



Strasbourg, 17 February 2010

ACFC/OP/I(2009)002

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

**Opinion on the Netherlands,
Adopted on 25 June 2009**

Table of contents:

I.	PREPARATION OF THE CURRENT OPINION	4
II.	GENERAL REMARKS	5
III.	SPECIFIC COMMENTS IN RESPECT OF ARTICLES 1-19.....	8
IV.	MAIN FINDINGS AND COMMENTS OF THE ADVISORY COMMITTEE	27
V.	CONCLUDING REMARKS	31

EXECUTIVE SUMMARY

Following the receipt of the initial State Report of the Netherlands on 16 July 2008 (due on 1st June 2006), the Advisory Committee commenced the examination of the State Report at its 33rd meeting on 6-8 October 2008. In the context of this examination, a delegation of the Advisory Committee visited the Netherlands from 25 to 27 February 2009, in order to seek further information on the implementation of the Framework Convention from representatives of the Government as well as from NGOs and other independent sources. The Advisory Committee adopted its Opinion on the Netherlands at its 35th meeting on 25 June 2009.

The Advisory Committee considers that the Netherlands has made commendable efforts with respect to the implementation of the Framework Convention with regard to the Frisians living in Fryslân. Measures have been taken to facilitate the use of Frisian in relations with the administration and the judiciary, teaching of Frisian is available in primary and secondary schools and instruction in Frisian is slightly increasing. Further efforts are however needed in terms of teacher training, supervision of Frisian teaching and the amount of teaching in Frisian needs to be further discussed with Frisian representatives in order to adequately meet their demands. A possible devolution of powers from the central to the local authorities is currently being discussed and it is expected that reforms in this area will result in enhancing the preservation and development of Frisian language and culture.

The Advisory Committee finds that the personal scope of application of the Framework Convention which is presently limited to the Frisians, has not been satisfactorily addressed by the authorities. The Roma and Sinti, many of whom have long ties with the Netherlands have been excluded from the protection of the Framework Convention. In addition, they have been left out from any institutionalised and direct dialogue with the national authorities and measures to address their socio-economic and educational situation have not been adopted at national level.

The Advisory Committee welcomes the comprehensive legal and institutional measures taken by the Dutch authorities both at national and local levels to combat discrimination. At the same time, it considers that the overall tone of the public discourse in the Netherlands and the new integration policy, with its particular focus on the preservation of the Dutch identity, have had negative consequences on the preservation of a climate of mutual understanding between the majority population and the ethnic minorities.

I. PREPARATION OF THE CURRENT OPINION

1. The initial State Report of the Netherlands (hereinafter: the State Report), due on 1 June 2006, was received on 16 July 2008. The Advisory Committee commenced the examination of the State Report at its 33rd meeting, on 6-8 October 2008.
2. In the context of this examination, the Advisory Committee identified a number of points on which it wished to obtain fuller information. A questionnaire was therefore sent to the authorities of the Netherlands on 10 February 2009. The Advisory Committee obtained replies to its questions in the course of the visit mentioned below.
3. Further to an invitation from the Government of the Netherlands, and in accordance with Rule 32 of the Committee of Ministers' Resolution (97) 10, a delegation of the Advisory Committee visited the Netherlands from 25 to 27 February 2009 in order to obtain supplementary information from representatives of the Government, NGOs and other independent sources on the implementation of the Framework Convention. In preparing this Opinion, the Advisory Committee also consulted a range of written materials from various Council of Europe bodies, other international organisations, NGOs and other independent sources.
4. The Advisory Committee subsequently adopted this Opinion at its 35th meeting on 25 June 2009 and decided to transmit it to the Committee of Ministers.
5. The present Opinion is submitted pursuant to Article 26 (1) of the Framework Convention, according to which, in evaluating the adequacy of the measures taken by the Parties to give effect to the principles of the Framework Convention, "the Committee of Ministers shall be assisted by an advisory committee", as well as pursuant to Rule 23 of Resolution (97) 10 of the Committee of Ministers, according to which the "Advisory Committee shall consider the state reports and shall transmit its opinion to the Committee of Ministers".

II. GENERAL REMARKS

6. The Advisory Committee regrets that the State Report was submitted with more than 24 months delay, a matter which significantly hampered the monitoring of the Framework Convention in the Netherlands. The State Report provides an overview of the legislative and institutional framework relating to the Frisian language and in so doing, refers extensively to the information contained in the State Report of the Netherlands on the implementation of the European Charter for Regional or Minority Languages.

7. The Advisory Committee obtained a fuller picture of the situation during the above-mentioned visit to the Netherlands. The Advisory Committee finds that the visit organised at the invitation of the Government of the Netherlands provided an excellent opportunity to have a direct dialogue with relevant interlocutors. The additional information provided by the Government and by other sources, including by representatives of national minorities, was most useful, especially as concerns the implementation of relevant norms and the overall approach of the authorities regarding the personal scope of application of the Framework Convention in the Netherlands. The meetings took place in Leeuwarden, Utrecht, Amsterdam and the Hague. The Advisory Committee appreciates in particular the continuous and valuable co-operation demonstrated by the Provincial authorities of Fryslân in Leeuwarden in the process leading to the adoption of this Opinion.

8. The Advisory Committee welcomes the fact that the umbrella organisation dealing with the promotion of the Frisian Language together with the Secretariats of the Frisian Language Board (*Berie foar it Frysk*) and the Advisory Body to the Ministry of the Interior on Frisian language and Culture (*Konsultatyf Organ*) were invited to provide contributions during the process of drawing up the State Report. At the same time, the Advisory Committee understands that these organisations were given short deadlines, which did not allow them to contribute as fully as they would have liked. This is all the more disappointing given that the State Report was submitted with considerable delay. In addition, the Advisory Committee notes that consultations on the State Report could have been more inclusive.

9. The Advisory Committee finds that, with the exception of Fryslân, where specific awareness-raising measures have been taken, the general public's knowledge of the Framework Convention appears to be low. It notes that in the Netherlands, discussions on the Framework Convention have been limited in time to the parliamentary debates on its ratification. In particular, the years preceding the ratification of the Framework Convention were marked by contradictory debates regarding the persons to which the Framework Convention should apply. The Advisory Committee notes that the Dutch position *vis-à-vis* the Framework Convention moved from the inclusive approach proposed by the Dutch Government in the mid 1990¹ to the present approach applying the Framework Convention to the Frisians only. It notes that such an approach stems from the Dutch authorities' view that applying the Framework Convention to other groups than the Frisians would undermine the integration of these groups into Dutch society

¹ Reference is made here to the Governmental Bill of 4 February 1995 on the ratification of the Framework Convention which covered the Frisians and the target groups of the minorities policy (Surinamese, Antilleans/Arubans, Turks, Moroccans, refugees, Southern Europeans, Moluccans, Travellers, Roma and Sinti).

by emphasizing their distinct ethnic and cultural identity rather than encouraging them to adhere to a Dutch common identity.

10. The Advisory Committee finds that the Framework Convention was conceived as a tool for ensuring the preservation and development of the specific identities of persons belonging to various groups while, at the same time, allowing for interaction and their integration into the societies where they live. It considers that the Framework Convention aims at creating a climate of tolerance and dialogue to ensure that cultural diversity is a source and a factor, not of division, but of enrichment for each society. Furthermore, the Framework Convention offers structured ways of promoting effective participation of all persons belonging to national minorities in a pluralist and genuinely democratic society.

11. In the present Opinion, taking into account the approach adopted by the Netherlands with regard to the personal scope of application of the Framework Convention, the Advisory Committee addresses mainly the situation of the Frisian minority. However, in light of the observations concerning the personal scope of application of the Framework Convention under Article 3, the Advisory Committee considers some issues from a more general perspective under Article 6.

12. The Advisory Committee encourages the national authorities to take further measures to improve awareness of the Framework Convention among the Dutch society as a whole. It considers that promoting the Framework Convention could be instrumental in opening a dialogue on Dutch national policy targeting national minorities and anchor discussions into international human rights law of which the Framework Convention is part and parcel. The Advisory Committee encourages the authorities to make the present Opinion public upon its receipt in order to promote an inclusive and transparent process and stimulate a national debate on the protection of national minorities and integration issues.

