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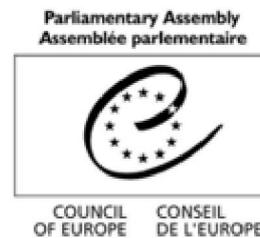
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**Doc. 9862**

9 July 2003

**Rights of national minorities**

**Report**

Committee on Legal Affairs and Human Rights

Rapporteur: Mr Boriss Cilevičs, Latvia, Socialist Group

*Summary*

The report takes stock of the situation of minorities in Europe two years after the Assembly adopted the last Recommendation on this subject.

Although the relevant Council of Europe conventions are now fully operational, some states persist in refusing to honour their obligations.

The report reiterates earlier proposals concerning the drafting of an additional protocol to the Framework Convention conferring on the Court the power to give advisory opinions on that instrument, and the abolition of restrictions on the establishment of private media broadcasting and publishing written news in minority languages.

The report reminds the states parties to the Framework Convention that they do not have an unconditional right to decide which groups in their territories qualify as national minorities within the meaning of the Framework Convention, and urges the states parties to the Framework Convention and the Charter to submit their state reports in due time.

Relaunching of the Committee of Experts on issues relating to the protection of national minorities is one of the recommendations made to the Committee of Ministers, together with recommendations on improving the procedure for applying and monitoring the Framework Convention.

**I. Draft recommendation**

1. The Parliamentary Assembly recalls its earlier [Recommendation 1492](#) (2001) on the rights of national minorities, and takes note of the Committee of Ministers' reply to this Recommendation ([Doc 9492](#)), as well as of the opinions of the inter-governmental committees, the Commissioner on Human Rights and the European Court on Human Rights.

2. The Assembly welcomes the success of the Framework Convention for the protection of national minorities, a privileged instrument in the field of protection of national minorities, which celebrated the fifth anniversary of its entry into force this year. The entry into force of the Framework Convention marked a new stage in the development of the minority protection system within the Council of Europe. Instead of elaborating basic standards for minority protection, the Council of Europe is rather concentrating on monitoring mechanisms and raising the efficiency of institutions and procedures aimed at ensuring the compliance with these basic principles by all Council of Europe member states. In this regard, the Assembly commends the outstanding work of the Advisory Committee of the Framework Convention.

3. The Assembly welcomes the important role assumed by the Charter of Regional or Minority Languages confirmed by the Secretary General in his communication on the application of the European Charter on regional or minority languages contained in Document 9540, welcomes the growing number of signatures and ratifications made

since the last report, and stresses the importance of further new signatures and ratifications to this instrument. The Assembly also welcomes the valuable work of the Committee of Experts of the Charter.

4. To date, three of the four member states mentioned in [Recommendation 1492](#) have yet to sign the Framework Convention, namely Andorra, France and Turkey. The Assembly, recalling its [Resolution 1301](#) (2002), reiterates its regret about the reservation made on signature of the instrument by Belgium.

5. The Assembly reiterates the positions it undertook in [Recommendation 1492](#) (2001) with regard to the Framework Convention, that is the demand for a swift signature and/or ratification by member states without reservations/declarations. The persistent refusal to sign and/or ratify this instrument should be the subject of close attention by the Council of Europe's Committee of Ministers and the Parliamentary Assembly monitoring procedures.

6. It also reiterates its proposal of an additional protocol to the Framework Convention for the protection of national minorities conferring on the Court the power to give advisory opinions on interpretation of the Framework Convention.

7. In a number of opinions, the Advisory Committee stated that although state parties have a margin of appreciation in respect of the personal scope of application of the Framework Convention, this must be exercised in accordance with the fundamental principles set out in Article 3 of the Convention ; in no case, the interpretation given by the states parties can be a source of arbitrary or unjustified distinctions. In turn, the Committee of Ministers asked the states parties to put the possibility of submitting reservations/declarations to careful use. In line with these views, the Assembly considers that the states parties do not have an unconditional right to decide which groups within their territories qualify as national minorities in the sense of the Framework Convention. Any decision of the kind must respect the principle of non-discrimination and comply with the letter and spirit of the Framework Convention.

8. The Assembly reiterates its views reflected in its [Recommendation 1589](#) (2003) on the freedom of expression in the media in Europe that all European States should abolish restrictions on the establishment and functioning of private media broadcasting in minority languages.

9. The Assembly considers that the states parties to the Framework Convention and the Charter should respect more scrupulously the deadlines set for the submission of reports.

10. The work of the Advisory Committee of the Framework Convention and the Committee of Experts of the Charter should be facilitated by the most effective means available, especially in the approach to the second phase of monitoring.

11. The Assembly considers that the bodies of the Council of Europe dealing with the protection of rights of national minorities, as well as with the struggle against discrimination, racism, xenophobia and intolerance, should reinforce the co-ordination of their work to achieve a better synergy. In the meantime, the co-operation between the Council of Europe's bodies and other relevant European organisations (including the European Union and the OSCE) as well as sub-regional organisations (including the Council of the Baltic Sea States, the Central European Initiative and other organisations) should be stepped up.

12. The Assembly calls on:

i. member states who have not already done so (that is, Andorra, France and Turkey) to swiftly sign and ratify, without reservations/declarations, the Framework Convention;

ii. member states who have signed but have not ratified (Belgium, Georgia, Greece, Iceland, Latvia, Luxembourg and the Netherlands) to swiftly ratify, without reservations/declarations, the Framework Convention;

iii. those states parties which have ratified the Framework Convention but have made declarations/reservations, to drop them in order to exclude arbitrary and unjustified distinctions, as well as the non recognition of certain minorities;

iv. the states parties to pay particular attention to the fair implementation of article 9 of the Framework Convention (freedom of expression) by abolishing undue restrictions imposed on private broadcasting and the publishing of written news in minority languages;

v. the states parties to pay particular attention to the possibility for the most vulnerable Roma minorities to fully benefit from the protection envisaged in the Framework Convention.

13. The Assembly also recommends to the Committee of Ministers:

- i. to draft an additional protocol to the Framework Convention conferring on the European Court on Human Rights the power to give advisory opinions on its interpretation of the Framework Convention;
- ii. to take the necessary steps to relaunch the Committee of Experts on issues relating to the protection of national minorities (DH-MIN) as an appropriate intergovernmental forum for policy discussions on questions relating to national minorities, including the co-operation with the EU and other international organisations in this field ;
- iii. to enhance efforts aimed at the speedy ratification of Protocol No 12 to the European Convention on Human Rights;
- iv. consider the holding of "tours de table" on signature and ratification of the Framework Convention;
- v. to reinforce as a matter of priority the financial and human resources at the disposal of the Secretariat of the Advisory Committee of the Framework Convention, in view of the approaching second cycle of monitoring and effective follow-up activities, as well as the financial and human resources at the disposal of the Secretariat of the Committee of Experts of the Charter;
- vi. to consider the possibility of abolishing the whole mandate requirement for seeking information from a variety of sources as well as for meeting with NGOs;
- vii. to revise the rules governing the monitoring procedure of the Framework Convention, with a view to securing that the Advisory Committee can visit any state party under consideration if the Advisory Committee deems it necessary;
- viii. to re-consider the confidentiality requirements set by Resolution (97) 10 of the Committee of Ministers, so as to allow the Advisory Committee, if it deems it necessary, to hold joint meetings with the representatives of governments and of civil society;
- ix. to encourage the Advisory Committee to consider thematic issues and to comment on them, so as to assist states and minorities in developing good practices;
- x. to ensure availability of the Framework Convention and the Charter, as well as related texts, in different languages, including the languages of national minorities;
- xi. to encourage early publication of the Advisory Committee's opinions by states parties, so that an open dialogue might develop between the authorities and civil society on implementation of the Framework Convention and on the conclusions drawn by the Committee.

14. Lastly, the Assembly recommends that the Committee of Ministers take the necessary measures to continue co-operation with the European Union, with a view to achieving common policies in the field of protection of national minorities, including the ongoing process of enlargement and the evaluation by the European Commission of measures taken by the candidate countries, and to see to the respect by all member states of the Copenhagen criteria related to the respect and the protection of national minorities.

## **II. Explanatory memorandum**

by Mr Cilevičs, Rapporteur

### **A. Introduction**

1. In its latest [Recommendation 1492](#) (2000) "Rights of national minorities", the Assembly paid particular attention to implementation of the existing Council of Europe mechanisms of minority protection, rather than to elaboration of new instruments. Since the adoption of this Recommendation, a considerable progress has been achieved in monitoring and evaluation of implementation of the Framework Convention for the Protection of National Minorities.

2. Twenty-six opinions have been adopted by the Advisory Committee, and twenty-one of them were already in the public domain as of April 2003 (on the implementation of the Framework Convention by Albania, Armenia, Austria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, Germany, Hungary, Italy, Slovakia, Liechtenstein, Malta, San Marino, Moldova, Norway, Romania, Ukraine and United Kingdom). Nineteen corresponding resolutions have been adopted by the Committee of Ministers, and more are expected soon.

3. Significant results have also been achieved in respect of the monitoring mechanism of the European Charter for Regional and Minority Languages. The Committee of Experts of the Charter adopted nine reports in respect of Croatia, Germany, Hungary, Norway, Finland, the Netherlands, Sweden, Switzerland and Liechtenstein.

