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

### **Second Opinion on Ukraine adopted on 30 May 2008**

#### **EXECUTIVE SUMMARY**

Since the adoption of the Advisory Committee's first Opinion in March 2002, some steps have been taken by the Ukrainian authorities to bring about legislative reforms pertaining to minority protection, with limited results to date. Ukraine continues to provide state funding for cultural initiatives of national minorities in various fields. Efforts have also been made to promote inter-cultural dialogue and reinforce the general climate of tolerance. Some commendable measures have been taken by the authorities to address the needs of persons belonging to the formerly deported peoples, such as the granting of Ukrainian citizenship.

A number of problems continue to hamper the implementation of some provisions of the Framework Convention. Language quotas to promote the use of the State language in radio and television broadcasting have had an adverse effect on programmes in minority languages. The threshold of such quotas and their possible application to private broadcasters raises issues of compatibility with the Framework Convention. In the area of cinematography, recent language restrictions have been imposed and may have a disproportionate effect on the production and broadcasting of films in minority languages.

The Advisory Committee noted with concern that final examinations in secondary education and entrance examination to higher education institutions will have to be conducted in Ukrainian only. This reform will also apply to students who have studied in schools with minority language instruction. There remains a lack of qualified teachers and textbooks in minority languages. Increased attention should also be paid to ensure equal access of persons belonging to the Roma minority to quality education.

The various reforms promoting the use of the State language, although warranted, may lead to undue limitations of the rights and opportunities of persons belonging to national minorities. It is therefore essential that their effects be carefully considered.

No comprehensive anti-discrimination legislation has yet been developed and there remains a lack of reliable statistics in this field. There is continuous reluctance to introduce special measures as a means to achieve full and effective equality of persons belonging to disadvantaged minorities.

There has been an alarming increase in the number of racially-motivated crimes in recent years and more efforts should be made by the authorities to investigate and prosecute their perpetrators. Inter-ethnic tensions have also increased in Crimea.

The new electoral system of 2004 significantly reduced possibilities for persons belonging to national minorities to be represented in elected bodies. Although the Council of All-Ukrainian associations of national minorities now enjoys stronger independence, there is scope for improvement in the overall consultation process of national minorities on issues affecting them. More efforts should be made to provide for effective consultation of Roma organisations.

Problems relating to land claims by the Crimean Tatars persist. Compensation received is often inadequate and no legal norms on property and land restitution have been adopted so far.

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

**SECOND OPINION ON UKRAINE**

1. The Advisory Committee adopted the present Opinion on 30 May 2008 in accordance with Article 26 (1) of the Framework Convention and Rule 23 of Resolution (97) 10 of the Committee of Ministers. The findings are based on information contained in the second State Report (hereinafter the State Report), received on 8 June 2006, and other written sources and on information obtained by the Advisory Committee from governmental and non-governmental contacts during its visit to Kyiv and Simferopol from 6 to 10 April 2008.
2. Section I below contains the Advisory Committee's main findings on key issues pertaining to the implementation of the Framework Convention in Ukraine. These findings reflect the more detailed article-by-article findings contained in Section II, which covers those provisions of the Framework Convention on which the Advisory Committee has substantive issues to raise.
3. Both sections make extensive reference to the follow-up given to the findings of the first cycle of monitoring of the Framework Convention, contained in the Advisory Committee's first Opinion on Ukraine, adopted on 1 March 2002, and in the Committee of Ministers' corresponding Resolution, adopted on 5 February 2003.
4. The concluding remarks, contained in Section III, could serve as the basis for the Committee of Ministers' forthcoming conclusions and recommendations on Ukraine.
5. The Advisory Committee looks forward to continuing its dialogue with the authorities of Ukraine as well as with representatives of national minorities and others involved in the implementation of the Framework Convention. In order to promote an inclusive and transparent process, the Advisory Committee strongly encourages the authorities to make the present Opinion public upon its receipt.

## **I. MAIN FINDINGS**

### **Monitoring process**

6. Ukraine has adopted a positive approach to the Framework Convention's monitoring process. In September 2003, the authorities organised a follow-up seminar in Kyiv with representatives of the national minorities and the Advisory Committee, to discuss ways of putting in practice the findings of the first monitoring cycle. The first Opinion of the Advisory Committee and the subsequent Resolution of the Committee of Ministers have been translated into Ukrainian.

7. The Advisory Committee regrets, however, that the State Report was submitted with a two-year delay. Furthermore, civil society and NGOs, including those participating in the Council of representatives of all-Ukrainian public minority associations, have reportedly only been consulted on the second State Report of Ukraine to a limited extent. As a result, there is little awareness of the existence and content of the second State Report, including within the authorities themselves. The authorities have committed themselves to engage in a wider consultation exercise on the Draft Concept of State Ethnic Policy, which is currently under examination by the Cabinet of Ministers. The Advisory Committee hopes that further preparatory stages of this Draft Concept will result in effective involvement of national minority organisations, which the authorities could draw on in forthcoming monitoring cycles under the Framework Convention.

8. Information provided in the second State Report submitted by Ukraine is mainly focused on the legislative framework and no systematic information was provided to the specific questionnaire that the Advisory Committee appended to the Outline for second state reports. The work of the Advisory Committee would have benefited from more comprehensive and updated information in respect of the various articles of the Framework Convention, as well as precise replies to its questionnaire. Furthermore, repeated changes in the allocation of responsibilities for minority issues within governmental structures have, at times, complicated efforts by national minorities to engage in the monitoring process and the dialogue it entails.

### **Institutional and legislative framework**

9. There have been no major developments in the legislation concerning national minorities since the first Opinion of the Advisory Committee, with the exception of the adoption of regulations restricting the use of minority languages in the field of education as well as in radio and television broadcasting. The need to adapt the national legislation in accordance with relevant international norms, including the Framework Convention, has been widely recognised for a long time in Ukraine. The authorities have repeatedly pledged to carry out the necessary reforms, including in the framework of their Action Plan for the implementation of their obligations resulting from Ukraine's membership of the Council of Europe. The current legislative framework protecting persons belonging to national minorities is indeed outdated, lacks coherence and contains a number of shortcomings. A number of key laws, such as the 1992 Law on National Minorities and the 1989 Law on Languages, no longer suit the reality of today's Ukraine and their inter-relations lack clarity.

