIDERATIONS INFLUENCING MINORITY AND INTERCULTURAL EDUCATION

94. On the basis of the above experience of the Advisory Committee, it is possible to offer a short checklist of core considerations that need to be taken into account when discussing educational policies concerning minorities and intercultural education. In summing up, the Advisory Committee concludes that all minority educational policies need to address the following core questions:

Why? Which are the precise goals of educational policies?

95. As already indicated, the Framework Convention requires not only the protection of minority cultures and languages, but also the dissemination and development of intercultural contacts and dialogue, the encouragement of a spirit of tolerance in all educational efforts and even an ethos of bilingualism and plurilingualism with regard to languages. Different situations and different groups may need to be treated differently in order to ensure effective equality and access to good quality education for all persons.

Who? Who are the involved and concerned actors?

96. State Parties need to have access to adequate basic information concerning the situation of different minority groups, their needs and aspirations. Differences in geographic concentration, historical status and experience, kin-state support, level of organisation, gender disparities require different responses from the State and local and regional authorities. The particularly disadvantaged position of the Roma and Travellers needs to be taken into account in all countries that have ratified the Framework Convention.

97. Many other actors influence the availability and quality of education. Decision-makers at central and local level, teachers and school heads are among the most important. Parents and those receiving education (pupils or adults) are other crucial actors. The wishes of those groups and persons need to be heard and the right of effective participation as enshrined in Article 15 of the Framework Convention should be kept in mind in all decision-making processes, including in the field of education.

How? What tools are available and feasible?

98. The form and content of education needs to be adapted to the aims discussed above. The introduction of multicultural and intercultural elements in all curricula is one step. Different types of schools and classes is another method to address the varying needs. Training of bilingual and plurilingual teachers with expertise in working in multicultural environments is another important step. These aspects are not exhaustive, but they are crucial in offering access to good quality education to all persons living in a country in a way which supports a climate of tolerance and intercultural dialogue.

APPENDIX : INVENTORY OF EDUCATIONAL ISSUES ADDRESSED BY THE ADVISORY COMMITTEE IN ITS FIRST CYCLE OPINIONS

Article 4 *[Cross-reference with articles 5, 6, 12, 13, 14]*

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

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

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

1. right of equality before the law and of equal protection of the law

Equality and non-discrimination of persons belonging to national minorities in the field of education (legal and practical levels)

- existence/absence of specific anti-discrimination legislation in education; discriminatory provisions regarding education
- existence of relevant case-law
- instances of discrimination of persons belonging to national minorities in the field of education (discriminatory attitudes of other pupils, teachers and other educational actors)
- isolation, large concentration of minority children (Roma in particular) in certain public schools because of rejection in other schools
- undue placement of minority children (Roma in particular) in separate classes and school facilities
- disproportionate (undue) presence in special schools for mentally disabled children

2. full and effective equality

- full and effective equality of persons belonging to national minorities in the field of education
- unequal position of persons belonging to national minorities in the sphere of education (unequal educational opportunities and unequal access to resources)
impact on their situation in other areas like employment, civil service, etc.
additional measures required in education to obtain full and effective equality
- education as a tool for eliminating discrimination and promoting integration.

Article 5 *[Cross-reference with articles 4, 6, 12, 13, 14]*

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

[...]

- education as a tool for preservation of identity (including outside areas inhabited by national minorities traditionally or in substantial numbers)

Article 6 *[Cross-reference with articles 4, 5, 12, 13, 14]*

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

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

1. education as a tool for tolerance

- promotion of tolerance in education (multicultural content and form of education)
- promotion of tolerance through education (educational programmes on human rights, tolerance, diversity for journalists, police members etc.
- equal opportunities in education for non-citizens, as a tool for integration
- role of media as a tool for support for education

2. measures to protect against discrimination, hostility, violence

- protection against discrimination, intolerance, hostility against persons belonging to national minorities in schools.

Article 8 *[Cross-reference with articles 4, 5, 6, 12, 15]*

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

- religious diversity and tolerance reflected by religious subjects in the schools curriculum
- compulsory or voluntary nature of religious education in school curricula

Article 9 *[Cross-reference with articles 6, 12]*

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

[...]