4. The Framework Convention is “a document of principles”, and its state parties are entitled to a certain margin of interpretation in respect of particular methods of implementation of the convention’s provisions. In this view, the evaluation given by the Committee of Ministers and by the Advisory Committee within the framework of the monitoring procedures established by Articles 24-26 of the Framework Convention and by the Resolution (97) 10 of the Committee of Ministers, is of crucial importance for the successful achievement of the purposes of the Convention. This is why it is essential that the Assembly timely engages in this discussion, follows and analyses recent developments, and suggests its recommendations in respect of further enhancement of the effectiveness of the Framework convention’s implementation machinery.

5. The main objectives of this report are the following:

- to analyse activities of the Advisory Committee, the Committee of Experts, and the Committee of Ministers in the course of monitoring of implementation of the Framework Convention and the Charter;

- to draw conclusions about the best practices and most appropriate ways to exercise the provisions of the Framework Convention by state parties;

- to make proposals aimed at further improvement of the Framework Convention’s and the Charter’s monitoring mechanisms.

6. Within the framework of this report, also motions for recommendations “Right of national minorities to create and use their own media in the Council of Europe member states” ([Doc 9151](#), 2001), and “Common standards for protecting the rights of national minorities” ([Doc 9259](#), 2001), will be taken into account.

## **B. Developments since the adoption of the Recommendation 1492 (2001)**

7. In respect of new signatures and ratifications of the Framework Convention, no crucial changes occurred since January 2001, when [Recommendation 1492](#) was adopted.

8. On 31 July, 2001, Belgium signed the Convention, thus reducing the number of non-signatory European states to three (Andorra, France, and Turkey). However, the reservation accompanying the signature of the instrument by Belgium caused protracted debates in the Assembly, which finally resulted in the adoption of a special [Resolution 1301](#) (2002) “Protection of minorities in Belgium”.

9. On 7 May 2002, Portugal has ratified the Framework Convention.

10. On 11 May, 2001, the Federal Republic of Yugoslavia acceded to the Framework Convention – prior to its accession to the Council of Europe. It should be noted that some other states who recently joined the Council of Europe, acted similarly (in particular, Armenia and Bosnia and Herzegovina).

11. Thus, to date all but one member states listed in paragraph 6 of the [Recommendation 1492](#) (namely, Georgia, Greece, Iceland, Latvia, Luxembourg, and the Netherlands) have still failed to ratify the Framework Convention.

12. More member states have ratified the Charter since then; they are: Armenia, Austria, Cyprus, Slovakia, Spain and the United Kingdom, while Azerbaijan, Moldova and Russia signed it. However, to date fifteen member states neither signed nor ratified the Charter, in comparison to three in the case of the Framework Convention.

## **C. Brief overview of previous Assembly’s pertinent activities**

13. From its inception, the Assembly paid great attention to the rights of national minorities in Europe. The first adopted text in this field dates back to 1957 (Resolution 136 (1957) “Position of national minorities in Europe”). The Assembly adopted its documents on this issue also in 1958, 1959, 1961.

14. Fundamental changes occurred in Europe in late 80s – early 90s. Collapse of the communist system and fall of the “iron curtain” entailed crucial consequences, including substantial enlargement of the Council of Europe membership, and appearance on its agenda of new problems – not least, numerous new issues related to minority protection. Bloody ethnic conflicts that erupted in many former communist countries, notably in former Soviet Union and former Yugoslavia, clearly revealed the urgency and significance of these problems.

15. In 1990, in its [Recommendation 1134](#) (1990) “On the rights of minorities”, the Assembly for the first time recommended to “draw up a Protocol to the European Convention on Human Rights or a special Council of Europe convention to protect the rights of minorities in the light of the principles” stated in this Recommendation. This proposal was reiterated in the Assembly’s [Recommendation 1177](#) (1992). Furthermore, the [Recommendation 1201](#) (1993) “On an additional protocol on the rights of national minorities to the European Convention on Human Rights” included

already the concrete text of the proposal for an additional protocol.

16. However, the governments of the Council of Europe member states declined this proposal. In its [Recommendation 1231](#) (1994) "On the follow-up to the Council of Europe Vienna Summit", the Assembly "deeply regretted" that the summit did not follow the Assembly's recommendation on an additional protocol on the rights of national minorities to the European Convention on Human Rights".

17. In the meantime, the persistence of the Assembly considerably accelerated elaboration of the framework convention - another option mentioned in the [Recommendation 1134](#) (1990). At the Vienna Summit on 9 October 1993, the heads of states and governments of the member states of the Council of Europe decided to instruct the Committee of Ministers, *inter alia*, "to draft with minimum delay a framework convention specifying the principles which contracting states commit themselves to respect, in order to assure the protection of national minorities".

18. The Framework Convention for the Protection of National Minorities was elaborated by the Committee of Ministers at unprecedented speed, and adopted in its final form, at the ministerial meeting on 10 November 1994. The Framework Convention was opened for signature on 1 February 1995, and was signed on behalf of 21 member states.

19. In the [Recommendation 1255](#) (1995) "On the protection of the rights of national minorities", the Assembly expressed some concerns about the Convention being "weakly worded": "It formulates a number of vaguely defined objectives and principles, the observation of which will be an obligation of the contracting states but not a right which individuals may invoke". Therefore, "It is furthermore essential that the framework convention be complemented by an additional protocol to the European Convention on Human Rights setting out clearly defined rights which individuals may invoke before independent judiciary organs", like the European Commission and Court of Human Rights.

20. Nevertheless, "Despite its reservations as to the content and legal nature of the framework convention", the Assembly expressed its hope "that it will be signed and ratified soon by an overwhelming majority of member states and also that a considerable number of European non-member states will become contracting parties". The Assembly also emphasized the need to ensure effectiveness of the monitoring mechanism pertinent to the Framework Convention, in particular, to "make sure that the advisory committee to be set up once the framework convention enters into force is as independent, effective and transparent as possible" and suggested a number of measures to achieve this goal.

21. In its [Recommendation 1285](#) (1996) "On the rights of national minorities", the Assembly recommended that the Committee of Ministers "invite those member states which have not yet done so to sign and to ratify the Framework Convention for the Protection of National Minorities as soon as possible", as well as repeated its insistent intention to make sure that the advisory committee will be as independent, effective and transparent as possible. Moreover, the [Recommendation 1300](#) (1996) "On the protection of the rights of minorities" predominantly concentrates on the issue of effectiveness of the Advisory Committee, and contains a long list of detailed recommendations aimed at this.

22. In the [Recommendation 1345](#) (1997) "On the protection of national minorities", the Assembly expressed its concern that the Framework Convention had not yet entered into force at that time, and recommended that the Committee of Ministers "invite states which have not yet done so to sign and ratify the Framework Convention for the Protection of National Minorities ..., in order to enable these instruments to enter into force on the occasion of the second Council of Europe summit, to be held in Strasbourg on 10 and 11 October 1997", as well as "strongly urge member states to comply with the above-mentioned Council of Europe instruments".

23. Finally, in the last document adopted so far, the [Recommendation 1492](#) (2000) "Rights of national minorities", the Assembly used more specific and considerably stronger language to facilitate making the Framework Convention a universal and effective European instrument on minority protection. In particular, the Assembly condemned "the denial of the existence of minorities and of minority rights in several Council of Europe member states and the fact that many minorities in Europe are not afforded adequate protection", asked the states "which have not signed the Framework Convention for the Protection of National Minorities to bring their constitution and their legislation into harmony with the European standards in force in order to remove any obstacle to the signature and ratification of the convention", those states who had signed but not yet ratified the Convention - to "ratify as soon as possible and without reservations and declarations the Framework Convention", but those which have already ratified it - "to implement it and to revoke their reservations and declarations".