10. Efforts have recently been resumed to prepare a Draft Concept for State Ethnic Policy, which is due to be examined soon by the Parliament (*Verkhovna Rada*). The Advisory Committee welcomes that this Draft Concept contains a number of key principles which could help national minorities to preserve and develop their identity, as well as stimulate inter-ethnic dialogue and promote mutual respect among all components of the population of Ukraine. It is essential that its forthcoming adoption be promptly followed by amendments to the 1992 Law on National Minorities, without weakening the existing level of protection and with full respect for the relevant international standards.

11. The Advisory Committee is concerned that efforts to promote and encourage a wider use of the State language in all fields of public life do not seem to have been adequately coordinated with the preparation of the Draft Concept for State Ethnic Policy. For example, isolated reforms in the field of education and media have recently been carried out without striking the overall balance between the legitimate aim to promote the use of the State language in various spheres of life and the necessity to provide for the use of minority languages in private and in public. The Advisory Committee is of the opinion that failure to proceed with sectoral reforms in accordance with a comprehensive and agreed vision can generate confusion and lack of ownership of the reforms among those concerned.

12. Concerns have been raised by some representatives of the Russian minority that the use of the Russian language is being unduly restricted. It is important that policies to promote the use of the State language do not disproportionately restrict the use of minority languages, including Russian.

### **Equality and protection against discrimination**

13. The way in which the principle of equality is interpreted in Ukraine continues to pose problems. Regrettably, Article 24 of the Constitution providing for no privileges based on ethnic origin, is still being used by several authorities as the main argument against the introduction of special measures for the benefit of persons belonging to national minorities. Special measures must in fact not be considered an act of discrimination, but rather a means to achieve full and effective equality for persons belonging to the most disadvantaged minority groups, such as Crimean Tatars and Roma.

14. A detailed and comprehensive civil and/or administrative legislation pertaining to discrimination remains to be developed in Ukraine. There is a lack of clarity in the existing laws as regards certain terms relating to discrimination, such as the absence of a civil or administrative definition of direct and indirect discrimination. There appears to be no collection of statistical data on the number and nature of cases of discrimination registered by courts and other complaint mechanisms. Such data should be collected on a regular basis to facilitate the evaluation of the effectiveness of the legislative and institutional mechanisms put in place, including with regard to the protection of minorities and disadvantaged groups.

15. Particular difficulties in ensuring full and effective equality with respect to Crimean Tatars and Roma, who are facing social and economic difficulties, continue to be reported. For example, it is difficult for some Roma to obtain official documents, such as birth certificates and other identity documents, which may hamper their access to social and health services, as well as to the labour market. Against this background, the Ukrainian authorities should take more resolute measures to assess, monitor and combat discrimination against persons belonging to disadvantaged minorities in such fields as employment, access to housing, social and health services. Given the needs of the Roma, these measures should

preferably be designed in the framework of a comprehensive Roma Strategy at the national level, which could draw on the experience from Roma Action Plans carried out at the regional level.

### **Inter-ethnic Relations**

16. The Advisory Committee welcomes the efforts made by the Ukrainian authorities to promote good inter-ethnic relations. It is positive that the current Draft Concept on State Ethnic Policy provides for a number of measures conducive to strengthening inter-cultural and inter-ethnic dialogue. Despite the general climate of tolerance prevailing in Ukraine, discussions surrounding the development of a national linguistic policy have recently led to increased inter-ethnic tensions. It is therefore particularly important that care be taken to address language issues in a balanced way, so as to overcome existing antagonisms rather than reinforce them.

17. There is reason for deep concern about the reported increase, since 2004, of inter-ethnic tensions between Crimean Tatars and Russians living in Crimea, a problem often having land issues as a source. The authorities should pay increased attention to this phenomenon. Measures aimed at fighting stereotypes, and raising awareness among the general population of the importance of tolerance and respect for diversity, should be strengthened.

18. An alarming increase in racist attacks, but also manifestations of anti-Semitism and islamophobia, have been reported in Ukraine in recent years. These actions are targeted at asylum seekers, refugees, immigrants or foreign students belonging to visible minority groups, as well as against persons belonging to some national minorities, such as Crimean Tatars. Although some laudable initiatives have been taken to combat these acts in the framework of an Action Plan on Countering Racism adopted by the Ministry of Interior in 2007, the Advisory Committee regrets that certain authorities are still reluctant to acknowledge the extent of racially-motivated violence in Ukraine. Against this background, it is essential to clarify and strengthen legislative provisions concerning racist crimes. It is also important to increase the vigour with which crimes motivated by racial, ethnic or religious hatred are investigated and prosecuted and to intensify existing awareness-raising measures among law-enforcement officers, prosecutors and judges.

### **Support for minority cultures**

19. Ukraine has continued to provide state funding for cultural initiatives of national minorities in various fields. The authorities have started to improve openness, transparency and participation in the process leading to the allocation of financial support and should continue their efforts in this respect. Representatives of the Council of All-Ukrainian public associations of national minorities indeed consider that their views are not sufficiently taken into account in this process. There has been no progress concerning the further development of the notion of cultural autonomy for national minorities.

20. Representatives of some national minorities deplore that the authorities provide no assistance to enable them to maintain and renovate some of their cultural monuments and old cemeteries, which deteriorate considerably over time and are sometimes vandalised. This problem should be addressed more decisively by the authorities.

## **Media**

21. Language quotas to promote the use of the State language in radio and television broadcasting continue to pose problems. Although it is positive that specific language-related quotas are no longer left to the sole discretion of the National Television and Radio Council, the threshold chosen, and the possibility to apply it to private operators, raises issues of compatibility with the Framework Convention. Representatives of several national minorities have indeed indicated that the imposition of quotas was making it extremely difficult to obtain a license for broadcasting programmes in minority languages, including at the regional level. The Advisory Committee takes the view that measures to promote the use of the state language should rather be principally pursued through incentive-based, voluntary methods since the imposition of rigid translation or dubbing requirements cause undue difficulties for persons belonging to national minorities.