13. The Advisory Committee notes that in the Netherlands, the preservation and further development of Frisian language and culture is a shared responsibility of the central government and the Province of Fryslân. This joint responsibility has been formalised in Covenants on Frisian Language and Culture, which are regularly updated. The last Covenant signed in 2001 for the period 2001-2010 (hereinafter: Covenant) makes explicit reference to the European Charter for Regional or Minority Languages and the Advisory Committee expects that the subsequent covenants will adequately incorporate the standards of the Framework Convention and draw upon its monitoring results. Furthermore, the Advisory Committee notes that the current framework of co-operation between national and provincial authorities provided for in the Covenant may be revisited in the light of the results of the discussions currently held on increasing the competences of the provincial authorities (see Article 15 below). Irrespective of the solution found, the Advisory Committee wishes to highlight that national authorities should remain committed to their general responsibility resulting from their international obligations and ensure that adequate measures are taken to implement the Framework Convention.

14. In the following part of the Opinion, it is stated in respect of certain provisions that, based on the information currently at its disposal, the Advisory Committee considers that implementation of the article at issue does not give rise to any specific observations. This statement is not to be understood as signalling that adequate measures have now been taken and

that efforts in this respect may be diminished or even halted. On the contrary, the nature of the obligations of the Framework Convention requires a sustained and continued effort by the authorities to respect the principles and achieve the goals of the Framework Convention. Furthermore, a certain state of affairs may be considered acceptable at this stage but that need not necessarily be so in further cycles of monitoring. Finally, it may be the case that issues that appear at this stage to be of relatively minor concern, prove over time to have been underestimated.

III. SPECIFIC COMMENTS IN RESPECT OF ARTICLES 1 - 19

Article 1

15. The Advisory Committee welcomes the fact that the Netherlands ratified a large range of international human rights treaties, including Protocol N°12 to the European Convention of Human Rights. It notes, in particular, that in addition to the Framework Convention, the Netherlands also ratified the European Charter for Regional or Minority Languages which it applies to the Frisian, Lower Saxon, Limburger, as well to Yiddish and Roma languages.

Article 2

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

Article 3

Personal scope of application

17. As mentioned above, the Advisory Committee notes that according to the Dutch authorities, the Framework Convention applies only to the Frisians. This position was formalised in the declaration made by the Dutch authorities at the time of the ratification of the Framework Convention.² The Advisory Committee underlines that in the absence of a definition in the Framework Convention itself, the Parties must examine the personal scope of application to be given to the Framework Convention within their country. The position of the authorities of the Netherlands is therefore deemed to be the outcome of this examination.

18. 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.

19. 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.

20. The Advisory Committee notes that in its State Report, the Dutch authorities indicated that the Government in consultation with the Parliament have agreed a definition of a national minority³ that includes “groups of citizens who are traditionally resident within the territory of the State and who live in their traditional/ancestral settlement areas, but who differ from the

² See the Declaration of the Netherlands contained in a Note verbale from the Permanent Representation of the Netherlands deposited with the instrument of acceptance, on 16 February 2005: “The Kingdom of the Netherlands will apply the Framework Convention to the Frisians”.

³ It appears that such a definition was agreed during the parliamentary debates preceding the ratification of the Framework Convention and is included in the *travaux préparatoires*.

majority population through their own language, culture and history, i.e. have an identity of their own and who wish to preserve that identity”.⁴ The Dutch authorities further explain that in the Netherlands, only Frisians fulfill these criteria and are therefore considered to benefit from the protection of the Framework Convention. The Advisory Committee notes that this approach has not been codified in Dutch law.

21. The Advisory Committee notes with concern that this definition contains a territorial dimension which in practice leads to the exclusion of certain groups. In particular, the Advisory Committee notes that Roma and Sinti groups have been historically present in the Netherlands. In addition, although there is diversity within these groups, Roma and Sinti appear to be motivated by a common aim to preserve together what constitutes their shared identity, including their culture, their traditions and their language and have expressed an interest in benefiting from the protection of the Framework Convention. However, the Advisory Committee notes that persons belonging to these groups reside in different areas of the Netherlands and therefore, do not necessarily live in an “ancestral settlement”. The territorial criterion therefore *a priori* excludes them from the protection provided for by the Framework Convention.

22. In this context, the Advisory Committee is deeply concerned that the fact that some groups are territorially dispersed becomes a reason to entirely deny them the protection of the Framework Convention. It recalls that only some provisions of the Framework Convention contain a territorial dimension. These provisions concern the use of minority languages in relations with local administration, their use on topographical indications and their teaching. These are precisely areas where Roma and Sinti have already been granted a certain level of protection under the European Charter for Regional or Minority Languages since the Netherlands declared that it applies its principles to Romani. However, most of the provisions of the Framework Convention, such as the prohibition of discrimination, the principles of full and effective equality, the need to promote tolerance as well as the right to participate in public, social and economic life, do not imply that the minorities concerned “live in their traditional or ancestral settlement areas”. The *a priori* exclusion of Roma and Sinti from the scope of application of the Framework Convention results, in fact, in depriving these persons from the protection of those provisions of the Framework Convention which are instrumental to achieving equality. The Advisory Committee considers that such an approach is not compatible with the Framework Convention.

23. The second problematic aspect of the criteria chosen by the Dutch authorities concerns the inclusion of a criterion of citizenship for access to the protection of the Framework Convention. The Advisory Committee considers that such a criterion is not in line with the current efforts aimed at developing a more nuanced approach to the use of the citizenship criterion in the protection of national minorities.⁵ The Advisory Committee indeed considers that, while citizenship may be a legitimate requirement in fields such as electoral rights at national level, general application of this criterion nevertheless remains problematic in relation to the guarantees associated with other important fields covered by the Framework Convention, such as non-discrimination and equality.

⁴ See paragraph A3.3 of the State Report, page 21.

⁵ See, the Report of the Venice Commission, “Non-citizens and minority rights”, CDL-AD(2007)001, 18 January 2007.

24. The Advisory Committee notes that, while adopting the position described above with regard to the scope of application of the Framework Convention, the Dutch authorities recognise the relevance of Article 6 of the Framework Convention with regard to other groups, and included some information, albeit limited, on the measures taken to address the situation of the Roma. While welcoming this more flexible approach to the personal scope of application when dealing with issues of racism (see below under Article 6), the Advisory Committee finds that there is a need for the authorities to re-examine their position of principle with regard to the scope of application of the Framework Convention and make the relevant provisions of this treaty applicable to those who are in need of them. The Advisory Committee therefore recommends that the authorities establish an institutionalised dialogue, with no further delay, with persons belonging to the Roma and Sinti minorities and possibly other groups who have expressed the wish to benefit from the protection of the Framework Convention in order to examine their needs and discuss their inclusion in the scope of application of the Framework Convention.

Collection of personal data and free self-identification with a minority

25. The Advisory Committee notes that the Netherlands does not collect information on the ethnic affiliation of persons through population censuses.⁶ Instead, the available data on ethnic composition of the Dutch population is obtained through the matching of information from already existing data contained in administrative registers at municipal level and other surveys such as the household sample survey. On the basis of such data, the Dutch Statistics Agency (CBS) has developed a classification based on the country of birth of the person. Accordingly, information is classified alongside the category of *allochtoon* (person with a foreign background) and *autochtoon* (native). The category “persons with a foreign background” includes those persons who have at least one parent who was born abroad. The Advisory Committee notes that these persons may also include persons who are Dutch citizens. Within this group, a further distinction is made as to whether the country of birth is a Western or a non-Western country. The Advisory Committee notes that such a classification is not based on the self-identification of the person concerned (see also paragraph 52 under Article 6).