#### **D. The problem of common standards of minority protection in the Council of Europe member states**

24. In October 2001, a group of Assembly members tabled a motion for a recommendation titled "Common standards for protecting the rights of national minorities" (Doc 9259, presented by Mr Rogozin and others).
25. In this motion, the Assembly members rightly emphasised "the need for all member states to observe common European standards as regards the legal status of national minorities, their rights to participate in governmental and administrative bodies, in decision-making on issues which affect their interests, their inherent right to use their language in private and public life as well as the right to maintain and develop their cultures and to have equal opportunities for access to education at all levels".
26. Your Rapporteur fully shares the concerns expressed in the motion in respect of very different approaches to minority protection in general, and broadly varying interpretation of the provisions of the Framework Convention in particular, in different Council of Europe member states.
27. In this view, the idea that "it is essential to work out a set of common European standards for protecting minorities' rights, and set up an effective mechanism for monitoring its implementation" must be energetically and wholeheartedly supported.
28. In fact, the proposal that additional protocols to the existing conventions should be elaborated and adopted, is fully in line with the Assembly's consistent position that an additional protocol to the European Convention on Human Rights on minority rights is necessary, in order to ensure justiciability of minority rights, to make them a kind of rights which individuals may invoke before independent judiciary organs, notably the European Court of Human Rights<sup>1</sup>. We can only reiterate our deep regret that the Committee of Ministers has so far been reluctant to resume its work aimed at elaborating such a protocol<sup>2</sup>. As far as an additional protocol to the Framework Convention is concerned<sup>3</sup>, the Committee of Ministers, unfortunately, similarly considered it premature.
29. Strengthening the implementation mechanism of the Framework Convention is probably even more important. Indeed, the Framework Convention, in its Art. 1, clearly declares that "protection of national minorities and of the rights and freedoms of persons belonging to these minorities forms an integral part of the international protection of human rights".
30. This means, *inter alia*, that minority rights cannot be any longer considered a sort of special privileges granted by a state to a certain group of persons who are, due to certain reasons, particularly dear to another state – as it was the case with practically all historical systems of minority protection, including "minority treaties" under the auspices of League of Nations. More generally, minority rights, as integral part of human rights, are universal, and as such must be ensured without any discrimination.
31. In the meantime, being "a document of principles", the Framework Convention cannot offer clear and detailed prescriptions on how to implement this or that principle enshrined in the Framework Convention's provisions. Moreover, it is highly doubtful that, given extreme diversity of the minority situations in the Council of Europe member states, imposition of such prescriptions would be productive. The result – i.e. full and effective equality between the persons belonging to minorities and to majorities – can be achieved through different models and methods. It is a task of the monitoring bodies to examine whether these models and methods, indeed, correspond to the letter and spirit of the Framework Convention.
32. Effective monitoring procedure, based itself on legal rather than political approach but, in the meantime, politically supported by the Committee of Ministers, will become the fastest way to arrive at universal interpretation of the Framework Convention's provisions – keeping, in the meantime, the wide range of possible methods and procedures of implementation corresponding to the peculiar situations in different Council of Europe member states.
33. One area where the universal interpretation of the Framework Convention's provisions must be pursued particularly forcefully is the principle of participation of minorities in decision-making on the issues directly affecting them. Indeed, ostensibly weak wording of the Convention is very much due to numerous conditions and reservations included in its provisions: "...if those persons so request and where such a request corresponds to a real need,..." (Article 10, paragraph 2 ), "...when there is a sufficient demand..." (Article 11 paragraph 3), "...if there is sufficient demand..." (Article 4 paragraph 2), etc. According to Article 2 of the Convention, these conditions must be interpreted "in good faith", i.e. not as pretexts for declining minorities' claims but as necessity to take into account minorities' demands.
34. Unlike other human rights where the wish of the right-holder are not of crucial importance, and their application must be indeed uniform, minority rights, as a rule,

imply response to practical demand in this or that concrete situation. For example, there is no need to ask a detainee whether he/she does not mind to be tortured, or whether he/she insists on having a fair trial – torture is prohibited under any circumstances, and fair trial must be ensured to everybody. On the other hand, according to Article 3 paragraph 1 of the Framework Convention, every person belonging to a national minority has “the right freely to choose to be treated or not to be treated as such”. Thus, all rights envisaged in the Framework Convention should not be automatically imposed – e.g. the persons belonging to minority must have the right to study in minority language only if they really wish so, otherwise this treatment may qualify as segregation.

35. The crucial factor is to ensure that the choice is indeed free, not made under any kind of pressure on the part of government, and that indeed “no disadvantage” results “from this choice” (Article 3 paragraph 1).

36. In this view, involvement of expertise of the Venice Commission “to prepare a comparative study analysing national legislation in the field of protection of national minorities’ rights” aimed at proliferation of best practices, without interference with the field of competence of the Advisory Committee, would be very useful for the further work of both the Assembly and governments of the Council of Europe member states. However, in line with the approach developed by the Advisory Committee, not only legislation but also practices of implementation could be studied.

### **E. Monitoring procedure of the European Charter for Regional and Minority Languages**

37. The Charter is divided into two main parts, a general one containing the principles applicable to all the Parties and all regional or minority languages, and a second part which lays down specific practical commitments which may vary according to the state and the language: a large number of those provisions consist of several options, of varying degrees of stringency, one of which has to be chosen according to the situation of each language; the parties are encouraged subsequently to add to their commitments, as their legal situation develops or as their financial circumstances allow. The monitoring procedure on the application of the Charter is covered by its articles 15-17. The Charter stipulates that states parties are to present an initial report in the year following the accession and periodical reports every three years (article 15). So far, however, only Norway has presented its second report. Nine reports have been adopted by the Committee of Experts, all of them are already in public domain (on implementation of the Charter by Croatia, Finland, Germany, Hungary, Liechtenstein, the Netherlands, Norway, Sweden and Switzerland). Eight corresponding recommendations have been adopted by the Committee of Ministers. Further initial periodical reports have now been submitted by Slovenia, Slovakia, Spain, Denmark and the United Kingdom. Second periodical reports now also have been submitted by some States like Finland, Croatia and Switzerland. The Committee of Ministers has adopted a new outline to be followed by the States in drafting their second reports, and the Secretariat of the Charter organised a working meeting with representatives of these states in Strasbourg early in 2002. Moreover, once every two years, the Secretary General of the Council of Europe has to present to the Parliamentary Assembly a detailed report on the application of the Charter (article 16.5). This ensures that the members of Europe’s parliaments are kept informed about application. The Secretary General submitted two reports to the Assembly so far: one in 2000 ([Doc. 8879](#)) and another in 2002 ([Doc. 9540](#)).

### **F. Submission of state reports by the parties to the Framework Convention**

38. The Convention’s monitoring mechanism is defined in Articles 24-26 of the Convention, as well as, more specifically, by Resolution (97) 10 “Rules adopted by the Committee of Ministers on the monitoring arrangements under Articles 24 to 26 of the framework Convention for the Protection of National Minorities”, adopted by the Committee of Ministers on 17 September 1997. This monitoring mechanism is based primarily on state reports, which are due within one year after entry into force, and every five years thereafter<sup>4</sup>.

39. At its first meetings, the Advisory Committee produced an outline for the state reports adopted by the Committee of Ministers on 30 September 1998. The report should be in two parts: the first contains introduction on how the state party plans to implement the Convention, and the second part describes details on an article-by-article basis with “full information on the measures they have adopted to ensure its implementation”.

40. To date, most of the state parties have submitted their first state reports. Altogether, thirty one state reports pursuant to Article 25 of the Framework Convention have been submitted to the Advisory Committee, latest of them being reports of Azerbaijan (submitted 4 June 2002), Poland (10 July 2002), and the Federal Republic of Yugoslavia (16 October 2002).

41. Regrettably, in most cases the deadline for the submission of state reports was not met by the state parties. Several state parties delayed the submission for one

year or more (in particular, Armenia, Austria, Germany, Ireland, Moldova, Slovenia, Spain, and Switzerland). Some state parties have not yet submitted the state reports, despite the deadline passed long time ago (Bosnia and Herzegovina – deadline 1 June 2001, Bulgaria – deadline 1 September 2000, Macedonia – deadline 1 February 1999).

42. In its third activity report, the Advisory Committee called on the Committee of Ministers to address this issue as a matter of priority "with a view to ensuring that cases of persistent failure to report under the Framework Convention do not result in a continuous lack of monitoring of the countries concerned"<sup>5</sup>.

43. On 19 March 2003, the Committee of Ministers at its 832nd meeting authorised the Advisory Committee "to submit a proposal regarding the commencement of the monitoring of the Framework Convention without a state report when a state is more than 24 months behind in submitting a state report, together with the information received from this state concerning the reasons for the delay. In so doing, the Advisory Committee shall invite the Deputies to take a decision on the matter without a debate, unless at least one delegation requests that the matter be discussed"<sup>6</sup>.

44. In this view, the Assembly might consider the issue with the view to ensure that the reporting delays will not undermine the Framework Convention's monitoring procedure. The problem is not unique for the Framework Convention, and special measures aimed at preventing the possibility to block the monitoring procedure are often envisaged. Thus, in the framework of the UN treaty bodies, the Committee against Racial Discrimination (CERD) starts monitoring without a state report when a report is seriously overdue.

### **G. Activities of the Advisory Committee<sup>7</sup>**

45. Initial role of the Advisory Committee of independent experts (AC) as stipulated by Art.26 of the Framework Convention was rather limited ("In evaluating the adequacy of the measures taken by the Parties to give effect to the principles set out in this framework Convention the Committee of Ministers shall be assisted by an advisory committee..."). However, in the course of practical implementation of the monitoring the work of the AC has developed far beyond this modest task. Your Rapporteur fully appreciates these developments, and believes that effective work of the AC is indispensable and crucial for fair implementation of the Framework Convention.

46. Although consideration of state reports remains the main source of information for the AC, it is of utmost importance for impartial and comprehensive monitoring to ensure that the AC has the right and real opportunities to seek and receive information also from other sources, besides state reports. The rules of procedure on monitoring (Resolution 97 (10)) envisage this possibility, however, only after notifying the Committee of Ministers of the intention to do so. This restriction was seen by many in the AC as a serious impediment to the AC's activities. In 1998, the AC requested permission to seek information from a variety of reliable sources, and in May 1999 the Committee of Ministers authorised this for the first monitoring cycle.

47. On 8 April 2003, the Committee of Ministers renewed and even extended the authorisations granted to the AC for the first cycle of monitoring, namely to seek information from a variety of sources, and to hold meetings with NGOs and independent institutions, both in and outside the context of country visits. However, in the view of your rapporteur, the possibility to abolish the whole mandate requirement should be considered by the Committee of Ministers.