22. In the field of cinematography, there is reason for concern that the requirement to dub, post-synchronise or sub-title every foreign film into Ukrainian may prove disproportionate for those films which are produced in Russian and in other minority languages, bearing in mind that the notion of “film distribution” not only covers the showing of films in special premises like cinemas, but also Television broadcasting channels.

## **National minorities and education**

23. The share of instruction in the Ukrainian language has continued to increase at all levels of education while, in particular, the share of instruction in Russian language teaching has decreased. In the absence of a thorough discussion with representatives of national minorities, the Ministry of Education decided, in December 2007, that all final examinations in secondary education and entrance examination to higher education institutes would be conducted in Ukrainian only, even for those students who complete their curricula in educational institutions with minority languages. While agreeing that a reform of the system of language education is warranted, the Advisory Committee emphasises that the reform should not result in undue limitations of the rights of persons belonging to national minorities under Article 14 of the Framework Convention. Given the lack of coordination which has characterised certain sectoral reforms in this field, it is essential that authorities start a broader reflection on the role and place of minority language teaching in the overall educational system and in the light of ongoing reforms intended to strengthen the State language.

24. According to information from representatives of national minorities, local authorities sometimes show a lack of support for minority language education. For example, Ukrainian classes have reportedly been opened in certain schools with minority language instruction and some local authorities continue to object to the introduction of bilingual education in certain regions. There is, therefore, a need to provide clearer legal guarantees for the right of persons belonging to national minorities to receive instruction in their language when certain conditions are met, in particular when there is sufficient demand as provided for by Article 14, paragraph 2 of the Framework Convention. Also, there remains a lack of qualified teachers for teaching in minority languages and this argument is sometimes used by some authorities to discourage the opening or maintenance of educational institutions with minority languages. The lack of quality textbooks continues to be an issue of deep concern for several national minorities, such as the Romanians, the Moldovans and the Crimean Tatars.



25. Further efforts should be made to encourage the attendance of Roma children in pre-school education and to address more decisively the existence of schools and/or classes of a much lower quality attended by Roma children exclusively.

### **Participation in public affairs**

26. Amendments to the electoral legislation in 2004 have had an adverse impact on the representation of national minorities in Parliament and other elected bodies at the regional level. The introduction of an election system of pure proportional representation, replacing the previous mixed system, has reportedly made it extremely difficult for national minorities to have deputies elected in a single, nationwide constituency.

27. It is positive that the Council of representatives of all-Ukrainians public minority associations, which operates as a consultative body to the State Committee for Nationalities and Religions, has recently resumed its work and now enjoys stronger independence. There is, however, scope for improvement in the interaction between the Council and the State Committee and efforts should be made to ensure more effective consultation of all national minorities on issues pertaining to minority protection. A more inclusive participation of Roma organisations should be ensured in the work of the Council, as well as in the context of *ad hoc* consultations by the authorities.

28. A number of commendable measures have been taken by the authorities to address the needs of formerly deported peoples<sup>1</sup> in relation to their return. Nevertheless, problems relating to access to land by the Crimean Tatars have largely remained unsolved in Crimea. Compensation received is reportedly often inadequate and land allocated of lower quality. The Advisory Committee is concerned that no legal norms concerning restitution of property have been adopted so far. A Draft Law on the Rights of Deported Persons has been prepared and should hopefully constitute a legal basis facilitating the process of land restitution. It is essential that such legislation be developed in consultation with those concerned and take into account relevant international norms.

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<sup>1</sup> This expression is not legally defined in Ukraine but embraces those peoples which have in the past been collectively expelled from Ukraine for their alleged guilt of “co-operation with the enemy”. The 2008 Draft Law on the Restoration of the Rights of Persons Deported on the Grounds of their Nationality does not contain a list of the peoples potentially concerned and addresses “deported persons”.

## II. ARTICLE-BY-ARTICLE FINDINGS

### Article 1 of the Framework Convention

#### Protection of the Rights and Freedoms of Persons belonging to National Minorities Ratification of the European Charter for Regional or Minority Languages

##### *Present situation*

29. Ukraine ratified the European Charter for Regional or Minority Languages in September 2005 and this treaty entered into force in respect of this country on 1 January 2006. In its Declaration contained in the instrument of ratification, Ukraine declared that the provisions of the Charter shall apply to the languages of the following ethnic minorities: Byelorussian, Bulgarian, Gagauz, Greek, Jewish, Crimean Tatar, Moldavian, German, Polish, Russian, Romanian, Slovak and Hungarian.

30. As was acknowledged by several representatives of the authorities during its visit to Ukraine, languages of numerically smaller national minorities were unfortunately left out from the scope of the aforementioned Declaration, although they need strong protective measures since they are under threat of extinction. The Advisory Committee was therefore pleased to learn that the Government is now preparing an amendment to the law on ratification of the Charter, with a view to covering also the Armenian, Romani, Krimchak and Karaim languages.

### Article 3 of the Framework Convention

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

##### *Findings of the first cycle*

31. In its first Opinion, the Advisory Committee noted that Ukraine had not established a list of national minorities and that the authorities seemed to consider that the 130 “nationalities” living in Ukraine were covered by the Framework Convention. It also noted that the authorities were using the term “ethno-graphic (sub-ethnic) groups of the Ukraine people” to describe *inter alia* Boikos, Hutsuls and Ruthenians (Rusyns), without however indicating whether these groups were protected by the Framework Convention.

32. The Advisory Committee also underlined that certain legislation pertaining to national minorities, notably the 1992 Law on National Minorities, only applied to citizens of Ukraine, a state of affairs which was likely to have a negative effect on certain groups such as the formerly deported peoples.

##### *Present situation*

##### *a) Positive developments*

33. The authorities have made it clear that they consider persons belonging to the 130 “nationalities” arising out of the census, protected by the Framework Convention. As a matter of principle, the Advisory Committee welcomes this inclusive approach, provided the groups concerned enjoy effective protection as national minorities.