26. The Advisory Committee notes that according to Article 16 of the 1999 Personal Data Protection Act, processing personal data concerning a person’s religion or philosophy of life, race, political convictions, health and sexual life or personal data concerning membership of a trade union, as well as data concerning a person’s criminal behaviour, is prohibited. Exemptions to this prohibition are subject to strict conditions: such data may only be compiled and used by institutions that have been granted this possibility by law or with the explicit authorisation of the person concerned. The Advisory Committee further notes that Article 18 of the said Act provides for exemptions in cases where such data is meant to support positive measures, provided that it is necessary for the intended purpose, that the data only relate to criteria allowing for an objective determination as to whether the person belongs to a minority group and that the person has not indicated any objection in writing (see also the Advisory Committee comments under Article 6).

27. The Advisory Committee notes that some surveys have been made available regarding the command of the Frisian language. The most recent information available to the Advisory Committee in this respect is contained in a study of the *Fryske Akademy* released in 1994 on

⁶ The last census carried out in the Netherlands, dates back to 1971. A new census should have been organised in 1981. It was however cancelled in view of the growing negative attitude of the population towards censuses, due in particular, to concerns with regard to the protection of privacy.

language proficiency, use, attitude and identity of a representative sample of the population in Fryslân.⁷ This research revealed a relatively stable position of the Frisian language between 1967 and 1994 with 94,3% of people from Fryslân understanding Frisian (97,2% in 1967), 74% speaking it (84,9% in 1967), 64,5% reading it (68,9% in 1967) and 17% writing it (11,5% in 1967). While welcoming this data, the Advisory Committee considers that further research could be undertaken on the issue, including data disaggregated by age, gender and location. In addition, the Advisory Committee notes that some Frisian representatives have expressed interest in collecting data on persons identifying themselves as Frisians. It considers that this should be further discussed with those who are supportive of collecting such data with a view to conducting a possible survey on the ethnic affiliation of persons living in Fryslân.

Article 4

Anti-discrimination legislative and institutional framework

28. The Advisory Committee notes that the Netherlands has a well developed legislative and institutional framework to combat discrimination. The principle of equality is guaranteed in Article 1 of the Dutch Constitution which provides for the equal treatment of persons in equal circumstances and prohibits discrimination on the grounds of religion, belief, political opinion, race, sex or any other grounds. The Equal Treatment Act (*Algemene Wet Gelijke Behandeling*, AWGB) adopted in 2004 to transpose the European Council Directive 2000/43/EC of 29 June 2000 implementing the Principle of Equal Treatment between Persons irrespective of Racial or Ethnic Origin provides protection against discrimination in a large number of fields (employment, provision of goods and services, social security and healthcare).

29. The Advisory Committee welcomes this comprehensive approach to the issue of combatting discrimination. It further notes that the authorities are planning to amend the Labour Act in order to introduce an obligation for employers to develop anti-discrimination plans, which would be a welcome development. More generally, the Advisory Committee encourages the authorities to periodically review the relevance and impact of its legislative framework. In this connection, the Advisory Committee refers to the recommendations contained in ECRI's Third Report⁸ to include law enforcement bodies within the scope of the AWGB.

30. The Advisory Committee notes that the Equal Treatment Commission is the independent national specialised body tasked with the promotion and monitoring of compliance with the AWGB. The Commission work currently focuses on employment, education and the provision of goods and services. The Commission has been increasingly involved in promoting awareness about the existing possibilities to combat discrimination.

31. The Advisory Committee welcomes the fact that in addition to the national level non-discrimination institution, the Netherlands has developed a most valuable system of monitoring and reporting discrimination at local level. Anti-discrimination bureaus have been established in a number of municipalities, most of them being financed by the municipalities themselves, others by the province and the central government. These bureaus are competent for providing assistance on discrimination and registering complaints as well as advising on policy and

⁷ Durk Gorter and Reitze J. Jonkman, *Tall yn Fryslân*, Fryske Akademy 1995.

⁸ See Third Report of the ECRI on the Netherlands, adopted on 29 June 2007, (CRI (2008)3).

providing information to the general public. They can also refer cases of alleged discrimination to the Equal Treatment Commission.

32. The Advisory Committee notes that such bureaus have been established in a number of municipalities, mainly in large cities, on the basis of voluntary agreements with the Government but that they have not reached a nationwide coverage as yet. In this context, the Advisory Committee welcomes the adoption of a Bill on Municipal Anti-Discrimination Services which will oblige the municipal authorities to set up an anti-discrimination service. This statutory obligation, once it is in force, should provide a comprehensive network of anti-discrimination at local level. The Advisory Committee notes that municipal authorities are free to decide on the form the service should take. It also notes that regular review of the budget allocation to these bureaus has been foreseen. It expects that the funding arrangements will adequately meet the existing needs. It also invites the authorities to ensure that the creation of additional structures will not have a negative impact on the funding of other existing structures, and in particular those bringing together expertise on discrimination and providing advice and information on discrimination and racism at national level, like “Art. 1”, the national association against discrimination.

Article 5

Support to Frisian culture and language

33. The Advisory Committee notes that as far as Frisians are concerned, support to their culture and language is a shared responsibility between the Provincial and the central authorities (see under General Remarks above). The Advisory Committee takes note in this context of the proactive role played by the *Fryske Akademy* as well as other Frisian cultural organisations in undertaking research and promoting Frisian language and culture.

34. In its dialogue with Frisian cultural organisations, the Advisory Committee found that the latter, while acknowledging the existing support to their activities, expressed their concern about the impact of the proposed increased decentralisation of competences to Provincial authorities for the continuity of such support. In particular, these organisations fear that the Province may be given more responsibilities without obtaining the corresponding necessary funding (see Article 15 below). The Advisory Committee considers that processes of decentralisation can play an important role in creating the conditions for persons belonging to national minorities to participate effectively in cultural life. It expects that irrespective of the solution found with regard to decentralisation, appropriate resources should be granted to the Provincial authorities to carry out their tasks.⁹ In this context, due attention should be paid not to reduce support to Frisian cultural organisations in the future.

Article 6

35. The Advisory Committee recalls that the scope of application of Article 6 of the Framework Convention is wide and it includes all persons living on the territory, including non-citizens. It notes that the situation of persons belonging to the Frisian minority does not call for

⁹ See the Advisory Committee Commentary on the Effective Participation of Persons belonging to National Minorities in Cultural, Social and Economic Life and Public Affairs, adopted on 27 February 2008, paragraph 130.

any specific observation under Article 6. It considers however, as detailed below, that the implementation of Article 6 prompts a number of comments with regard to the Roma and Sinti¹⁰ as well as the Moroccans, Turks and other groups.¹¹

Promoting tolerance and dialogue

36. The Advisory Committee notes that the Netherlands has a long tradition of tolerance and openness to other cultures. Its well-established integration policy has allowed for the peaceful cohabitation of its various ethnic and religious minorities for years. The terrorist attacks of 11 September 2001 and the ensuing measures against terrorism as well as the murders in 2002 and 2004 respectively of two Dutch personalities whose views expressed hostility towards Islam, Pim Fortuyn, a political leader, and Theo van Gogh, a film maker, have however profoundly questioned this policy. The approach taken by the authorities to handle the multicultural character of Dutch society has been criticized for being too liberal and harming the cohesion of the society. The Advisory Committee notes in particular that such criticism has impacted negatively *inter alia*, on the analysis made by the Dutch authorities of the role of the Framework Convention (see also under General Remarks above).

37. The Advisory Committee notes that as a result, the authorities are now addressing integration issues mainly through the objective of protecting Dutch national identity, rather than approaching it as a two-way process whereby both majority and minority populations learn from each other, in the spirit of Article 6 of the Framework Convention. This change of approach has led to an increased polarisation of the society whereby minority communities, and in particular persons belonging to the Muslim population¹² of the Dutch society, tend to be stigmatised. The Advisory Committee notes that such a stigmatisation has been regularly fed by political discourse as well as stereotypes and negative portrayal of ethnic minorities in the media. While welcoming that the Dutch Government has taken significant measures to tackle discrimination and manifestations of intolerance, (see comments under Article 4 above), the Advisory Committee is of the opinion that the overall tone of the debate in the Netherlands is not conducive to the creation of a climate of mutual understanding between the majority population and the ethnic minorities.