48. Thus, when evaluating implementation of the Framework Convention in a particular country, the AC relies, besides state reports, also on other sources, like documents produced by inter-governmental organizations, treaty monitoring bodies, international, national, and local NGOs, including minority organizations, etc. In several countries, NGOs prepared, in line with practices existing in respect of the UN treaty bodies, so called parallel (or shadow) reports on implementation of the Convention. Usually these shadow reports are prepared taking into account the same guidelines as elaborated for the state reports, so that comparative analysis is possible on the article-by-article basis. Although the shadow reports are not at the moment placed on the official Council of Europe website along with the state reports, some NGOs made them available online<sup>8</sup>.

49. Although the AC neither takes up individual petitions or complaints nor acts as adjudicator in concrete cases, the court decisions often highlight inadequacies in minority protection systems, and provide important information for the AC's conclusions.

50. Visits to the countries concerned have become one of the main assets of the monitoring procedures carried out by the AC. Despite not clearly envisaged in the [Resolution 97 \(10\)](#), the practice has gradually developed that all states whose reports are under consideration by the AC, at the point considered appropriate invited the AC

delegation to visit them (with the exception of Liechtenstein, Malta and San Marino). In fact, these visits became central in the monitoring procedure, allowing to develop dialogue on the spot with both governments and civil society, including wide range of minority representatives. This "interactive approach" appeared to be indispensable in the view of building confidence towards the conclusions of the AC. In this view, the rules of the monitoring procedure could be further revised, with a view to securing that in the future the visits to any country under monitoring are always carried out when the AC considers them necessary.

51. The Advisory Committee has rather considerable authority with regard of organizing its own internal work. The way in which the AC has established its methods of working has proved to be effective and should be highly commended.

52. The AC decided to set up working groups of four members to scrutinize each state report. Members of each group are not nationals of the country under scrutiny. However, it would be obviously counterproductive not to benefit from expertise of all experts, thus, every AC expert has a possibility to participate in the discussion on his/her country's report at the later stage. In practice, independent experts – members of the AC played a significant role in clarifying complex country-specific issues, but did not attempt to represent the state nor to challenge the AC opinion out of political considerations.

53. The working group members met and reviewed extensive dossiers compiled on the basis of different sources, and then went for an up to one week-long visit to the country in question. As a rule, the AC members visit not only capital, but also other regions, in particular, minority-populated areas. The drafts prepared by the working groups are then extensively debated at the plenary meetings of the AC.

54. At the time when the Framework Convention's monitoring mechanism was being drafted and launched, some experts expressed concerns about the role of the Committee of Ministers, the latter being a political body composed of Foreign Ministers of the member states, often taking instructions from their capitals and striving to take all decision by consensus. However, these pessimistic concerns appeared somewhat exaggerated. Although in some cases with considerable delays, caused by long negotiations on politically delicate issues, so far the Committee of Ministers has always adopted its Resolutions envisaged by the Framework Convention based largely on the AC's concluding remarks. Thus, so far the Committee of Ministers has practically always been behind the Advisory Committee, thus increasing the political weight of its conclusions.

55. It should be also kept in mind that the Committee of Ministers endorsed practically all initiatives coming from the AC, in particular in respect of seeking information from sources other than the state reports, country visits, and so on. However, it has not always been the case with the allocation of staffing and financial resources.

56. In all adopted Resolutions, the Committee of Ministers invited states "to continue the dialogue in progress with the Advisory Committee", and "to keep the Advisory Committee regularly informed of the measures it has taken in response to the conclusions and recommendations set out" in previous sections of the Resolution. Thus, an essential follow-up is given to the first results of the monitoring. In particular, a follow-up seminar on implementation of the Framework Convention held in Croatia in March 2002<sup>9</sup> should be mentioned as one of the very first activities of the kind. One should expect that gradually exactly the follow-up activities will occupy bigger and bigger share of the AC's efforts, thus enabling the state parties to benefit from a permanent dialogue with the independent experts.

57. The work undertaken by the Advisory Committee so far makes your Rapporteur to believe that the AC's activities proved to be very successful, and independent experts should be highly commended for the work they have done.

58. The problem of insufficient resources remains, unfortunately, the main impediment for further development and expansion of the AC's further activities. Along with new anticipated ratifications, as well as taking into account the forthcoming beginning of the second cycle of reporting, the amount of work for the AC will substantially increase in the nearest future. Therefore, realising the utmost importance of the thorough and timely preparation of AC opinions, and in line with its previous recommendations, the Assembly should insist that the allocation of required human and financial resources for the Advisory Committee be a priority for the Council of Europe.

59. Your Rapporteur wishes to strongly support the idea suggested by former Vice President of the Advisory Committee Alan Phillips that "in the future it will be important to look at thematic issues and develop a commentary on them to help guide States and minorities on good practice. This could take a similar course to the approach adopted in the General Recommendations of the UN Committee on the Elimination of Racial Discrimination and could be assisted by scholarly papers"<sup>10</sup>. Indeed, activities of the kind would greatly facilitate development of minority

protection systems particularly in those countries who recently acceded to the Framework Convention, as well as to create better synergy between activities of the AC and other bodies related to the Council of Europe (including the Committee of Experts of the European Charter for Regional and Minority Languages, the European Commission against Racism and Intolerance, the Venice Commission, the Specialist Group on Roma, and others).

60. Finally, your rapporteur believes that the Assembly could more actively use opinions and other materials at the disposal of the AC in its own work. This is particularly true in respect of the Monitoring Committee, including the post-monitoring dialogue with the states in respect of whom the monitoring has been closed.

#### **H. Activities of the Committee of Experts**

61. The role of the Committee of Experts (CE) as stipulated by Art. 16 of the Charter is much stronger ("The reports presented to the Secretary General of the Council of Europe under article 15 shall be examined by a committee of experts constituted in accordance with article 17 (...); (...) the committee of experts shall prepare a report for the Committee of Ministers (...); (...) the report shall contain in particular the proposals of the committee of experts to the Committee of Ministers for the preparation of such recommendations of the latter body to one or more of the Parties as may be required").

62. The Charter being a complex instrument for States to ratify, information seminars are regularly organised by the Charter's secretariat in those states which are approaching ratification. Various partners are involved in these seminars, such as non-governmental organisations and local, regional and national authorities.

63. After a first examination of the state report, the Committee of Experts may decide to visit the relevant state in order to meet with representatives of the users of various regional and minority languages and to consult with the authorities on the contents of the information that the Committee has received; fact-finding visits on-the-spot have become routine procedure. In the context of the information-gathering process, the Committee can be approached by bodies or associations legally established in the respective state party wishing to supply additional information or to give their views on specific situations relating to the implementation of the Charter. They can be cultural, political, or any other association with an interest in the promotion of regional or minority languages in their countries. Having concluded this process, the Committee adopts a report which is then sent to the Committee of Ministers together with proposals for the recommendations the Committee of Ministers could address to the state concerned. All reports adopted so far by the Committee of Experts have been made public by the Committee of Ministers and are available online<sup>11</sup>.

64. Given that the Parties are required to submit periodical reports every three years, this monitoring process is designed to institute a permanent dialogue with each state. Additionally, experience shows that an effect of the monitoring procedure is to initiate a dialogue inside the party itself, between the users of the regional or minority languages and those responsible for applying it in practice. The problem of insufficient resources remains the main impediment to the development and expansion of the CE's further activities. Therefore, in line with its previous recommendations, the Assembly should insist that the allocation of required human and financial resources for the Committee of Experts be a priority for the Council of Europe.

#### **I. Main approaches developed by the Advisory Committee and the Committee of Ministers in evaluation of implementation of the Framework Convention**

##### **- *Rights of minorities in the field of media and freedom of expression (Art.9)***

65. In June 2001, a group of Assembly members tabled a motion for a recommendation titled "Right of national minorities to create and use their own media in the Council of Europe member states" (Doc. 9151). In the motion, the parliamentarians expressed their concerns of limitations imposed on private media in minority languages in some Council of Europe member states; and of that these limitations might put disproportional burden on these media, or even effectively prevent their establishment, thus breaching Art.9 of the Framework Convention.

66. Evaluation of implementation of the Framework Convention by state parties carried out by the Advisory Committee reveals that the corresponding practices in the Council of Europe member states are very diverse. Most of the states in no way restrict the right of minorities to create and use private media in minority languages. In several cases, previously existed problems have been resolved, and obvious progress made in this respect should be appreciated.