34. The Advisory Committee welcomes that the overwhelming majority of persons belonging to national minorities and especially to the formerly deported peoples are now Ukrainian citizens and thus benefit from all the rights provided for in the relevant legislation.

35. The State Report indicates that the authorities have approved a programme of action up until 2009 to promote the preservation and revival of the cultural heritage and national traditions of the Boikos, Hutsuls and Lemks, which are considered “ethno-graphic groups” by the authorities.

*b) Outstanding issues*

36. The Advisory Committee notes that the more than 130 “nationalities” that have emerged from the population census and previous classifications may include some confusion regarding the exact meaning of “nationality” as ethnic origin, or originating from a national geographical unit, or citizenship. In view of the inclusive approach taken by the Ukrainian authorities that all these groups are covered by the Framework Convention, the Advisory Committee calls attention to the important fact that the groups concerned are not just incidentally labelled as national minorities, but can also enjoy effective support including through positive measures if they express the wish to preserve, as a group, the essential elements of their identity.

37. The authorities have reaffirmed that ethno-graphic groups are not distinct from the Ukrainian “nation” and that, consequently, those claiming to belong to these groups could not be given protection under the Framework Convention. Although more than 10,000 persons declared themselves Ruthenians in the 2001 census, the authorities insist that their claims are essentially political in nature and at times linked with separatist claims. Against this background, the Advisory Committee reasserts that the authorities should take due account of the right to self-identification and acknowledge the right of people to voice their concerns in a peaceful manner, regardless of possible conflicting views on the classification of the group in question.

38. The Constitution of Ukraine and other key legislative provisions relevant to persons belonging to national minorities continue to refer to “citizens” as subjects of rights and freedoms (see related comments under Article 6, below). Article 26 of the Constitution provides, however, that foreigners and stateless persons who are in Ukraine on legal grounds enjoy the same rights and freedoms and also bear the same duties as citizens of Ukraine. The Advisory Committee expresses the wish that Article 26 is consistently applied in practice, so that the formal restriction of the rights to citizens only, has no impact on the implementation of the principles of the Framework Convention with respect to persons belonging to national minorities.

*Recommendations*

39. The Advisory Committee encourages Ukraine to pursue further its inclusive approach with regard to the implementation of the Framework Convention while taking care to ascertain the needs expressed by the national minorities concerned. In this regard, the Advisory Committee notes that State Parties should promote mutual respect and understanding and co-operation among all persons living on their territory.

40. The authorities should develop an improved dialogue with the Ruthenians and the so called “ethno-graphic (sub-ethnic) groups”, which could cover also issues pertaining to the implementation of the Framework Convention, with a view to better taking into account their cultural and other needs.

41. The Advisory Committee encourages the authorities to reflect their inclusive approach with regard to the scope of application of the Framework Convention in any new legislation on national minorities. The authorities are also invited to revisit in their on-going legislative work the systematic restriction of rights and freedoms to citizens only.

### **Data collection and self-identification**

#### *Findings of the first cycle*

42. In its first Opinion, the Advisory Committee noted that the questionnaire on the basis of which the 2001 census had been conducted, contained a mandatory question on individuals’ “nationality/ethnic origin” and recalled that answering such a question should be optional. It also noted that there had been extensive debate on the inter-relation between the Romanian and the Moldovan identities and stressed the need to approach this issue with full respect to the principles contained in Article 3 of the Framework Convention.

43. The Advisory Committee expressed deep concern at the collection of information on persons’ ethnicity by law-enforcement officials without a clear legal basis and the consent of the persons concerned.

#### *Present situation*

##### *a) Positive developments*

44. A general census of the population was carried out in December 2001 and the findings have since been made public.<sup>2</sup> The census results show that, in addition to the great majority of ethnic Russians,<sup>3</sup> 14% of ethnic Ukrainians indicated that their mother tongue was Russian, as did a significant proportion of persons belonging to several national minorities. Amongst some ethnic Russians in Ukraine, there is a certain reluctance to accept as applicable to themselves the term “national minority” and Crimean Tatars see themselves mainly as an “indigenous people”,<sup>4</sup> but the Advisory Committee notes that this has not negatively affected the census results. Notwithstanding the discussion around their status, the Advisory Committee recalls that Crimean Tatars are entitled to claim protection of their rights under the Framework Convention. These factors need, however, to be taken into account when the authorities take measures to implement the Framework Convention, notably where language rights are at stake: indeed any measure affecting the Russian language in Ukraine has clearly wider implications than the protection of the language of the Russian national minority.

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<sup>2</sup> According to the 2001 census results, 22.2% of the population of Ukraine belong to « nationalities » other than Ukrainian (27.3% in the 1989 census). The numerically largest of these are Russians (8,334,000), Byelorussians (275,000), Moldovans (258,000), Crimean Tatars (248,000), Bulgarians (204,000), Hungarians (156,000), Romanians (151,000), Poles (144,000), Jews (103,000), Armenians (99,000) and Greek (91,000).

<sup>3</sup> 95% of ethnic Russians indicated that Russian was their mother tongue.

<sup>4</sup> The expression “indigenous peoples”, however, is not an exact translation of the Ukrainian term “??????”, which has led to ongoing discussions in Ukraine on the exact scope of this term.

45. The Advisory Committee notes that the next population census, due to take place in 2011, is expected to include a question on the national/ethnic origin, which should be open, as well as a question on the mother tongue, although the formulation of the latter is expected to be changed as compared to the last census (see related comments under paragraphs 49, 52 and 53, below). The Advisory Committee is pleased to note that the State Committee for Statistics is ready to consider extending the list of minority languages into which the census forms could be translated, especially in rural areas where the local population has sometimes limited knowledge of Ukrainian. It is also positive that the State Committee for Statistics intends to recruit census enumerators with a good command of minority languages in the regions with a compact proportion of persons belonging to national minorities.