38. The Advisory Committee finds that a key element to build up a cohesive society is to ensure that all its components are listened to and can contribute to the society they live in. In this context, the Advisory Committee welcomes the fact that minority organisations are represented in the National Ethnic Minority Consultative Committee (*Landelijk Overleg Minderheden*, LOM), a national consultation structure established in 1997 in accordance with the Act on Minority Policy Consultation. The role of the LOM is to discuss with the Government policy matters of interest for minority groups. Meetings with relevant representatives of the Government are expected to be

¹⁰ Figures of the number of persons belonging to the Roma and Sinti in the Netherlands vary between from 2 000 to 10 000 persons.

¹¹ These other groups include Surinamese, Antilleans/Arubans, Moluccans, Chinese and refugees.

¹² It is estimated that the Netherlands has a Muslim population of approximately one million (6% of the total population), with persons belonging to the Moroccan and the Turkish communities accounting for approximately two-thirds of the Muslim population. Other Muslim groups include: Surinamese and persons coming from Bosnia and Herzegovina, Somalia, Iran, Pakistan and Afghanistan.

organised three times a year, which according to representatives of minority communities, is not always the case. The Advisory Committee notes that the minorities currently represented in the LOM are the Chinese, Turkish, South European, Caribbean, Surinamese and Moroccan communities, each of them being represented by one organisation only.

39. The Advisory Committee was informed that Roma and Sinti are excluded from this consultative body since their organisation does not fully reflect the position of the main national movements within the target group which is one of the criteria set to have a seat in the LOM. The Advisory Committee notes that other criteria for representation in this consultative committee include the need for the minority concerned to focus its activities on the relevant policy sectors such as education, work, housing, healthcare and welfare, and to pay attention to the special categories within the target group.¹³ The Advisory Committee further notes that these criteria are not provided for by the law itself but are to be found in its Explanatory Memorandum.

40. The Advisory Committee notes that representatives of the Roma and Sinti have asked for direct dialogue with the national authorities and that they would welcome being represented in the LOM in order to express their concerns and interests (see also below, the situation of the Roma, paragraphs 46 to 51). They complained that so far, they only have limited access to local authorities and that, if specific institutions meant to support them have been established by the Government, such as the recently established Multifunctional Centre, they consider that the approach taken is depriving them from having a genuine ownership of projects and activities intended for them.

41. The Advisory Committee calls on the Dutch authorities to ensure full and comprehensive representation of the various minorities in the LOM. In particular, the authorities should demonstrate an open and flexible approach to the criteria they have set. They should in particular consider the inclusion of Roma and Sinti in the LOM. It also calls on the authorities to pay due attention to the need to ensure the effective functioning of this body by convening regular meetings, providing adequate conditions for a meaningful dialogue and ensuring that its work is duly taken into consideration in governmental decision-making.

Incitement to hatred and hate crime

42. The Advisory Committee notes that the Dutch Criminal Code contains several provisions penalising incitement to hatred and discrimination on the ground of race and dissemination of such expression.¹⁴ It notes, like the European Commission against Racism and Intolerance (ECRI) in its Third Report,¹⁵ that Dutch criminal law does not penalise the racist motivation of an offence as a specific aggravating circumstance. The Advisory Committee understands however

¹³ The fact that an organisation does not sufficiently involve women in its composition and activities has been used for example to exclude the Mollucans from the LOM.

¹⁴ See in particular Article 137 c) punishing racist insults, 137 d) punishing incitement to racial hatred, violence and discrimination, 137 e) punishing the dissemination of racist publications, 137 f) punishing participation and or support to racist activities, 137 g) punishing racial discrimination in the exercise of a public service, profession or trade and 429quater in the exercise of one's office, profession or business. It is noted that, in its decision of 21 January 2009, the Amsterdam Court of Appeal ordered the prosecution of Member of Parliament Geert Wilders on the grounds that the comments he made in various media on Muslims and their religion were infringing on Articles 137d) and c) of the Criminal code.

¹⁵ See Third Report of the ECRI on the Netherlands, adopted on 29 June 2007, (CRI (2008)3).

that instructions have been given to the Public Prosecution Service requiring public prosecutors to request increased sentence if the offence has a racist motivation.

43. In practice, the Advisory Committee notes that very few cases are brought before the courts alleging a breach of one of these provisions. This situation may be explained by a reluctance to report such discrimination to the competent bodies. In addition, the Advisory Committee understands that this state of affairs has also to do with the need to ensure that these provisions are better implemented by the police and the public prosecution service.

44. The Advisory Committee notes in this respect, as a positive step, that the authorities have taken a set of measures in order to increase the capacity of both the police and the public prosecution in treating discrimination cases and improve their performance in this domain. Such measures include the setting up of a National Discrimination Centre as part of the Public Prosecutor Office and of a similar type of centre for the police, the National Bureau on Discrimination Issues. Both centres have been working on improving exchanges of information, consistent treatment of racist and discrimination cases as well as training to assist prosecutors and police officers respectively in handling such cases. The Advisory Committee encourages the authorities to pursue these measures aimed at improving the reporting and monitoring of hate crime.

45. The Advisory Committee further notes the commitment of the Dutch authorities to combat the dissemination of racist materials through the internet and welcomes the work carried out by the Complaint Bureau for Discrimination on the Internet (*Meldpunt Discriminatie Internet*, MDI), the specialised body set for this purpose in 1997. It notes with satisfaction that the government financial support to this Bureau has increased in recent years and encourages the authorities to sustain their efforts in this field, including by ensuring that investigations are conducted and adequate sanctions taken.

Situation of the Roma and the Sinti

46. The Advisory Committee notes with concern that, according to Roma organisations as well as other NGOs, some Roma are reportedly still lacking personal documentation and that some of them are *de facto* stateless in the Netherlands. The Advisory Committee understands that there is no exact figure available as to the number of persons concerned within the Roma community. Such a situation has resulted in difficulties in practice for some Roma in accessing a number of social rights, as this has been signalled by NGOs doing mediation work between health care institutes and Roma patients. The Advisory Committee calls on the authorities to support research carried out by NGOs in consultation with Roma organisations in order to determine the number of Roma who are lacking personal documents and establish the scope of *de facto* statelessness. While investigating the situation, the authorities are urged to ensure that persons lacking the necessary documents are provided with support to obtain documents and with adequate access to health and social assistance, including by making social and health care institutions aware of their specific situation.

47. Further, the Advisory Committee notes that in the Netherlands, persons belonging to the Roma and Sinti minorities are reported to experience prejudice and discriminatory attitudes in a number of fields.

48. In the area of housing, Roma who choose to live in caravans as part of their traditional lifestyle are regularly faced with a shortage of authorised sites. The Advisory Committee notes that while this has been a persistent problem affecting also other caravan dwellers, the transfer of competences in this area from national authorities to local authorities following the abolition of the Caravan Act in 1999 has prompted new concerns in terms of actual responsibility of local authorities. It notes for example that the funding allocated by national authorities for local authorities to deal with their responsibility in this field has not been specifically earmarked but is part of local authorities' general budget, hence leaving the allocation of funds to caravan sites to their discretion. It notes in particular that local authorities have largely resorted to private companies for the management of caravan sites. It also finds that municipal authorities have been faced with an increasingly hostile attitude from the local population against new sites and this has led them, in some instances, to locate these sites in remote areas with substandard environmental conditions. Such a situation is not satisfactory and the Advisory Committee calls on the national authorities to undertake a comprehensive review, in consultation with Roma and Sinti organisations, of the provision by local authorities of accommodation for Roma and Sinti in order to better address their needs.¹⁶ As a result, they should provide local authorities with recommendations, and where relevant, statutory obligations regarding suitable accommodation arrangements for Roma and Sinti who wish to live in caravans.

49. In the field of education, Roma attendance in secondary education is reportedly low, their absenteeism rate high, their school performance well inferior to the average. Illiteracy is also reported to be above the national average. Besides, the Advisory Committee notes with concern that in secondary level, there is a disproportionately large attendance of Roma and Sinti children in vocational training schools (*VMBO*)¹⁷ as opposed to upper secondary schools (*HAVO/VWO*).¹⁸ While some valuable initiatives have been taken in the area of education such as the introduction of educational consultants in some municipalities, the Advisory Committee finds that the authorities should take vigorous monitoring measures to fight absenteeism of Roma in schools, with the active participation of the Roma community as well as to promote literacy. The Advisory Committee also invites the authorities to ensure that Roma and Sinti pupils are given equal opportunities to enter the higher academic streams of the secondary school system.