67. Thus, in respect of Croatia, the AC noted: "As concerns private broadcasting, the Advisory Committee welcomes the fact that Croatia has, through the adoption of the Law on Telecommunication in 1999, abolished the previously applicable undue

limitations on the freedom to receive and impart information and ideas in a minority language. In accordance with Article 83 of the new Law, radio and television concession holders, at both state and local level, are entitled to broadcast in a minority language if this is envisaged in the programming sheets attached to the bids for obtaining a concession. In this connection, the Advisory Committee would support measures aimed at ensuring that broadcasters have a possibility to introduce minority language programming also after obtaining a concession. In general, the Advisory Committee expresses the view that broadcasting in a minority language should also receive attention in the context of the on-going revision of the applicable norms and expects that the norms on the granting of concessions and other related issues are implemented in a non-discriminatory manner.”<sup>12</sup>

68. In Romania, the Decision of the National Council for Audiovisual Broadcasting was adopted in 1999<sup>13</sup>, which imposed the requirement that all programs (with few exceptions) broadcast within the territory of Romania in other languages than Romanian, shall be subtitled or translated into Romanian. However, this regulation was revoked very soon. As a result, the AC had good reasons to conclude that “the Romanian authorities have clearly tried to implement the

essence of this article, which is designed to guarantee members of national minorities freedom to receive and impart information, access to the media, and the right to establish and use their own media, as well as tolerance and cultural pluralism.”<sup>14</sup>

69. In Hungary, private minority media even enjoys certain preferential treatment: “The system for the granting of local broadcasting licenses to private entities through a competitive system favouring those tenders, which include minority programming, is welcomed by the Advisory Committee as a constructive and appropriate measure (...)”<sup>15</sup>

70. However, in some other state parties to the Framework Convention, implementation of the rights enshrined in Article 9 of the Framework Convention is much less generous. Thus, in respect of Estonia, the AC noted that “...pursuant to Article 25 of the Language Act of 1995, TV broadcasters are obliged to provide Estonian translation of their broadcasting in a minority language. Some programme categories, such as directly retransmitted programmes, are excluded from this requirement. The Advisory Committee agrees that it is often advisable, and fully in the spirit of the Framework Convention, to accompany minority language broadcasting with sub-titles in the state language. However, the Advisory Committee considers that, as far as private broadcasting is concerned, this goal should be principally pursued through incentive-based, voluntary methods, and that the imposition of a rigid translation requirement mars the implementation of Article 9 of the Framework Convention by causing undue difficulties for persons belonging to a national minority in their efforts to create their own media. The Advisory Committee is of the opinion that Estonia should examine the impact of the said provision on minority language broadcasting and, on the basis of this examination, take appropriate measures to further the implementation of Article 9 of the Framework Convention.”<sup>16</sup>

71. The AC was more critical in its evaluation of implementation of Article 9 of the Framework Convention by Ukraine: “With respect to the electronic media, the Advisory Committee notes that Article 6 the Law on National Minorities provides for the right of persons belonging to national minorities to “satisfy their needs in the field of mass media”. At the same time, Article 9 of the Law on Television and Radio Broadcasting stipulates that TV/radio organisations shall broadcast in the official language but that “programs beamed on certain regions may be in the language of the numerically prevalent local ethnic minority in the regions where national minorities live compactly”. While recognising that Ukraine can legitimately demand broadcasting licensing of broadcasting enterprises and that the need to promote the official language can be one of the factors to be taken into account in that context, an overall exclusion of the use of the languages of national minorities in the nation-wide public service and private broadcasting sectors is not compatible with Article 9 of the Framework Convention, bearing in mind *inter alia* the size of the population concerned and the fact that a large number of persons belonging to national minorities reside outside areas of compact residency... In the light of the foregoing, the Advisory Committee considers that Ukraine should review the provisions pertaining to the use of the languages of national minorities in nation-wide and regional broadcasting in its Law on Television and Radio Broadcasting, with a view to clarifying them and to ensuring that they are fully compatible with the principles contained in Article 9 of the Framework Convention.”<sup>17</sup>

72. Your Rapporteur is concerned about the fact that, according to media reports, the Ukrainian State Information Policy Committee has put forward even more stringent regulations envisaging transition to broadcasting only in the Ukrainian language within one year<sup>18</sup>. One should conclude that the introduction of the language restrictions of the kind is obviously incompatible with the Ukraine’s obligations under the Framework Convention.

73. The situation in Azerbaijan also gives rise for concerns. The AC has not yet issued its opinion on Azerbaijan. The Azerbaijan's state report does not mention any language restrictions on private electronic media<sup>19</sup>. To date, broadcasts are produced and distributed in a number of minority languages spoken in Azerbaijan, as well as in foreign languages. However, according to the media reports, the Law on the state language passed by Azerbaijani parliament on 30 September, 2002, contains a provision stipulating that no more than one sixth of broadcasting by any television or radio station may be in a language other than Azerbaijani<sup>20</sup>. Moreover, the text of the aforementioned law virtually rules out a possibility of broadcasting in minority languages at all, thus, is even more restrictive than reported by the source above. Its Article 6.1 reads: "All television and radio broadcasting, established and operating on the territory of Azerbaijan Republic, regardless of the form of ownership, is carried out in the official state language"<sup>21</sup>. This provision is clearly in breach with Art.9 of the Framework Convention.

74. Similarly, in the case of Moldova, the State report says nothing about limitations imposed on TV and radio broadcasting in minority languages<sup>22</sup>. However, Article 3 paragraph 3 of the Law on Audio-Visual Broadcasting of 1995, does contain such a limitation, although with certain reservations: "Audiovisual institutions, public or private, broadcast at least 65% of their audiovisual programs in the state language. This provision does not extend to the TV programs broadcast via satellite and provided by cable, as well as foreign stations and stations that broadcast in areas compactly populated with ethnic minorities."

75. This restriction provoked intervention in the matter of the OSCE High Commissioner on National Minorities, who argued that the aforementioned provision was not in compliance with the OSCE standards of freedom of expression and the rights of minorities. As a result of the debate with the Moldova's government and parliament, a special law on interpretation of Article 3 paragraph 3 of the Law on Audio-Visual Broadcasting was adopted on 29 September 2000, which exempted from this requirement all re-broadcasted programmes. Thus, only locally produced broadcasts remain subject to the language restrictions. Although the AC in its opinion on Moldova adopted on 1 March, 2002 confined itself to merely stating that it "is of the opinion that the authorities should ensure that the implementation of these provisions will not result in excessive limitations of the right of persons belonging to national minorities to impart or receive information in minority languages"<sup>23</sup>, one could conclude that also in the current form the provisions mentioned above are hardly in full compliance with Article 9 of the Framework Convention.

76. Even more restrictive provisions of the use of minority languages in private broadcasting exist in some Council of Europe member states who have not yet ratified the Framework Convention. In particular, in Latvia, Art.19 paragraph 5 of the Law on Radio and Television of 1995 restricts the share of broadcasting in minority languages to 25% of overall daily broadcasting both on private radio and TV. This provision has been contested before the Constitutional Court of Latvia by a group of MPs representing minority-based party, the case is to be considered by the Court in 2003<sup>24</sup>. On 6 June 2003, the Constitutional Court announced its decision. The Court ruled that, although the protection of the state language is a legitimate goal, the language quotas imposed on private broadcasting result in restrictions of the freedom of expression which are disproportionate and not necessary in a democratic society. Therefore, the Court declared the corresponding provision of the Latvia's Law on Radio and Television – Art. 19 para. 5 – null and void. This judgment has created an important legal precedent for the interpretation of the right to use minority languages in electronic media.

77. Some other member states who are not yet state parties to the Framework Convention, have more liberal legislation in this respect. Thus, in the Netherlands, 40% of the material broadcast by private broadcasters must be in Dutch or in Frisian – the only officially recognised minority language in the country<sup>25</sup>. In France, despite its traditional reluctance to give express recognition to minority languages, a number of specialised television and radio stations exists, broadcasting also in minority languages. In particular, a private television station broadcasting in the Breton language was set up in 2001<sup>26</sup>.

78. Thus, although the legislation and practices in the most of the Council of Europe member states fully comply with the provisions of Article 9 of the Framework Convention, some member states still impose undue restrictions on the use of minority languages in electronic media. The Assembly should urge these member states to bring their legislation into conformity with the principles of freedom of speech and the rights of national minorities, in line with the opinions adopted by the Advisory Committee.

**- Scope of application of the Framework Convention (Article 3)**

79. The scope of application of the Framework Convention remains probably the

most controversial issue related to implementation of this instrument. The Convention itself does not determine the right-holders of the protection envisaged by the Convention, and basically each state party itself can determine which groups are covered by the Convention.

80. A number of state parties to the Convention made, upon ratification, the declarations stipulating, directly or descriptively, those minorities which shall enjoy protection under the Framework Convention. In particular, several state parties (Austria, Estonia, Poland, and Switzerland) declared that those persons who are nationals of the corresponding state, and belong to the "traditional" groups which have longstanding ties with the country, should be considered national minorities in the sense of the Framework Convention – basically, in line with the definition included in the Assembly [Recommendation 1201](#).

81. Some other state parties adopted exhaustive lists of those groups whose members enjoy protection under the Framework Convention: Denmark ("the Framework Convention shall apply to the German minority in South Jutland of the Kingdom of Denmark"<sup>27</sup>); Germany ("National Minorities in the Federal Republic of Germany are the Danes of German citizenship and the members of the Sorbian people with German citizenship. The Framework Convention will also be applied to members of the ethnic groups traditionally resident in Germany, the Frisians of German citizenship and the Sinti and Roma of German citizenship"<sup>28</sup>); Slovenia ("the Government of the Republic of Slovenia... declares that these are the autochthonous Italian and Hungarian National

Minorities... The provisions of the Framework Convention shall apply also to the members of the Roma community, who live in the Republic of Slovenia"<sup>29</sup>); and Sweden ("The national minorities in Sweden are Sami, Swedish Finns, Tornedalers, Roma and Jews"<sup>30</sup>).