*b) Outstanding issues*

46. The Advisory Committee received information that the practice to collect “operational statistics” pertaining to criminal acts related to specific national minorities had not been completely abandoned, notably in the case of Roma who are allegedly still subject to fingerprinting and recording for data bases of criminal suspects without a clear legal basis and without their consent. The authorities have repeatedly stressed that no personal data of an ethnic nature is collected by law-enforcement officials and other authorities without the consent of the persons concerned.

47. The Advisory Committee notes that some controversy continues to exist in Ukraine on the relation between the Romanian and Moldovan identities, including disagreements among some representatives of the Moldovan and Romanian minorities. This controversy may be more acute in some regions than others. In the Chernivtsi *oblast*, however, information made available to the Advisory Committee suggests that no pressure was exercised at the local level to encourage those concerned to affiliate with one minority or the other during the 2001 census. The central authorities have, on their part, repeatedly emphasised that due attention is taken to show no preference for one or the other identity claim, including in the context of the census.

48. With some notable exceptions,<sup>5</sup> the census figures show a marked decrease, since the previous census (1989), in the number of persons declaring an ethnic origin other than that of the majority.<sup>6</sup> While there may be various reasons explaining this decrease, it is important that the authorities endeavour to obtain a clearer picture of evolving demographic and other relevant trends concerning the number of persons belonging to national minorities, including at the regional level. The preparation of the 2011 census is of central importance in this respect, but selected surveys conducted by the State Committee on Statistics could also be instrumental, provided they include questions linked to the national/ethnic and linguistic affiliation and respect the principles of data protection, including the confidentiality of the respondent’s information. To date, however, focused and ordinary surveys conducted have not included such questions. Additional statistical data on persons belonging to national minorities would also be welcomed by those representatives of national minorities who underline that there has been a lack of precise data in this field since the removal of the ethnic identity on personal documents.

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<sup>5</sup> This is in particular the case for the Romanians, Armenians, Azerbaijanis and Georgians. This is also the case for the Crimean Tatars, who started to return to Ukraine after the 1989 census.

<sup>6</sup> This is in particular the case for the Russians, Byelorussians, Moldovans, Bulgarians, Poles and Jews.

49. A new Law on Census is due to be adopted in the near future. It should *inter alia* govern the questions posed as well as the modalities pertaining to the organisation of the 2011 census. While welcoming that the authorities have committed themselves to follow the principles and recommendations issued by EUROSTAT and the United Nations for the organisation of population and housing censuses, the Advisory Committee is concerned that the question on individuals' "nationality/ethnic origin" is expected to be mandatory. The Advisory Committee recalls that such a question should be optional to be fully compatible with Article 3 of the Framework Convention and the principles of voluntary self-identification. No question on religion is currently foreseen in the 2011 census, even though answers to such a question might give useful information also from the perspective of persons belonging to national minorities.

50. During its visit to Ukraine, the Advisory Committee was told that some local authorities were continuing to ask persons who change their residence to complete certain administrative forms with a mention of the ethnic belonging, without informing the persons concerned that such data can only be collected on a voluntary basis.

#### *Recommendations*

51. Ukraine should ensure that the practice to collect "operational statistics" pertaining to criminal acts related to specific national minorities is no longer followed.

52. The Advisory Committee encourages the authorities to conduct awareness-raising campaigns ahead of the 2011 population census to ensure free and informed choice by persons belonging to national minorities with regard to the declaration of their ethnic identity.

53. Minority representatives should be consulted on the questions regarding ethnic/national origin, language and possibly religion during the preparatory phase of the census and any question on ethnic/national origin should be optional and open-ended. The Advisory Committee also encourages the authorities to consider translating the census questionnaire into minority languages and to recruit enumerators with appropriate command of the respective minority languages.

54. Consideration should be given to conducting selected surveys which include questions linked to the national/ethnic or linguistic affiliation with full respect for the principles of data protection, including the confidentiality and the prior consent of the respondents. Ukraine should ensure that no ethnic data focusing on certain national minorities is collected by law-enforcement bodies without adequate legal safeguards and without respect for the voluntary identification by the persons concerned.

55. Ukraine should ensure that there are no attempts to indicate preference for one or the other identity on persons claiming to belong to the Moldovan minority and persons claiming to belong to the Romanian minority. Ukraine should continue to recognise both identities concerned on an equal footing.

### **Legislative framework protecting national minorities**

#### *Findings of the first cycle*

56. In its first Opinion, the Advisory Committee underlined that the existing legislation pertaining to national minorities contained some limitations and noted that there were plans to adopt new legislative provisions, including on languages.

*Present situation*

*a) Positive developments*

57. The Advisory Committee welcomes that according to Presidential Decree 39/2006 of 20 January 2006 on the Action Plan for the implementation of the obligations of Ukraine resulting from its membership of the Council of Europe, the need to adapt the national legislation in accordance with the relevant international legal instruments, including the Framework Convention, has been explicitly acknowledged. The State Report also expressed a commitment to take into account the findings of the first monitoring cycle and the recommendations issued by the Venice Commission<sup>7</sup> when bringing the national legislation in line with relevant international standards.

58. A working group was established in April 2006 under the Ministry of Justice to start preparing a Draft Concept for State Ethnic Policy, with the participation of experts and some representatives of associations of national minorities. In March 2008, this Draft Concept was transmitted to the Cabinet of Ministers for consideration with a view to be adopted and subsequently transmitted to the Parliament. It is foreseen that following the adoption of the Draft Concept for State Ethnic Policy, amendments to the 1992 Law on National Minorities will be submitted by the Government to the Parliament for consideration and adoption. The Draft Concept contains a number of key principles which could help national minorities to preserve and develop their identity, as well as stimulate inter-ethnic dialogue and promote mutual respect among all components of the population of Ukraine.

59. Article 6 of the Draft Concept reiterates in particular the right to use minority languages in private and in public, including in relation with the authorities, which is positive. This right is, however, not unconditional and can be implemented only to the extent that this does not harm the further use and development of the State language. Provision is also made for a stronger coordination of the State policy in this field by an authority which remains to be determined. The Draft Concept also provides details on the means and funds which should make it possible to implement this State policy. A specific provision is devoted to the rights of formerly deported peoples and a commitment to design specific programmes to facilitate their socio-economic integration is included in the Draft Concept.