50. The Advisory Committee notes with concern the very high unemployment rate among the Roma which is often the consequence of their educational situation. In addition, the Advisory Committee regrets the fact that their portrayal in the media is often associated with negative events which reinforces prejudices and discriminatory attitudes.

51. The Advisory Committee shares the view of other Council of Europe bodies¹⁹ that the above-mentioned situation of the Roma and Sinti demands that the authorities address the multiple causes of Roma and Sinti marginalisation in the Netherlands in a comprehensive policy

¹⁶ See also the Recommendation (2005)4 of the Committee of Ministers on the Movement and Encampment of Travellers in Europe.

¹⁷ VMBO stands for *voorbereidend middel baar beroepsonderwijs* (preparatory middle-level applied education).

¹⁸ HAVO stands for *hoger algemeen voortgezet onderwijs* (higher general continued education) and VWO stands for *voorbereidend wetenschappelijk onderwijs* (preparatory scientific education).

¹⁹ See the Third Report of the ECRI on the Netherlands, adopted on 29 June 2007, (CRI (2008)3) and the Report of the Commissioner for Human Rights dated 11 March 2009 (CommDH(2009)2).

which should be elaborated in consultation with Roma and Sinti organisations. Such a policy should set clear targets and obligations for the local authorities concerned and receive adequate financial support and be regularly monitored and reviewed.

Integration and ethnic registration

52. The Advisory Committee considers that reliable statistical data on ethnicity, broken down by age, gender and location are essential for targeting, implementing and monitoring measures to ensure full and effective equality and facilitate the integration of all ethnic groups in the society. The Advisory Committee is however concerned that registration of ethnicity may only target certain ethnic groups and that such registration may be matched with data concerning the criminal record of the person concerned. In this connection, the Advisory Committee refers to plans authorised by the Dutch Data Protection Authority, to set up a separate register including data on persons under the age of 25 who were either born in the Dutch Antilles or Aruba or whose parents were born there (the so-called “Reference Index of Antilleans”, *Verwijsindex Antillianen*, VIA). The Advisory Committee welcomes the fact that the Dutch authorities have not proceeded with the setting up of this index which would have raised a number of issues of compatibility with the principles of free self-identification and of non-discrimination (Articles 3 and 4 of the Framework Convention). It notes however that discussions are underway to extend such an index to all young people considered at risk (the so-called “General Reference Index of Youth at Risk”, *Verwijsindex Risicjongeren*). The Advisory Committee notes that the question has arisen whether such an index would include registration of the ethnicity of the persons concerned. It understands that both the Council of State and the Dutch Data Protection Authority advised against including registration of the ethnicity which has apparently been confirmed by the authorities. The Advisory Committee expects that in future, measures taken to address a situation of inequality fully respect the principles of the Framework Convention, in particular the principle of non-discrimination. It also calls upon the authorities to ensure that the collection of data required by these measures fully respects the principle of free self identification with a minority as set out in Article 3 of the Framework Convention as well as the principles of Committee of Ministers’ Recommendation (97) 18 concerning the protection of personal data collected and processed for statistical purposes, and other international standards on the protection of personal data.

Police and ethnic minorities

53. The Advisory Committee notes that there is a reported practice to register and monitor crime suspects according to their ethnic origin. It also notes the reported increased use of racial profiling practices within the police, with persons belonging to minority communities, especially Muslim communities, being disproportionately stopped and searched. The Advisory Committee understands that such practices are carried out in the context of policies aimed at preventing crime and notes that they have reportedly intensified in particular in the light of the measures taken to fight terrorist crime. The Advisory Committee calls on the authorities to monitor such practices as well as to review the implementation of legislation giving increased powers to the police with a view to detect discriminatory implementation.

54. The Advisory Committee notes that the Dutch police has put in place a recruitment policy with the aim that 8% of the police officers should come from ethnic minorities by 2011. The

Advisory Committee welcomes the fact that work is being done with associations of minority communities in order to encourage the application of persons belonging to minorities to join the police but notes that in practice, the number of these persons remains lower than the set target and there is a reported high number of recruits from minority communities who are leaving the service. It notes that different factors may explain such a situation, including the lack of attractiveness of a police career among minority communities and reported prejudices and sometimes racist attitudes within the ranks of the police. The Advisory Committee welcomes the efforts of the Government to investigate further the situation and encourages it to pursue its approach to increase minority participation in the police and ensure that due attention is paid to creating appropriate conditions to retain recruits from minority communities in the police service.

Promoting diversity in schools - Teaching of ethnic minorities languages

55. The Advisory Committee welcomes the fact that following an amendment introduced in 2006, the Primary Education Act acknowledges that pupils grow up in a multi-cultural society and that the school curriculum should aim at the children's development and address the diversity of the demands of the society of which they are a part. It also notes that, reflecting on this aim, the Dutch Government has shown increased commitment to enhance ethnic diversity in schools: since 2006, primary schools in the Netherlands have been under the obligation to provide information on the measures they have taken in order to promote diversity in schools and an expertise centre, the Knowledge Centre for Mixed Schools, has been set up to investigate and support schools in their efforts to encourage diversity.

56. The Advisory Committee notes that according to a survey released by this Centre in April 2009,²⁰ over a third of these primary schools do not reflect the ethnic background of the local areas in which they are established: these schools are reported to have predominantly either pupils with Dutch background or pupils from minority communities. This may also be the reason for a certain segregation in housing, especially in large cities, caused by the demographic trend according to which white people go away from neighborhoods that are becoming racially desegregated and move to white suburbs (the so-called "white flight" phenomena). The Advisory Committee understands that the attempt to prompt further diversity in classes has sometimes been met with resistance. The Advisory Committee encourages the Government to take further awareness-raising measures to highlight the role of schools in promoting mutual respect and understanding, in line with Article 6 of the Framework Convention. They should make ethnically mixed classes attractive to parents, including by ensuring a constant quality to the education provided in these schools.

57. The Advisory Committee notes that as a result of the new integration policy of the Dutch Government (see paragraph 9 under General Remarks and Article 3 above), the education system has increasingly focused on the teaching of the Dutch language to the detriment of the languages spoken by other groups living in the Netherlands (with the exception of Frisian in Fryslân and English). It notes that this led to the abolition in 2004 of ethnic minorities language classes as part of the Dutch mainstream curriculum. In practice, this measure has resulted in ethnic minority language classes being held under separate private arrangements and for some communities such as the Moroccan community, under religious authority. The Advisory Committee was informed

²⁰ The survey was carried out over 2 000 primary schools in approximately 40 municipal districts.

that this has triggered new difficulties for the minority communities regarding the organisation of such classes, the availability of teachers as well as the overall supervision of the conduct and quality of the teaching provided. The Advisory Committee finds that the authorities should analyse the consequences of the withdrawal of minority language teaching from the mainstream curriculum on the integration of pupils from minority communities into the school system. They should also ensure that the private teaching currently provided respects official educational standards.

Article 7

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

Article 8

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

Article 9

Broadcasting in Frisian: legislative framework and practice

60. The Advisory Committee notes that the 1987 Media Act, as amended, provides that as far as public broadcasting is concerned, organisations that have been allocated broadcasting time shall devote 50% of their television broadcasting time to original programming in Dutch or Frisian. There is only one regional broadcasting company broadcasting in Frisian (Omrop Fryslân) which is treated as any other regional broadcasting company and the Advisory Committee notes with regret that it does not enjoy an increased level of support from national authorities to fulfill the additional tasks implied by broadcasting in a minority language.