- training and awareness rising for journalists on minority-related issues
- training opportunities for minority journalists as tool for ensuring minorities access to and presence in the media

Article 12 [cross-reference with articles 4, 5, 6, 14, 15]

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

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

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

1. Promotion of an intercultural perspective of education

Specific aim:

- to improve understanding about national minorities and to contribute to a climate of interethnic tolerance and dialogue

Fields of action :

- revision of the school curriculum to include elements of culture, history, religion and traditions of national minorities (also as part of the general teaching curriculum)
provision/revision of schoolbooks with multicultural content

Coverage :

- levels of education - all education levels, including research,
- geographical areas - the general school system, not limited to areas inhabited by national minorities

Actors involved :

- state educational actors (including state authorities, at central and local level, teachers, schools heads)
- minorities participation (including parents and students)
- bilateral co-operation

2. Teacher training, access to textbooks and multicultural contacts

Teacher training:

- teacher encouragement/awareness raising/support on the multicultural dimension of education
- teaching of history - exploring/developing more adequate approaches, designed to enhance the intercultural dialogue

Access to textbooks:

- availability of quality textbooks for minority languages teaching

Multicultural contacts:

- contacts among students and teachers of different communities – i.e. bilingual schools, teaching of minority languages also for the majority
 - composition of pupil/student groups and of teaching staff profile
3. Promotion of equal opportunities for access to education

All the points below have to be considered in the light of the possible gender disparities.

Legal and institutional framework:

- constitutional and legal guarantees of the right to education at all levels
- minority education strategies to ensure equal access to quality education
- specialized structures for minority education within state educational authorities
- supervision of schools
- minorities participation in decision-making in the educational sphere

Resources:

- financial resources in state/local budget to implement legislation and strategies
- state support for educational initiatives by national minorities - (vulnerability of numerically smaller minorities or of those who do not enjoy the support of a kin-state)
- bilateral/multilateral co-operation in the educational sphere (teacher training, textbooks and teaching materials, students exchanges)

Specific issues of concern as for the accessibility of education (and measures):

- **School registration**
 - ◇ denial of registration of minority children (Roma in particular)
 - ◇ specific situation of displaced persons (attempts to link access to education to the residency registration)
 - ◇ specific situation of travelling persons belonging to national minorities and the importance of an integrated environment
 - ◇ access to education imitations in relation to the absence of citizenship
- **School attendance**
 - ◇ absenteeism/low school attendance/withdrawal due to:
 - unavailability of pre-school education for minority children (in the official language, but also in minority language)
 - insufficient/inadequate school facilities (insufficiency of resources for the proper functioning of schools)
 - difficult and dangerous access to the schools, insufficient/inadequate related services (transportation)
 - parents' socio-economic problems
 - reluctance of parents to send their children to kindergarten
 - lack of confidence in the educational system

School attainment (access to quality education at all levels)

- ◇ absenteeism/low school attendance/withdrawal due to:
 - proportion of minority students successfully completing secondary and higher education (as compared to majority students relevant statistics)
 - continuity of education in minority languages at different levels as a factor for school attainment
 - low literacy or illiteracy among minority children (and adults)
 - ◇ assistance programmes for minority children with specific concerns:
 - special measures adapted to itinerant culture of Roma
 - preparatory classes (for Roma and other disadvantaged children)
 - Roma (minority) assistants mediators/experts/advisors in schools and educational state authorities
 - individualised teaching plans
- Official language position in education and equal access to education
- Specific educational needs of adults of national minorities

Article 13 [cross-reference with articles 4, 5, 6, 12, 14]

- 1 Within the framework of their education systems, the Parties shall recognise that persons belonging to a national minority have the right to set up and to manage their own private educational and training establishments.
 - 2 The exercise of this right shall not entail any financial obligation for the Parties.
1. right to set up and to manage private educational and training establishments

Legal and Institutional basis:

- existence of clear legal guarantees of the right of persons belonging to national minorities to establish private educational institutions, schools and universities

Legal and/or other obstacles:

- restrictions (such as the language of instruction)
- conditions (such as the existence of bilateral agreements providing for reciprocity)

Right of the state to supervise private educational institutions (legality and quality control)

2. no financial obligation for the state
- general rule: no financial obligation of the state to assist minorities when setting up private educational institutions
- clear and objective legal criteria needed when financial state support is provided :
- ◇ where private schools are the only opportunity for national minorities to be provided minority language/bilingual education

- ◇ where numerically smaller minorities are concerned or those who do not enjoy the support of a kin-state and do not have their own financial means to set up educational institutions)

Article 14 [cross-reference with articles 4, 5, 6, 12, 13, 15]

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

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

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

1. Recognition of the right of persons belonging to a national minority to learn their minority language

Legal guarantees of the right to learn the minority language

2. Implementation of the right of persons belonging to a national minority to learn their minority language or to receive instruction in this language

Measures taken to specify the conditions required for implementation of the aforementioned right:

- identification of "areas inhabited by persons belonging to national minorities traditionally or in substantial numbers" (thresholds)
- evaluation of language needs and "sufficient demand":
 - ◇ availability of accurate statistical information on national minorities
 - ◇ the need for flexibility (in terms of geographical coverage and numerical thresholds) to respond to specific situations
 - the needs of numerically small and dispersed minorities
 - the need for increased support for the learning of certain minority languages (e.g. Roma language: specific difficulties)
- responsibility of the decision-making on opening/closing classes/schools and providing learning of/in minority languages:
 - ◇ local and regional authorities role
 - ◇ parents participation/consultation in decision-making processes

Concrete modalities chosen and their practical implementation :

- **scope and the volume** of the teaching in/of minority languages (not mutually exclusive)
 - ◇ levels of education and numbers of hours
 - ◇ public school system/informal teaching of/in minority languages
- **compulsory/optional nature** of the teaching of in minority language (when optional, whether integrated or not in regular school curriculum and how)

- **continuity** of the teaching of/in minority language at various levels
 - ◇ public support to preschool bilingual/multilingual education (public or private)
 - ◇ use of minority languages in final school examinations and in entrance examinations
 - ◇ use of minority languages in higher educational institutions
 - establishment of minority language/multicultural universities;
 - quotas for minority students
 - use of minority languages for admission/final university examinations;
 - recognition of diplomas

Resources:

- teacher training
- textbooks and teaching materials
- distribution of resources: need for a balanced and flexible in response to specific language needs
- bilateral co-operation with kin-states
- State support (financial/logistic) for Sunday and other optional classes outside the public school system

3. Learning of the official language

Compulsory teaching of official language

Quality of official language teaching

Different models of official language "immersion" programs (whether they are of voluntary or compulsory nature)

Article 15 [*Cross-reference with articles 4, 5, 6, 12, 14*]

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

- education as subject of consultation/participation of persons belonging to national minorities to public life
- education as a means for effective participation of persons belonging to national minorities in public life
- importance of effective participation of adults as well as children belonging to national minorities
- participation of persons belonging to national minorities in educational public institutions (the role of teachers dealing with minority education)
- impact of decentralisation on the implementation of educational policies relevant for national minorities

Article 18 [*Cross-reference with articles 4, 5, 12, 13, 14*]

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

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

- education as a field of bilateral and regional co-operation
- the question of the official recognition of the diplomas by educational institutions of other States

IN ADDITION to country-specific opinions on the implementation of the Framework Convention, the Advisory Committee has developed a more transversal approach to its work after the first monitoring cycle. In 2004, the committee launched its work on thematic issues with the aim of summarising its experience and views on the most important issues it has come across in its monitoring work. The results of this thematic work take the form of “Commentaries” on specific issues.

Four such commentaries have been adopted so far: on education (2006), participation (2008), language rights (2012) and the scope of application (2016). Other themes are expected to be covered in the coming years in order to further guide states parties and other actors in the implementation of the rights granted by the Framework Convention.

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