82. Finally, Liechtenstein, Luxembourg, and Malta declared that "no national minorities in the sense of the Framework Convention exist" in their territories<sup>31</sup>.

83. In its [Recommendation 1492](#) (2001), the Assembly asked member states "to sign and/or ratify as soon as possible and without reservations and declarations the Framework Convention for the Protection of National Minorities, and ask those which have already ratified it to implement it and to revoke their reservations and declarations". However, no declarations have been revoked so far by any state party.

84. In the course of the monitoring and evaluation procedures, the AC and the Committee of Ministers in a number of cases recommended the state parties to develop more generous and inclusive approach when deciding about the scope of application of the Framework Convention.

85. Thus, in its Resolution on implementation of the Framework Convention by Denmark, the Committee of Ministers concluded "the personal scope of application of the Framework Convention merits further consideration by the Government of Denmark with those concerned"<sup>32</sup>. The AC in its opinion elaborated the same point with more details: "...the Advisory Committee considers that the personal scope of application of the Framework Convention in Denmark, limited to the German minority in Southern Jutland, has not been satisfactorily addressed. In particular, it notes that persons belonging to groups with long historic ties to Denmark such as Faroese and Greenlanders appear to have been excluded *a priori* from protection under the Framework Convention. Similarly, despite the historic presence of Roma in Denmark, they appear to have been *a priori* excluded from the protection of the Convention. This approach is not compatible with the Framework Convention. Furthermore, the Advisory Committee considers a limited territorial application, leading to the *a priori* exclusion of persons no longer residing in the traditional area of settlement, not to be compatible with the Framework Convention. The Advisory Committee therefore considers that the Danish Government should, in consultation with those concerned, examine the application of the Framework Convention"<sup>33</sup>.

86. In its opinion on Estonia, the AC took a similar attitude towards the declaration made by this state party: "The Advisory Committee considers that, bearing in mind the prevailing situation of minorities in Estonia, the above declaration is restrictive in nature. In particular, the citizenship requirement does not appear suited for the existing situation in Estonia, where a substantial proportion of persons belonging to minorities are persons who arrived in Estonia prior to the re-establishment of independence in 1991 and who do not at present have the citizenship of Estonia. ... The Advisory Committee notes that in its dialogue with the Government on the implementation of the Framework Convention, the Government agreed to examine also the protection of persons not covered by the said declaration, including non-citizens. ... With a view to the foregoing, the

Advisory Committee is of the opinion that Estonia should re-examine its approach reflected in the declaration in consultation with those concerned and consider the inclusion of additional persons belonging to minorities, in particular non-citizens, in

the application of the Framework Convention"<sup>34</sup>.

87. Similarly, in its opinion on Germany, the AC stated: "The Advisory Committee is of the opinion that it would be possible to consider the inclusion of persons belonging to other groups, including citizens and non-citizens as appropriate, in the application of the Framework Convention on an article-by-article basis. It takes the view that the German authorities should consider this issue in consultation with those concerned at some appropriate time in the future"<sup>35</sup>. Moreover, this reference to article-by-article approach is included in a number of other AC opinions.

88. Moreover, in some cases the AC and the Committee of Ministers pointed to insufficient implementation of the Framework Convention in respect of some groups even when these groups were not explicitly excluded from the Convention's protection. Thus, although Finland ratified the Convention without declarations, the Committee of Ministers in its Resolution stated: "Further consideration should also be given to the implementation of the Framework Convention in respect of the Russian-speaking population, in particular in the fields of education and media"<sup>36</sup>.

89. Thus, the analysis of the ongoing monitoring procedure clearly reveals that both the AC and the Committee of Ministers do not consider the state parties to have an unconditional right to decide which groups within their territories qualify as national minorities in the sense of the Framework Convention. The AC's attitude is clearly reflected in the following points included in a number of issued opinions (*inter alia*, the opinions on Germany and Estonia quoted above): "The Advisory Committee underlines that in the absence of a definition in the Framework Convention itself, the Parties must examine the personal scope of application to be given to the Framework Convention within their country... Whereas the Advisory Committee notes on the one hand that Parties have a margin of appreciation in this respect in order to take the specific circumstances prevailing in their country into account, it notes on the other hand that this must be exercised in accordance with general principles of international law and the fundamental principles set out in Article 3. In particular, it stresses that the implementation of the Framework Convention should not be a source of arbitrary or unjustified distinctions. For this reason the Advisory Committee considers that it is part of its duty to examine the personal scope given to the implementation of the Framework Convention in order to verify that no arbitrary or unjustified distinctions have been made. Furthermore, it considers that it must verify the proper application of the fundamental principles set out in Article 3".

90. In this view, your rapporteur would like to stress that the text of the Framework Convention itself does not contain such notions as "traditional", "historical", or "new" minorities. However, some provisions of the Convention contain wording like "in areas inhabited by persons belonging to national minorities traditionally **or** in substantial numbers (...)" (e.g. Article 10 para 2), i.e. mention these two prerequisites as alternatives. The only exception is Article 11 para 3, where "traditionally" is used in addition to "substantial" ("In areas traditionally inhabited by substantial numbers of persons belonging to a national minority..."). However, in this case this condition is justified, since this paragraph speaks about displaying "traditional local names" and other topographical information in the minority language.

91. Article 3 of the Framework Convention states: "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". However, it remains unclear what individuals are considered belonging to national minorities, i.e. who is entitled to this choice. The Explanatory Report only says: "This paragraph 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". In the meantime, nothing is said about the nature of these "objective criteria", and about the procedure of and the authority over verification of compliance with these criteria.

92. Three major problems related to the scope of application of the Framework Convention could be singled out.

93. First, coherence with the UN mechanism of minority protection. All state parties to the Framework Convention are, in the meantime, state parties to the International Covenant on Civil and Political Rights (ICCPR), and as such are bound by its Article 27: "In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language". The scope of applicability of this provision is determined by the UN Human Rights Committee's General Comment No. 23 of 8 April 1994. This comment explicitly denies the possibility to introduce any restrictions on enjoyment of the rights enshrined in Art.27 of ICCPR: "The terms used in article 27 indicate that the persons designed to be protected are those who belong to a group and who share in common a culture, a religion and/or a language. Those

terms also indicate that the individuals designed to be protected need not be citizens of the State party. In this regard, the obligations deriving from article 2.1 are also relevant, since a State party is required under that article to ensure that the rights protected under the Covenant are available to all individuals within its territory and subject to its jurisdiction, except rights which are expressly made to apply to citizens, for example, political rights under article 25. A State party may not, therefore, restrict the rights under article 27 to its citizens alone... Just as they need not be nationals or citizens, they need not be permanent residents. Thus, migrant workers or even visitors in a State party constituting such minorities are entitled not to be denied the exercise of those rights... The existence of an ethnic, religious or linguistic minority in a given State party does not depend upon a decision by that State party but requires to be established by objective criteria<sup>37</sup>.

94. It would be rather unfortunate if the European standards of minority protection appear to be more restrictive in nature than the universal standards, the more so that, as mentioned above, Article 27 of ICCPR is anyway binding for all state parties to the Framework Convention.

95. The second problem is of rather legalistic nature. The Framework Convention considers minority rights as individual rights which may be enjoyed in community with other individuals belonging to the same group. In the meantime, the definition included in the Assembly [Recommendation 1201](#), is worded in terms of group rights – i.e. a minority is defined as a group as a whole. This makes practical application of this definition problematic. In practice often a part of persons belonging to a certain minority group have been living in a certain country for centuries, while a substantial number of other members of the same group migrated to the country relatively recently. For example, more than 40% of ethnic Russians in Latvia have been registered as citizens on the basis of the “restored citizenship” concept, what means that their ancestors lived in Latvia for centuries. In the meantime, almost 60% of ethnic Russians arrived in Latvia after World War 2. In this and a number of similar cases, the question arises whether it is appropriate to deny the protection under the Framework Convention to a number of individuals who fully qualify under the [Recommendation 1201](#)’s definition, solely on the basis that other members of the same group arrived to the country later?

96. It is not at all evident that attempts to introduce group rights into international law will be productive for the better protection of minorities. It should be mentioned that absence of recognised group rights nowadays does not prevent international institutions, notably the European Court of Human Rights, from dealing with different aspects of the problem<sup>38</sup>. More generally, “...International law supposes the existence of minorities both in general and of specific types. However, while the existence of human beings and states are “automatic” in international law, the existence of human groups is problematic. Conceptually, international law struggles with the definition of actors beyond the “State”... [While] the catalogue and content of individual human rights has become relatively clear, the specificity of protection for groups, particularly minorities, has remained largely uncertain. Paramount in this uncertainty has been the very definition of “the” or “a minority” to whom any rights may accrue<sup>39</sup>. On the contrary, the concept of minority rights as individual rights enshrined in the Framework Convention, seems to have proven its effectiveness.