61. The Advisory Committee notes that such a situation has been largely compensated by the Provincial authorities' financial commitment to the production of additional programmes in Frisian language. At present, Omrop Fryslân broadcasts two hours of television and 17 hours of radio daily, it has developed an internet site which is, in its view, the key to staying attractive, especially among its younger audience. The Advisory Committee notes however that current discussions on decentralisation have triggered new concerns with regard to the financial sustainability of Omrop Fryslân broadcasting in Frisian, should increased decentralisation not be accompanied with adequate funds. The Advisory Committee considers that Omrop Fryslân has acquired an important role in promoting the Frisian language and that the national authorities should pay due attention to maintaining conditions, in particular financial ones which would enable Omrop Fryslân to effectively fulfill its functions.

62. As far as private broadcasters are concerned, the Advisory Committee notes that they are obliged to have 40% of the programmes broadcast in Dutch or Frisian according to the aforementioned Media Act. The Advisory Committee notes with regret that no use is made of

Frisian in regional private broadcasts²¹ and while understanding that there is low demand, it considers that the authorities should examine the legal and practical incentive measures which could promote Frisian-language private broadcasting.

Print media in Frisian

63. The Advisory Committee notes that articles in Frisian, although limited in number, are published in the two provincial daily newspapers, including in their weekly supplements. Articles of these newspapers written in Dutch usually quote Frisian speakers in their language. It also welcomes the fact that the Province of Fryslân has allocated specific funding for the publication of Frisian language magazines as part of its policy on the use of Frisian in the written media for 2007 to 2010. This support has proven instrumental in ensuring that some Frisian language press is able to remain visible in a Dutch media environment. In this context, the Advisory Committee encourages the authorities to pursue such a supporting policy while fully respecting the editorial independence of the media.

Article 10

Use of Frisian language with administrative authorities

64. The Advisory Committee notes with satisfaction that the legislative framework regarding the use of Frisian has been consolidated over years, in line with the successive covenants concluded between the national authorities and the authorities of the Province of Fryslân. Accordingly, the use of Frisian in relations with administrative authorities located in the Province of Fryslân is explicitly provided for in the 1996 General Administrative Act (Section 2:7) as well in some specific regulations. The Advisory Committee notes that regulations are provided for in the 1956 Act on the Use of Frisian in Judicial Matters which authorises the use of Frisian in judicial proceedings.

65. In practice, the Advisory Committee understands that even though the legal possibility of using Frisian in official dealings exists, the use of Frisian remains largely limited to informal settings. The Advisory Committee understands that sociological and historical reasons may explain a traditional use of the Dutch language in relations with representatives of the authorities and the perception that using Frisian may not be considered as adequate in this sphere.

66. In this context, the Advisory Committee welcomes the creative and continuous awareness-raising efforts already made by the Provincial authorities to encourage persons to use Frisian in relations with administrative and judicial authorities. It also notes that these efforts have rightly aimed at increasing the ability of civil servants to use Frisian. In this respect, it notes that the authorities of the Province of Fryslân have adopted a flexible approach with regard to Frisian language proficiency requirements in recruitment procedures in local public administration of the Province. In general, the passive knowledge of Frisian is required and depending on the municipality and of the administration concerned, is evaluated through a language test. It notes nevertheless that such a test is not decisive since the person who does not have a sufficient understanding of the Frisian language would be invited to take Frisian language classes. The

²¹ In its Third Report, the Committee of Experts considered that this situation was not fulfilling the European Charter for Regional or Minority Language requirements.

Advisory Committee encourages the authorities in their efforts to further expand the use of Frisian within the local administration and regularly monitor the situation. In the field of the judiciary, the Advisory Committee notes the specific attention devoted to the legal terminology by making a Frisian-Dutch legal Dictionary available (see also Article 15 below).

67. The Advisory Committee also welcomes the fact that although rarely used in practice, Frisian may be used to address the Office of the National Ombudsman which has the necessary staff at its disposal to answer requests in Frisian.

68. While welcoming these measures, the Advisory Committee finds that achieving an increased use of Frisian in relations with administrative authorities would benefit from a more proactive attitude from national authorities in those matters. In doing so, national authorities could give a positive signal regarding the importance attached to the use of Frisian and boost the willingness of Frisian speakers to use their language more often in official dealings, irrespective of their command of Dutch. In addition, the Advisory Committee is of the opinion that national authorities should also ensure that conditions are in place for the enforceability of the existing linguistic provisions. In particular, the authorities should adopt the necessary regulations to allow the use of Frisian in relations with representations of central administrative authorities in the Province of Fryslân. The Advisory Committee notes that so far, this has not been done, despite the recommendations of the Committee of Experts of the Language Charter²² and it considers that this situation merits to be followed-up by national authorities.

69. The Advisory Committee is aware that there had been discussions on the possible inclusion in the Constitution of a provision stipulating that the Dutch language is the official language of the State. The Advisory Committee underlines that any future constitutional protection given to the Dutch language should be respectful of the right of persons belonging to national minorities to use their languages as prescribed by Articles 10 to 14 of the Framework Convention.

Article 11

70. The Advisory Committee notes that in accordance with the Municipalities Act, the name of a municipality may be changed by decision of the municipal council and the name chosen should be communicated to the national authorities and the Provincial executive. It further notes that such a name does not have to be supplemented by a Dutch version. Given the margin of appreciation left to the municipalities, the situation with regard to signs in Frisian varies in practice from one municipality to another. The Advisory Committee wishes to highlight that the display of signs visible to the public in the Frisian language, beyond the name of municipalities, may further contribute to enhancing the position of the language in the Province and it encourages the authorities to make use of the possibility they have to display such signs in the Frisian language, according to the demand and when the conditions of Article 11 of the Framework Convention are met.

²² See the 3rd Report on the application of the European Charter for Regional or Minority Languages by the Netherlands, adopted on 9 July 2008, ECRML (2008)3.

Articles 12 - 14

Fostering knowledge of culture and history of minorities

71. The Advisory Committee notes that Frisian history and culture is, to a large extent, incorporated into the general education programmes in the Netherlands but that there is no specific provision devoted to the teaching of Frisian history and culture in Dutch law. In practice, the Advisory Committee notes that some attention has been paid to strengthening cultural studies in primary education. The Advisory Committee wishes to highlight the positive contribution of Aftûk, an Institution for Frisian language learning, in organising special courses on Frisian history, although it is disappointing to note that the number of students has gradually decreased over years. It further notes that following the recommendations made in 2005 by the Committee for the Development of the Dutch Canon to develop regional canons, the Provincial authorities of Fryslân have taken steps to develop a canon of Frisian history and culture. This should in the long run allow for more Frisian autonomy in developing curricula (as well as defining attainment targets) and better reflect local needs, which is a positive development.

Frisian education at all levels

72. The Advisory Committee notes that in accordance with the Acts on Primary School and Secondary education,²³ Frisian language is a compulsory subject in primary schools and in the first level of secondary education. The teaching of Frisian language and culture is available at the University of Groningen.

73. Frisian may also be used as a language of instruction in pre-school, primary schools and secondary schools in the Province of Fryslân. However, the Advisory Committee notes that this is done only to a limited extent, especially in pre-schools and in secondary education. Textbooks in Frisian and for Frisian teaching are available in an increasing number of subjects. The Advisory Committee notes that attainment levels have been set for Frisian language but notes on the other hand that these have been lowered in 2005 as compared to Dutch attainment targets. It expects that the authorities ensure that such a measure does not have a negative impact on the position of Frisian in education.

74. The Advisory Committee notes that the amount of Frisian teaching is not subject to specific regulations. In primary schools, figures currently available indicate that there are about 30 to 45 minutes of classes of Frisian per week. Although this represents a slight increase as compared to previous years, this amount is still considered insufficient by Frisian associations and provincial authorities. The Advisory Committee was made aware by Frisian associations and Provincial authorities of the lack of common understanding with the national authorities of what constitutes an adequate amount of teaching in Frisian. It considers that the current amount of teaching in Frisian cannot be considered as “providing adequate conditions for receiving

²³ See Section 9 paragraph 4 of the Primary Education Act: « Schools in the Province of Fryslân shall also teach the Frisian language, unless they have been granted exemption by the Provincial Executive after a request of the competent authorities”.