60. The Advisory Committee was also made aware that there have been attempts to develop a state language policy, including by the Presidency (see related comments under Article 10, below). In this context, the Advisory Committee wishes to recall that it is fully cognisant of the particular historical and other circumstances which led to a dramatic decrease of the use of the Ukrainian language prior to the independence of the country. The role of the Ukrainian language in the development of the Ukrainian national identity is therefore of particular importance in today's Ukraine. At the same time this objective needs to be balanced with the need to preserve the identity of persons belonging to national minorities.

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<sup>7</sup> See Opinion on the latest version of the Draft Law amending the Law on National Minorities, 18-19 June 2004 (CDL-AD(2004)022; Opinion on two Draft Laws amending the Law on National Minorities in Ukraine, 12-13 March 2004 (CDL-AD(2004)013; Opinion on the Draft Law on the Status of Indigeneous Peoples of Ukraine, 8-9 October 2004 (CDL-AD(2004)036; Opinion on the Draft Law on the Conception of the State Ethnic Policy of Ukraine, 18-19 June 2004, CDL-AD(2004)021.

*b) Outstanding issues*

61. There is a pressing need to update and complete the relevant legal and institutional framework concerning the protection of national minorities. It is outdated, lacks coherence and contains a number of shortcomings. A number of key laws, such as the 1992 Law on National Minorities and the 1989 Law on Languages no longer suit the reality of today's Ukraine. The inter-relation between these two laws lacks clarity and the Advisory Committee already identified a number of related shortcomings in the first monitoring cycle (see comments under Article 10, below). Furthermore, there are some contradictory views as to the validity of certain provisions of these laws, which add to the current legal uncertainty.<sup>8</sup> There is persisting confusion about the term "indigenous peoples" which is mentioned in Article 11 of the Constitution but it is neither defined nor regulated.

62. In spite of the generally recognised need to review the overall legal framework to bring it in line with the relevant international instruments, the corresponding reforms have been pending for quite a few years now and a number of different draft laws have in the meantime been presented to the Parliament, particularly on language issues. The resulting uncertainty on the direction of upcoming legislation and policy makes it particularly difficult, including for national minorities, to get a clear picture of the main principles which will underpin these reforms.

63. The Advisory Committee finds it particularly striking that efforts to promote and encourage a wider use of the State language in all fields of public life, including through the development of a Concept for the State language and the creation of a central state body to deal with national linguistic policy, do not seem to have been adequately coordinated with the preparation of the Draft Concept for State Ethnic Policy. Article 6 of the Draft Concept for State Ethnic Policy, which lists the main elements of the ethno-national policy to be developed by the State, could provide a useful basis to encourage a public debate with a view to striking the right balance between the promotion of the State language and the right to use minority languages in private and in public. The Advisory Committee understands that a wider public discussion is still due to start on this crucial question especially once the Parliament examines the Draft Concept. In the meantime, there have been isolated reforms, including in the field of education and media which have not been coordinated with the preparation of the Draft Concept and the ensuing planned reform of the Law on National Minorities (see related comments under Articles 9 and 10 below). The Advisory Committee is of the opinion that failure to proceed with sectoral reforms in accordance with a comprehensive and agreed vision can generate confusion and lack of ownership of the reforms among those concerned.

*Recommendations*

64. The Ukrainian authorities should accept the recommendation of the Ombudsman and facilitate a wider public debate on the Draft Concept for State Ethnic Policy in close co-operation with representatives of national minorities.

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<sup>8</sup> This legal uncertainty is notably due to the fact that the use of languages in different spheres is at present determined by the 1989 Law of the Ukrainian Soviet Socialistic Republic "On Languages in the Ukrainian SSR", which is *in force in the part that does not contradict the Constitution of Ukraine, according to paragraph 1 of chapter XV "Transitional provisions" of the Constitution of Ukraine* (emphasis added). The same formulation applies to the 1992 Law on National Minorities in Ukraine.



65. Legislative reforms regarding, in particular, the Law on National Minorities and the Law on Languages should be developed in a coherent way, without regressing from the existing level of protection and with full respect for the relevant international standards. In this context, the right balance must be struck between the legitimate aim to promote the use of the State language in various spheres of life and the necessity to provide for the use of minority languages in private and in public, as provided for by the Framework Convention.

#### **Article 4 of the Framework Convention**

##### **Protection against discrimination**

###### *Findings of the first cycle*

66. In its first Opinion, the Advisory Committee noted that Ukraine had not developed detailed and comprehensive civil and/or administrative law provisions pertaining to discrimination in various fields. It considered that such legislation should be developed by the Ukrainian authorities in order to protect individuals from discrimination by both public and private entities in a comprehensive manner.

67. Moreover, the authorities were not in a position to provide information on the number and nature of cases relating to discrimination. The Advisory Committee stressed that, in such circumstances, it was impossible to evaluate the effectiveness of the mechanisms working in the field of discrimination and recommended that the monitoring of developments in this field should be intensified.

###### *Present situation*

###### *a) Positive developments*

68. The Advisory Committee welcomes the ratification by Ukraine of Protocol N°12 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, which entered into force on 1 July 2006.

###### *b) Outstanding issues*

69. To date, no consistent efforts have been made to develop detailed and comprehensive civil and/or administrative legislation pertaining to discrimination. Moreover, there is a lack of clarity in the existing laws as regards certain terms relating to discrimination. For example, there is no civil or administrative definition of direct and indirect discrimination. The absence of such a definition of these terms may put into question the effectiveness of the legal protection provided by these provisions.

70. In spite of information received by the Advisory Committee concerning discrimination experienced by persons belonging to certain national minorities, there appears to be no collection of statistical data on the number and nature of cases of discrimination in various fields. The only data provided to the Advisory Committee concerns the number of complaints lodged with the Ombudsman Office by persons belonging to national minorities.<sup>9</sup> The Advisory Committee takes the view that, in the absence of such data, it is difficult to

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<sup>9</sup> The Office of the Ombudsman informed the Advisory Committee that less than 1% of the complaints registered in his Office had been lodged by persons belonging to national minorities for an alleged violation of their rights, including an unspecified proportion of complaints for alleged discrimination.

evaluate the effectiveness of the existing mechanisms and devise adequate measures to tackle the causes of discrimination.