97. Finally, the third, and probably the most important problem, is related to universal nature of fundamental human rights and the principle of non-discrimination. According to Art.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”. Hence, the minority rights are declared fundamental human rights, and as such must be implemented without any discrimination<sup>40</sup>. In this view, any criteria beyond the citizenship requirement might look dubious. While citizenship is, indeed, explicitly excluded from the list of prohibited grounds for distinction in a number of international non-discrimination instruments (see e.g. Art.1 paragraph 2 of the International Convention on the Elimination of All Forms of Racial Discrimination), any additional, besides citizenship, preconditions for enjoyment of minority rights might give rise to legitimate concerns about violation of the principle of equality of citizens.

98. With regard to the citizenship criteria, an effective approach was suggested by one of the world’ leading experts in the field A.Eide in his working paper prepared for the UN Working Group on Minorities. A.Eide examine the minority rights provisions of the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities of 1992 on the article-by-article basis, with the aim to analyse where limitation of minority rights merely to citizens would be discriminatory: “...Many, if not most, human rights apply to everyone, not only citizens, but there are some important rights which can be claimed only by citizens... With regard to minority rights it is difficult to make a general conclusion; a detailed analysis is required<sup>41</sup>.”

99. As a matter of fact, the Assembly decided to pursue a similar strategy in its [Recommendation 1492](#) (2001): “The Assembly recognises that immigrant populations whose members are citizens of the state in which they reside constitute special

categories of minorities, and recommends that a specific Council of Europe instrument should be applied to them<sup>42</sup>.

100. Your rapporteur tends to believe that ultimately one will have to admit that enjoyment of minority rights of only political nature (such as participation in political life, voting in national elections, etc.) might be restricted for non-citizens. As to other fundamental rights, the anticipated new instrument would probably stipulate them in a very similar way as the Framework Convention does, according to the principle of non-discrimination. In any case, only synergy between various approaches in the field of non-discrimination and preservation of identity, can ensure effective response to the major modern challenge of accommodation of growing ethnocultural diversity in Europe.

#### **J. Conclusions: evaluation of effectiveness and proposals aimed at further raising effectiveness of the monitoring procedures**

101. Overview of activities of the Council of Europe institutions pertinent to the protection of minorities gives certain reasons for optimism. The number of state parties to the Framework Convention is much bigger now than many experts forecasted at the moment when this instrument was opened for signatures, and substantial progress can be observed also in respect of the Charter.

102. The Advisory Committee on the Framework Convention should be highly commended for its diligent, professional, and impartial work related to monitoring of implementation of the Framework Convention. The fact that, despite utmost political sensitivity of the issue, the Committee of Ministers politically supported activities of the AC, should be highly appreciated.

103. In the view of your Rapporteur, at this stage the Assembly should more actively reiterate its views reflected in the Recommendation 1492. In particular, in line with the Recommendation 1492, denial of minority rights in some of the Council of Europe member states should be deplored, and all member states who have not yet signed and/or ratified the Framework Convention and the Charter should be urged to do so as a matter of priority, and without restrictive reservations and declarations. Protracted refusal to ratify the aforementioned instruments and persistent failure to comply with their provisions should become a matter of consideration by the Assembly's Monitoring Committee.

104. New ways to encourage signatures and ratifications of the Framework Convention and the Charter should be explored. In particular, the Assembly could recommend that, taking into account the utmost importance of the Framework Convention, the Committee of Ministers consider the possibility to hold "tours de table" on this issue, similarly to existing practices in respect of signature and ratification of the European Social Charter, its Protocols, and the Revised European Social Charter.

105. Particular attention should be paid to the need to ensure that all state parties to the Framework Convention and the Charter submit their reports in good time. Cases in which state reports are seriously overdue could be considered by the Assembly's Monitoring Committee.

106. Better cooperation and more synergy should be developed between different Assembly's committees dealing with the issues relevant to national minorities, as well as between different Council of Europe pertinent bodies (the AC, the Committee of Experts on the Charter, the European Commission against Racism and Intolerance, Specialist Group on Roma, etc.), on the basis of main principles of the Framework Convention as the first ever legally binding instrument on minority protection. The Assembly's Monitoring Committee should closely follow the monitoring procedure implemented by the Advisory Committee and the Committee of Experts, and should take into account their opinions in the course of its own ongoing monitoring process, as well as in the post-monitoring dialogue.

107. The fact that only three member states (Georgia, Croatia and Cyprus) have so far ratified Protocol No 12 to the European Convention on Human Rights is to become a matter of concern for the Assembly. All member states should be urged to ratify this Protocol as a matter of priority.

108. Despite the reserved attitude of the CDDH, the Assembly should once again recommend that the Committee of Ministers begin drafting an additional protocol to the Framework Convention for the Protection of National Minorities giving the European Court of Human Rights or a general judicial authority of the Council of Europe the power to give advisory opinions concerning the interpretation of the framework convention, taking into account that the Court is in principle willing to assume an interpretative role in the field of minority protection "to the extent that this is compatible with its judicial function"<sup>43</sup>.

109. The Assembly should continue its work aimed at further developing the basic principles of minority protection enshrined in the Framework Convention. In particular,

the Assembly should continue and encourage preparatory work aimed at elaboration of a new instrument on minority rights of recent immigrants, with the aim to ensure more inclusive and coherent approach to the issue of the scope of application of minority rights standards of the Council of Europe.

110. In order to further develop and streamline the procedure of monitoring of implementation of the Framework Convention, the Assembly should recommend that the Committee of Ministers:

- i. considers the allocation of necessary financial and human resources to the secretariat of the Advisory Committee of the Framework Convention as a matter of high priority, particularly in the view of approaching second cycle of monitoring, as well as the growing follow-up work;
- ii. to consider the possibility of abolishing the whole mandate requirement for seeking information from various sources and for meeting with non-governmental actors;
- iii. revises the rules of the monitoring procedure with a view to securing that in future the visits to any country under monitoring are always carried out when the AC considers this necessary;
- iv. to re-consider confidentiality requirements set by the [Resolution 97/10](#), so that, if the AC deems it necessary, the AC could have meetings together with the representatives of governments and of civil society;
- v. encourages the Advisory Committee to consider thematic issues and develop general commentaries on them to help guide States and minorities on good practice;
- vi. ensures availability of the Framework Convention, as well as related texts, in different languages, including languages of national minorities;
- vii. encourages early publication of the AC's opinions by member states, so that civil society might engage in an open dialogue about implementation of the Framework Convention in a given state and the conclusions made by the AC.

111. Finally, the Assembly should recommend that the Committee of Ministers take necessary measures to develop closer cooperation with the European Union with the view of harmonising attitudes and policies in the field of minority protection, particularly in the course of ongoing EU enlargement and evaluation of the candidate states' compliance with the Copenhagen political criteria envisaging the respect for and protection of minorities.

*Reporting committee:* Committee on Legal Affairs and Human Rights

*Reference to committee:* [Doc 9151](#), Reference No 2632 of 25 September 2001 and [Doc 9259](#), Reference No 2676 of 8 November 2001

*Draft recommendation* adopted unanimously by the Committee on 5 June 2003

*Members of the Committee:* *Mr Lintner (Chairperson), Mr Marty, Mr Jaskiernia, Mr Jurgens (Vice-Chairpersons), Mrs Ahlqvist, Mr Akçam, Mr G. Aliyev (alternate: Mr R. Huseynov), Mrs Arifi, Mr Arzilli, Mr Attard Montalto, Mr Barquero Vázquez, Mr Berisha, Mr Bindig, Mr Brejč, Mr Bruce, Mr Chaklein, Mrs Christmas-Møller, Mr Cilevics, Mr Clerfayt, Mr Contestabile, Mr Daly, Mr Davis, Mr Dees, Mr Dimas, Mrs Domingues, Mr Engeset, Mrs Err, Mr Fedorov, Mr Fico, Mrs Frimansdóttir, Mr Frunda, Mr Galchenko, Mr Guardans, Mr Gündüz, Mrs Hajiyeva (alternate: Mr A. Huseynov), Mrs Hakl, Mr Holovaty (alternate: Mr Shybko), Mr Kelber, Mr Kelemen, Mr Kontogiannopoulos, Mr S. Kovalev, Mr Kroll, Mr Kroupa, Mr Kucheida, Mrs Leutheusser-Schnarrenberger, Mr Livaneli (alternate: Mr Ateş), Mr Manzella, Mr Martins, Mr Mas Torres, Mr Masson, Mr McNamara, Mr Meelak, Mrs Nabholz-Haidegger, Mr Nachbar, Mr Olteanu, Mrs Pasternak, Mr Pehrson, Mr Pellicini, Mr Pentchev, Mr Piscitello, Mr Poroshenko, Mrs Postoica, Mr Pourgourides, Mr Raguz, Mr Ransdorf, Mr Rochebloine, Mr Rustamyan, Mr Skrabalo, Mr Solé Tura, Mr Spindelegger, Mr Stankevic, Mr Stoica, Mr Symonenko, Mr Tabajdi (alternate: Mr Gedei), Mr Takkula (alternate: Mrs Hurskainen), Mrs Tevdoradze, Mr Toshev, Mr Vanoost, Mr Wilkinson, Mrs Wohlwend*

*N.B. The names of those members who were present at the meeting are printed in italics.*

*Secretaries to the Committee:* Ms Coin, Mr Schirmer, Mr Čupina, Mr Milner

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<sup>1</sup> See paragraph 12.xi. of [Recommendation 1492](#).