Section 11 e of the Act on Secondary “Education Schools in the Province of Fryslân shall also provide education in the Frisian language and culture with due observance of the attainment targets laid down in that regard, unless they have been granted exemption by the Provincial Executive after a request of the competent authorities”.

instruction in their language” as foreseen in Article 14 paragraph 2 of the Framework Convention.²⁴ It therefore calls on the authorities to take into account the demands expressed by the Frisian minority in this respect and expects that a mutually acceptable solution that is in line with Article 14 paragraph 2 of the Framework Convention can be found.

75. The Advisory Committee notes that a model of trilingual education has been introduced in 23 primary schools with Dutch, Frisian and English used as a medium of instruction. The Advisory Committee welcomes the positive results achieved by these schools in terms of language learning. It notes that the Provincial authorities intend to increase the number of these schools to 50 in 2012. It also welcomes their intention to develop a policy on trilinguism with a view to strengthening the role of Frisian as a medium of instruction.

Teacher training

76. The Advisory Committee welcomes the fact that Frisian as a specific subject is available in the existing teacher training arrangements in order to provide teachers of Frisian with the necessary skills to teach in primary and secondary schools. Besides, additional training opportunities have been made available: these include language coordinators whose tasks include improving language teaching and in-service training and other courses organised by the organisation Atfûk.

77. However, the Advisory Committee notes from the 2006 Report of the Education Inspectorate quoted in the State Report, that 40% of the teachers of Frisian as a language in primary and secondary schools were not qualified for that subject. This insufficient number of qualified teachers is a recurrent concern among Frisian associations. The Advisory Committee is of the opinion that the authorities should look at ways to provide further incentives for primary and secondary school teachers to make use of the existing training arrangements in order to obtain qualifications in Frisian language teaching.

78. The Advisory Committee notes that teacher training in Frisian for pre-school education has not been regulated. The Dutch Government itself recognises that this is a shortcoming and the Covenant makes specific reference to the need to develop quality standards regarding the use of Frisian in playgroups and in childcare.²⁵ The Advisory Committee has not been informed of any development in this respect. Therefore, like the Committee of Experts of the European Charter for Regional or Minority Languages,²⁶ the Advisory Committee encourages the Dutch authorities to increase their efforts in order to fill the existing gaps regarding Frisian teacher training for pre-school teachers in Frisian.

Education Inspectorate

79. The Advisory Committee notes that the Education Inspectorate is responsible for supervising the educational policy throughout the country and advising the Ministry of

²⁴ See also the 3rd Report on the application of the European Charter for Regional or Minority Languages by the Netherlands, adopted on 9 July 2008, ECRML (2008)3, paragraph 92.

²⁵ See Chapter 1, paragraph 2.1 of the Covenant.

²⁶ See the 3rd Report on the application of the European Charter for Regional or Minority Languages by the Netherlands, adopted on 9 July 2008, ECRML (2008)3.

Education. It notes that there has been fluctuation with regard to the time allocated to the Inspectorate to supervise the teaching of Frisian in primary and secondary schools, which has generated dissatisfaction among Frisian representatives. In this context, the Advisory Committee welcomes the fact that the authorities have recently tackled this issue by allocating 250 hours per year for the Education Inspectorate to fulfill its task *vis-à-vis* the supervision of the teaching of Frisian. At the same time, the Advisory Committee understands from its dialogue with Frisian representatives that greater progress in this area could be made if the Inspectorate was given a specific mandate, which is lacking at present, regarding the teaching of minority languages. The Advisory Committee encourages the authorities to discuss this issue with the relevant organisations working for the promotion of Frisian language and culture with a view to enhancing the supervision made by the Education Inspectorate.

Article 15

Institutions and consultation mechanisms

80. The Advisory Committee notes that the Advisory Board (*Konsultatyf Orgaan*) was established in 1998 as the organ in charge of advising the Ministry of the Interior on Frisian culture and language. Its responsibilities include advising on issues relating to the implementation of the European Language Charter for Regional or Minority Languages and as from 2009, on the implementation of the Framework Convention. The Advisory Committee welcomes the fact that the Board has taken a proactive role in this respect, especially with regard to issues relating to teaching of and use of Frisian, albeit its recommendations have not always been given all due attention by central authorities.

81. In addition, the Advisory Committee notes that at the Provincial level, a Frisian Language Board has been set up to advise the Provincial Executive and conduct research in areas of interest to Frisian speakers.

82. While noting that there is, on the whole, a good and constructive co-operation between the national authorities and those of the Province of Fryslân, the Advisory Committee is disappointed to note that the national authorities have not provided the relevant advisory boards with adequate conditions to contribute to the State Report (see also under General Remarks above) and it is therefore of the opinion that there is scope for improvement in this respect.

83. The Advisory Committee refers to its comments under Article 6 regarding the consultation arrangements provided for ethnic groups (see paragraphs 38-41). In this respect, it wishes to reiterate that ensuring appropriate conditions for the effective participation of persons belonging to national minorities is crucial for enhancing social cohesion and laying the foundation of a genuinely pluralist society in which all segments of society are able to contribute.

Decentralisation

84. The Advisory Committee notes that Dutch legislation does not provide for any special administrative status to the Province of Fryslân as compared to the eleven other provinces of the Netherlands. However, discussions are currently taking place regarding possible changes to be introduced in this respect. The Advisory Committee takes note in particular of the fact that the Joint Committee for Provincial Decentralisation (the so-called Ladders Committee) appointed by

the Government in November 2007, recommended increased decentralisation of the competences of the central Government to the Province of Fryslân.²⁷ A steering committee with both State and Provincial representation, started to examine a possible devolution of powers from the central to the local authorities in the field of Frisian language and culture.

85. The Advisory Committee expects that the result of this work will further contribute to the preservation and development of Frisian language, culture and the media. It further recommends that whatever solution is found in this area, the respective competences between central and local levels be clearly defined in the legislation and that the financial implications of decentralisation are duly taken into account.²⁸

Article 16

Territorial divisions

86. The Advisory Committee notes that in parallel to the above-mentioned plan to increase the competences of the Province of Fryslân in a number of fields, a redrawing of municipal boundaries is being discussed. It expects that adequate consultations will be carried out with the persons concerned and that the resulting solution will duly take into account the principles contained in Article 16 of the Framework Convention.

Article 17

Cross-border contacts

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

Article 18

Bilateral co-operation in the field of protection of national minorities

88. The Advisory Committee welcomes the fact that there is good co-operation between organisations representing the Frisians living in the Netherlands and those representing the Frisians living in Germany and Denmark, notably through the Inter-Frisian Council. It notes that the Government takes the view that there is no need to adopt a treaty or any specific measures regarding inter-Frisian co-operation whereas organisations representing the Frisians with whom it had dialogue, consider that a specific treaty would be instrumental in enhancing this co-operation.

89. Against this background, the Advisory Committee encourages the authorities to engage discussions with these organisations, keeping in mind the useful role that such agreements can play in implementing the principles of Article 18 of the Framework Convention.

²⁷ Report on Freedom, Governance and Accountability (*Ruimte, Regie en Rekenschap*), March 2008

²⁸ See Commentary on the Effective Participation of Persons Belonging to National Minorities in Cultural, Social and Economic life and Public Affairs, adopted on 27 February 2008, paragraphs 133 to 137.

Article 19

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

IV. MAIN FINDINGS AND COMMENTS OF THE ADVISORY COMMITTEE

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

In respect of Article 3

92. The Advisory Committee *finds* that the position taken by the authorities with regard to the personal scope of application of the Framework Convention leads in practice to the exclusion of certain groups, notably the Roma and the Sinti. It *considers* that the Netherlands should reconsider their approach to the scope of application of the Framework Convention. In this context, it should establish an institutionalised dialogue with the groups concerned.

93. The Advisory Committee *finds* that the Netherlands does not collect information on the ethnic affiliation of persons through population censuses but that information on the ethnic composition of the population, although not based on the self-identification of the person concerned is available through the matching of information contained in various administrative registers. It *finds* that interest was expressed by Frisian representatives in collecting data on persons identifying themselves as Frisians and it *considers* that this should be further discussed with those who are supportive of collecting such data.

In respect of Article 4

94. The Advisory Committee *finds* that the Netherlands has a well developed legal and institutional framework to combat discrimination. It *considers* that the authorities should pursue their efforts in this field, including by ensuring that adequate funds are made available for the various anti-discrimination bodies set up to function effectively.