#### *Recommendations*

71. The Advisory Committee urges the authorities to develop comprehensive civil and administrative legislation and provide effective remedies against discrimination by public and private entities. Definitions of discrimination which include *inter alia* direct and indirect forms of discrimination should be incorporated in this anti-discrimination legislation.

72. The Advisory Committee considers that official data on complaints regarding discrimination, including cases of discrimination registered in courts, should be collected on a regular basis to facilitate the evaluation of the effectiveness of the legislative and institutional mechanisms put in place.

### **Efforts to ensure full and effective equality in respect of disadvantaged groups**

#### *Findings of the first cycle*

73. In its first opinion, the Advisory Committee noted that the general anti-discrimination provisions contained in the Constitution of Ukraine which prescribe that no privileges should be given on the grounds of ethnic origin, had been used in public discussions as an argument against the introduction of special measures for the benefit of some persons belonging to national minorities.

74. The Advisory Committee also noted the particular difficulties experienced in ensuring full and effective equality with respect to Crimean Tatars and Roma, who were facing social and economic difficulties. The Ukrainian authorities were requested to give increased attention to the situation of persons belonging to these groups.

#### *Present situation*

##### *a) Positive developments*

75. The Advisory Committee welcomes the commitment undertaken by the Odessa and Uzhgorod authorities to implement the 2003 – 2006 programmes for improving the situation of the Roma in various fields, such as health care and education. Moreover, a Social Programme for the Crimean Tatars is being implemented in Crimea (see also remarks under Article 15).

76. The Advisory Committee welcomes the efforts made by the Ukrainian authorities to remove undue obstacles which had prevented the Crimean Tatars and other formerly deported peoples from obtaining Ukrainian citizenship. Since 2004, approximately three thousand Crimean Tatars have received Ukrainian citizenship every year. This has led to a considerable reduction in the number of stateless persons, as required by the European Convention on Nationality ratified by Ukraine in December 2006.<sup>10</sup>

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<sup>10</sup> The European Convention on Nationality (CETS No.: 166), which was ratified by Ukraine on 21 December 2006, entered in force in respect of Ukraine on 1 April 2007.

*b) Outstanding issues*

77. The Advisory Committee regrets that Article 24 of the Constitution providing for no privileges based on ethnic origin, has continued to be used by several authorities, such as the Ministry of Labour and Social Affairs, as an argument against the introduction of special measures (also called ‘positive action’) for the benefit of persons belonging to national minorities aimed at promoting full and effective equality.<sup>11</sup> The Advisory Committee reiterates that such measures must not be considered to be an act of discrimination as stipulated in Article 4, paragraph 3, of the Framework Convention. On the contrary, special measures are a means to achieve full and effective equality for persons belonging to the most disadvantaged minority groups, such as Crimean Tatars and Roma. The ongoing constitutional reform should therefore be used as an opportunity to entrench the concept of special measures as a means to realise full and effective equality.

78. The Advisory Committee has received disconcerting information about difficulties faced by Roma in obtaining official documents, such as birth certificates and other identity documents, which may hamper their access to social and health services, as well as to the labour market. Complex bureaucratic requirements, high registration fees, discriminatory behaviour towards Roma and corruption among state employees, may be possible reasons why some public officials have reportedly refused to issue such documents. Various instances of discrimination have also been reported in the labour market, mainly against Roma but also against Crimean Tatars. Special care should also be paid to indirect discrimination as it may be one of the reasons behind the turning down of job applications.

79. Some interlocutors informed the Advisory Committee that persons belonging to national minorities are affected by unjustified and/or unlawful stop and search procedures which are carried out by law-enforcement officials. Roma, as well as persons belonging to visible minorities living in various regions of Ukraine, seem to be particularly targeted by this practice which is allegedly accompanied, in certain cases, by calls for bribes. Raids and home searches in Roma settlements, sometimes accompanied by an excessive use of force, have reportedly not ceased. Cases of ill-treatment by the police are still being reported, and the complaints brought against the officials under suspicion are often not properly investigated. Moreover, there are reports of Roma convicted of crimes and subsequently sentenced to imprisonment, without substantive proof of guilt. By contrast, law-enforcement agencies are reported to be more reluctant to investigate crimes committed against Roma. Widespread negative stereotypes of the Roma population seem to be prevalent also within law-enforcement agencies as well as the judiciary (see also remarks under Article 6, below) and no doubt contribute to the risk of unequal treatment by these institutions.

*Recommendations*

80. The Advisory Committee encourages the Ukrainian authorities to consider incorporating norms explicitly allowing special measures in the existing legislation to redress the situation of persons belonging to disadvantaged national minorities and achieve full and effective equality.

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<sup>11</sup> Article 24 of the Constitution of Ukraine states *inter alia* that:

- i) *Citizens have equal constitutional rights and freedoms and are equal before the law*
- ii) *There shall be no privileges or restrictions based on race, colour of skin, political, religious and other beliefs, sex, ethnic and social origin, property status, place of residence, linguistic or other characteristics.*

81. The Ukrainian authorities should take more resolute measures to assess, monitor and combat discrimination against persons belonging to disadvantaged minorities in such spheres as employment, access to housing, social and health services.

82. Efforts to eliminate obstacles faced by the Roma in obtaining identity and other documents should be strengthened with a view to facilitating their access to all social rights. Incidents of corruption among public employees should be addressed and effective, proportional and dissuasive sanctions applied for discriminatory practices.

83. The Advisory Committee encourages the authorities to reinforce their efforts to provide law-enforcement agencies and the judiciary with the necessary human rights training. The authorities should monitor the behaviour of law-enforcement officials and ensure that any unwarranted and discriminatory acts against persons belonging to national minorities, in particular the Roma, are effectively sanctioned.