<sup>2</sup> See the Committee of Ministers' reply to [Recommendation 1492](#), [Doc 9492](#), where the Committee considered it somewhat premature to reopen the debate on this project.

<sup>3</sup> See paragraph 12 x. of [Recommendation 1492](#).

- <sup>4</sup> All state reports, as well as opinions of the Advisory Committee and a number of other relevant materials, are available online at <http://www.humanrights.coe.int/minorities/index.htm>.
- <sup>5</sup> See at <http://www.humanrights.coe.int/minorities/index.htm>.
- <sup>6</sup> Document (CM(2002)80, GR-H(2002)27, GR-H(2003)1),  
[http://www.coe.int/T/e/human\\_rights/Minorities/2.\\_FRAMEWORK\\_CONVENTION\\_\(MONITORING\)/2.\\_Monitoring\\_mechanism/6.\\_Resolutions\\_of\\_the\\_Committee\\_of\\_Ministers/2.\\_Procedural\\_resolutions/832nd%20meeting%2019mar2003%20E.asp#TopOfPage](http://www.coe.int/T/e/human_rights/Minorities/2._FRAMEWORK_CONVENTION_(MONITORING)/2._Monitoring_mechanism/6._Resolutions_of_the_Committee_of_Ministers/2._Procedural_resolutions/832nd%20meeting%2019mar2003%20E.asp#TopOfPage)
- <sup>7</sup> When preparing this chapter, the rapporteur greatly benefited from the paper "The Framework Convention for the Protection of National Minorities: A Policy Analysis" by Alan Phillips, Minority Rights Group International: 2002.
- <sup>8</sup> See e.g. MINELRES website at <http://www.minelres.lv/coe/statereports.htm> ; or CEDIME-SE website at <http://www.greekhelsinki.gr/english/reports/CEDIME-FCNM.html>
- <sup>9</sup> For more details, see <http://www.vlada.hr/english/okrug.stol-VE-manjine-eng.htm>.
- <sup>10</sup> "The Framework Convention for the Protection of National Minorities: A Policy Analysis", Minority Rights Group International: 2002.
- <sup>11</sup> [http://www.coe.int/T/E/Legal\\_Affairs/Local\\_and\\_regional\\_Democracy/](http://www.coe.int/T/E/Legal_Affairs/Local_and_regional_Democracy/).
- <sup>12</sup> Advisory Committee on the Framework Convention for the Protection of National Minorities, Opinion on Croatia, adopted on 6 April 2001.
- <sup>13</sup> National Council for Audiovisual Broadcasting. Decision No. 14/1999 concerning the translation into Romanian of some programs broadcast in other languages, 18 February 1999.
- <sup>14</sup> Advisory Committee on the Framework Convention for the Protection of National Minorities.  
Opinion on Romania, adopted on 6 April 2001.
- <sup>15</sup> Advisory Committee on the Framework Convention for the Protection of National Minorities. Opinion on Hungary, adopted on 22 September 2000.
- <sup>16</sup> Advisory Committee on the Framework Convention for the Protection of National Minorities. Opinion on Estonia, adopted on 14 September 2001.
- <sup>17</sup> Advisory Committee on the Framework Convention for the Protection of National Minorities. Opinion on Ukraine, adopted on 1 March 2002.
- <sup>18</sup> RFE/RL Media Matters, No.33, 30 August 2002.
- <sup>19</sup> Report submitted by Azerbaijan pursuant to Article 25, paragraph 1 of the Framework Convention for the Protection of National Minorities, received on 4 June 2002, <http://www.humanrights.coe.int/minorities/Eng/FrameworkConvention/StateReports/2002/azerbaijan.htm>.
- <sup>20</sup> RFE/RL Newslines, Vol.6, No.186, Part. I, 2 October 2002.
- <sup>21</sup> When preparing this chapter of the report, your rapporteur greatly benefited from the possibility of reading excerpts from a pre-publication version of McGonagle, Tarlach, Davis Noll, Bethany & Price, Monroe, 'Minority-Language Related Broadcasting and Legislation in the OSCE' (provisional title), Study commissioned by the OSCE High Commissioner on National Minorities, carried out by the Programme in Comparative Media Law and Policy (PCMLP), University of Oxford and the Institute for Information Law (IViR), University of Amsterdam (forthcoming - 2003).
- <sup>22</sup> Report submitted by the Republic of Moldova pursuant to Article 25, paragraph 1 of the Framework Convention for the Protection of National Minorities, received on 29 June 2000, <http://www.humanrights.coe.int/minorities/Eng/FrameworkConvention/StateReports/2000/moldova/moldovan.html>.
- <sup>23</sup> Advisory Committee on the Framework Convention for the Protection of National Minorities. Opinion on Moldova, adopted on 1 March 2002.
- <sup>24</sup> Newsletter "Minority Issues in Latvia", No. 60, 20 December 2002, <http://lists.delfi.lv/pipermail/minelres/2002-December/002471.html>.

<sup>25</sup> Study by Tarlach McGonagle et al referred to above

<sup>26</sup> Ibid

<sup>27</sup> Declaration contained in a Note Verbale dated 22 September 1997, handed to the Secretary General at the time of deposit of the instrument of ratification, on 22 September 1997, <http://conventions.coe.int/treaty/EN/DeclareList.asp?NT=157&CM=&DF=>.

<sup>28</sup> Declaration contained in a letter from the Permanent Representative of Germany, dated 11 May 1995, handed to the Secretary General at the time of signature, on 11 May 1995, and renewed in the instrument of ratification, deposited on 10 September 1997, <http://conventions.coe.int/treaty/EN/DeclareList.asp?NT=157&CM=&DF=>.

<sup>29</sup> Declaration contained in a Note Verbale from the Permanent Representation of Slovenia, dated 23 March 1998, handed to the Secretary General at the time of deposit of the instrument of ratification, on 25 March 1998,

<http://conventions.coe.int/treaty/EN/DeclareList.asp?NT=157&CM=&DF=>.

<sup>30</sup> Declaration contained in the instrument of ratification deposited on 9 February 2000, <http://conventions.coe.int/treaty/EN/DeclareList.asp?NT=157&CM=&DF=>.

<sup>31</sup> <http://conventions.coe.int/treaty/EN/DeclareList.asp?NT=157&CM=&DF=>.

<sup>32</sup> Resolution ResCMN(2001)2 on the implementation of the Framework Convention for the Protection of National Minorities by Denmark, 31 October 2001, <http://cm.coe.int/ta/res/resCMN/2001/2001xn2.htm>.

<sup>33</sup> ACFC/INF/OP/1(2001)5 , Advisory Committee on the Framework Convention for the Protection of National Minorities. Opinion on Denmark, adopted on 22 September 2000, <http://www.humanrights.coe.int/minorities/Eng/FrameworkConvention/AdvisoryCommittee/Opinions/Denmark.htm>.

<sup>34</sup> Advisory Committee on the Framework Convention for the Protection of National Minorities. Opinion on Estonia, adopted on 14 September 2001, <http://www.humanrights.coe.int/minorities/Eng/FrameworkConvention/AdvisoryCommittee/Opinions/Estonia.htm>.

<sup>35</sup> Advisory Committee on the Framework Convention for the Protection of National Minorities. Opinion on Germany, adopted on 1 March 2002, <http://www.humanrights.coe.int/minorities/Eng/FrameworkConvention/AdvisoryCommittee/Opinions/Germany.htm>.

<sup>36</sup> Resolution ResCMN(2001)3 on the implementation of the Framework Convention for the Protection of National Minorities by Finland, 31 October 2001, <http://cm.coe.int/ta/res/resCMN/2001/2001xn3.htm>

<sup>37</sup> The rights of minorities (Art. 27). CCPR General comment 23, 08/04/94., <http://www.unhchr.ch/tbs/doc.nsf/c12563e7005d936d4125611e00445ea9/fb7fb12c2fb8bb21c12563ed004df111?opendocument>.

<sup>38</sup> See e.g. Geoff Gilbert. The Burgeoning Minority Rights Jurisprudence of the European Court of Human Rights. Human Rights Quarterly, Vol.24 (2002), 736-780. .

<sup>39</sup> John Packer. On the Definition of Minorities. In: J.Packer and K.Myntti (eds), The Protection of Ethnic and Linguistic Minorities in Europe. Abo Akademi University, 1993, 23-66.

<sup>40</sup> See also paragraph ... of this report.

<sup>41</sup> UN document E/CN.4/Sub.2/AC.5/1999/WP.3, Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities. Working Group on Minorities, Fifth session, 25-31 May 1999. "Citizenship and the minority rights of non-citizens", working paper submitted by Asbjorn Eide.

<sup>42</sup> Paragraph 11 of [Recommendation 1492](#).

<sup>43</sup> Opinion of the European Court of Human Rights on the Draft Additional Protocol to the Framework Convention for the Protection of National Minorities (on the interpretation of the Convention), 2 April 2001, Annexe 6 to the Reply from the Committee of Ministers adopted at the 799<sup>th</sup> meeting of the Ministers' Deputies, 12 June 2002, [Doc. 9492](#)