In respect of Article 5

95. The Advisory Committee *finds* that there is presently a shared responsibility between the province of Fryslân and central authorities regarding support to Frisian language and culture and *considers* that the current discussions on increased decentralisation of competences in this field should ensure that appropriate resources are allocated to the provincial authorities to carry out their tasks.

In respect of Article 6

96. The Advisory Committee *finds* that the Netherlands has a long tradition of tolerance and openness to the culture of others but considers that international and national events in the early 2000's that led policies to focus on the protection of Dutch national identity have resulted in an increased stigmatisation of minority communities, in particular persons belonging to the Muslim communities. It *considers* that the overall tone of the public discourse in the Netherlands and the new integration policy, with its particular focus on the preservation of the Dutch identity, are not conducive to the creation of a climate of mutual understanding between majority population and the ethnic minorities.

97. The Advisory Committee *finds* that the Roma and Sinti have been excluded from the national consultation structure (the National Ethnic Minority Consultative Committee (LOM)) on

the grounds that they do not meet the established criteria to be represented in this body. The Advisory Committee *considers* that the authorities should demonstrate an open and flexible approach to the criteria set and have a direct dialogue at national level with the Roma and Sinti to discuss their concerns and interests.

98. The Advisory Committee *finds* that Dutch legislation contains several provisions penalising incitement to hatred and discrimination and that specific instructions have been given to the Public Prosecutor service to request increasing sentencing in cases of racially-motivated offences. It *finds* nevertheless that very few cases have been brought to courts on such grounds and *considers* that the authorities should pursue their efforts to ensure that police and public prosecution implement better these provisions, including by improving the reporting and monitoring of hate crime.

99. The Advisory Committee *finds* that there is no comprehensive policy at present that would address the multiple causes of Roma and Sinti marginalisation in the Netherlands in a number of fields including housing, schooling and registration and it *considers* that the authorities should elaborate such a policy in consultation with the Roma and Sinti organisations.

100. The Advisory Committee *finds* that concerns have been raised by attempts to take measures targeting specific ethnic groups (namely the so-called Reference Index of Antilleans). It *considers* that any measures to be taken in future to address a situation of inequality fully respect the principles of the Framework Convention, in particular the principle of non-discrimination and the principle of free expression of a person's affiliation to a minority.

101. The Advisory Committee *finds* that the practice of racial profiling by the police is still widely reported and *considers* that the authorities should monitor such practices with a view to detect discriminatory implementation.

102. The Advisory Committee *finds* that measures have been taken to fight ethnic segregation in schools. It also *finds* that the current private arrangements made for minority languages teaching following the abolition in 2004 of classes of minority languages as part of the school curriculum have prompted difficulties, including in terms of supervision and considers that the consequences of this abolition should be evaluated.

In respect of Article 9

103. The Advisory Committee *finds* that Omrop Fryslân is the only one public broadcasting company broadcasting in Frisian and that the latter does not enjoy specific support from national authorities to fulfill its tasks although this has been compensated by the provincial authorities' financial commitment. In this context, it *considers* that current discussions on decentralisation should ensure that adequate conditions, including financial ones are maintained for Omrop Fryslân, to effectively fulfill its functions.

In respect of Article 10

104. The Advisory Committee *finds* that Dutch legislation provides for the use of Frisian in relations with administrative authorities and courts located in the Province of Fryslân. It *finds* that although the Provincial authorities have had a positive and creative role in encouraging persons to use Frisian in administrative and judicial authorities, Frisian is still used on a limited basis. It

considers that achieving an increased use of Frisian would benefit from a proactive attitude by national authorities. The Advisory Committee also *considers* that the authorities should adopt the necessary regulations to allow the use of Frisian in relations with representations of central administrative authorities in the Province of Fryslân.

In respect of Article 11

105. The Advisory Committee *finds* that municipalities are given a margin of appreciation with regard to displaying signs in Frisian. It *considers* that they should be encouraged to use the possibility they have to do so when the conditions of Article 11 are met with a view to reinforcing the position of Frisian in the Province of Fryslân.

In respect of Articles 12 - 14

106. The Advisory Committee *finds* that Frisian language is a compulsory subject in primary schools and in the first level of secondary education in Fryslân and *finds* that, in the absence of specific regulation, the definition of what constitutes an adequate amount of teaching in Frisian is subject to disagreement between the authorities and representatives of the Frisian minority. The Advisory Committee *considers* that the authorities should pay due attention to the demands expressed by the Frisian minority.

107. The Advisory Committee *finds* that a model of trilingual education (Dutch, Frisian and English) has been introduced in a number of primary schools and *considers* that the authorities should continue their support to trilingual schooling.

108. The Advisory Committee *finds* that arrangements have been made for Frisian language teacher training but that they are not sufficiently used and *considers* that the authorities should envisage further incentives for primary and secondary school teachers to use the arrangements made. It further *finds* that teacher training in Frisian for pre-schools has not been regulated yet and it *considers* that the authorities should address this shortcoming.

In respect of Article 15

109. The Advisory Committee *finds* that advisory boards have been set up to advise central and provincial authorities on issues of interest to the Frisians and that there is an overall good co-operation between the authorities and these bodies. It *considers* that in future, sufficient time should be given to these bodies in order to adequately contribute to the State Report under the Framework Convention.

110. The Advisory Committee *finds* that a steering committee with both State and Provincial representation launched work on a possible devolution of powers from central to local authorities in the field of Frisian language and culture. It *considers* that the outcome of this work should further contribute to the preservation and development of Frisian language and culture and that the respective competences at central and local levels should be clearly defined in legislation.

In respect of Article 16

111. The Advisory Committee *finds* that in parallel to plans for decentralisation, a redrawing of municipal boundaries is being discussed and it *considers* that adequate consultations should be held with the persons concerned.

In respect of Article 18

112. The Advisory Committee *finds* that there is good co-operation between organisations representing the Frisians living in the Netherlands and those representing the Frisians in Germany and Denmark and *finds* that interest was expressed by Frisian organisations to formalise such co-operation through the adoption of a treaty and it *considers* that the authorities should discuss further the issue with these organisations.

V. CONCLUDING REMARKS

113. Following the receipt of the initial State Report of the Netherlands on 16 July 2008 (due on 1st June 2006), the Advisory Committee commenced the examination of the State Report at its 33rd meeting on 6-8 October 2008. In the context of this examination, a delegation of the Advisory Committee visited the Netherlands from 25 to 27 February 2009, in order to seek further information on the implementation of the Framework Convention from representatives of the Government as well as from NGOs and other independent sources. The Advisory Committee adopted its Opinion on the Netherlands at its 35th meeting on 25 June 2009.

114. The Advisory Committee considers that the Netherlands has made commendable efforts with respect to the implementation of the Framework Convention to the Frisians living in Fryslân. Measures have been taken to facilitate the use of Frisian in relations with the administration and the judiciary, teaching of Frisian is available in primary and secondary schools and instruction in Frisian is slightly increasing. Further efforts are however needed in terms of teacher training, supervision of Frisian teaching and the amount of teaching in Frisian needs to be further discussed with Frisian representatives in order to adequately meet their demands. A possible devolution of powers from the central to the local authorities is currently being discussed and it is expected that reforms in this area will result in enhancing the preservation and development of Frisian language and culture.

115. The Advisory Committee finds that the personal scope of application which is presently limited to the Frisians, has not been satisfactorily addressed by the authorities. The Roma and Sinti, many of whom have long ties with the Netherlands have been excluded from the protection of the Framework Convention. In addition, they have been left out from any institutionalised and direct dialogue with the national authorities and measures to address their socio-economic and educational situation have not been adopted at national level.

116. The Advisory Committee welcomes the comprehensive legal and institutional measures taken by the Dutch authorities both at national and local levels to combat discrimination. At the same time, it considers that the overall tone of the public discourse in the Netherlands and the new integration policy, with its particular focus on the preservation of the Dutch identity, have had negative consequences to the preservation of a climate of mutual understanding between the majority population and the ethnic minorities.