### **Data collection**

#### *Present situation*

84. Although ethnic data can be extracted from census databases when the need arises, data on the situation of national minorities in economic, social, cultural and political fields (employment, health, housing, education, minority representation in public authorities etc.) is not systematically collected. In fact, the general census seems to be the only comprehensive data collection even though there is a continuous need for such data. Labour force surveys and household surveys do not include ethnicity. For example, the Ministry of Labour and Social Affairs informed the Advisory Committee that no data on the employment of persons belonging to the Roma minority was available. By contrast, the State Committee on Statistics informed the Advisory Committee that the collection of ethnic data in the aforementioned field could be gathered in Ukraine upon a request from the competent Ministry, at least from within the census results.

85. The Advisory Committee notes that the lack of statistical data on the situation of the different groups in the aforementioned spheres leads to increased difficulties to elaborate targeted minority policies. The Advisory Committee wishes to emphasise the importance of such data for the preparation, implementation and monitoring of public policies with regard to the protection of minorities and especially disadvantaged groups. Awareness-raising among national minorities of the necessity to collect such data for the elaboration of adequate policies, is also desirable.

86. The Advisory Committee regrets that despite worrying recent trends, there is still no reliable statistical data on hate and racially motivated crimes perpetrated *inter alia* against persons belonging to national minorities (see also related comments under Article 6, below).

#### *Recommendation*

87. The Advisory Committee calls on the authorities to develop further policies to promote full and effective equality in fields such as employment and health in the light of relevant statistical data on the situation of persons belonging to national minorities. Particular attention should be paid to persons belonging to disadvantaged minorities. The authorities are encouraged to make more frequent use of the services of the State Committee on Statistics of Ukraine to collect such data by including questions on ethnic affiliation in labour force and household surveys. Ethnic data collection should be conducted in close co-operation with

national minority representatives and with full respect for the safeguards, notably those related to the protection of personal data, the specific and limited use of such data by the authorities, and the free, informed and unambiguous consent of the persons concerned, as laid down in the Committee of Ministers Recommendation (97) 18 concerning the protection of personal data.

## **Article 5 of the Framework Convention**

### **Support for minority cultures**

#### *Findings of the first cycle*

88. In its first Opinion, the Advisory Committee considered that the concept of cultural autonomy entrenched in the Law on National Minorities would merit being defined and developed in more detail to become truly operational. It also welcomed the financial support that the authorities were allocating for projects of persons belonging to national minorities aimed at maintaining and developing their culture and at preserving their identity, but suggested that representatives of national minorities should be more closely involved in the decision-making process as regards the methods of allocation of such financial support.

#### *Present situation*

##### *a) Positive developments*

89. Ukraine has continued to provide state funding for cultural initiatives of national minorities in various fields. Such support is primarily coordinated and distributed by the State Committee for Nationalities and Religions (hereinafter referred to as: the “State Committee”) and also by the Ministry of Culture, although to a lesser extent.

90. Both the State Committee and the Ministry of Culture have confirmed to the Advisory Committee that they were taking care to discuss the allocation of their financial support for various projects with the Council of representatives of All-Ukrainian public associations of national minorities. Since 2006, the State Committee has endeavoured to improve openness and transparency in the process leading to the allocation of financial support for measures aimed at preserving and developing history, cultures, languages and traditions of national minorities. To this end, it has for example organised calls for tenders to select the best projects deserving support. On a more general note, the State Committee expressed commitment to try and obtain greater funds from the State budget to support cultural initiatives in the future.

##### *b) Outstanding issues*

91. Given the persisting delays in the adoption of a Concept for State Ethnic Policy and the enactment of ensuing amendments to the 1992 Law on National Minorities (see related comments under Article 3, above), there has been no progress concerning the further development of the notion of cultural autonomy for national minorities. Therefore a more coherent and ambitious framework to support minority cultural initiatives remains to be developed. Even though the State Committee has tried to improve the procedure leading to the selection of the projects to be supported, representatives of the Council of representatives of All-Ukrainian public associations of national minorities continue to consider that their views are not sufficiently taken into account in this process, which may at least partly be linked to the insufficient institutional interaction between the Council and the State Committee (see

related comments under Article 15, below). In addition, there is scope for improvement as regards coordination between the aforementioned procedure and the consultation process of the Council led by the Ministry of Culture, so as to achieve greater clarity on the overall distribution of financial support.

92. According to representatives of several national minorities, including the Jews, the Poles, the Byelorussians and the Tatars from the Volga, the lack of availability at reasonable cost of cultural centres and/or offices is an acute problem in Ukraine given the scarcity of premises which could be used for such purposes. This is not only the case in Kyiv, but also in other regions, such as Transcarpathia, as mentioned by the Slovaks, and Crimea, as mentioned by the Karaims and the Azerbaijanis. Furthermore, a number of minority associations which have a cultural centre hosted in premises belonging to local authorities complain that their monthly rent has dramatically increased recently. The Advisory Committee underlines that representatives of several national minorities attach great importance to state support for the development of their cultural activities, in particular to set up cultural centres. In this respect minority representatives have expressed a degree of frustration at the lack of will some authorities have shown to improve matters in this respect.

93. A factor that might account, at least in part, for the difficulties in obtaining state support for establishing minority cultural institutions is that the authorities now tend to prioritise financial support for projects and activities. National minorities' representatives regret that this makes it increasingly difficult, or even impossible, to obtain longer-term subsidies for setting up and running institutions or renting premises. While acknowledging the need for project funding and budgetary constraints, the Advisory Committee nevertheless considers that the authorities should pay more attention to requests from national minorities as regards setting up or supporting the running of cultural centres and/or offices, which are often an important means of asserting their identity and making it visible to the public.

94. The Advisory Committee notes with concern that some national minorities deplore that the authorities provide no assistance to enable them to maintain and renovate some of their cultural monuments and old cemeteries, which deteriorate considerably over time and are sometimes vandalised (see related comments under Article 6, below). This is notably the case of the Karaims, who are a numerically small minority scattered over 15 regions. Representatives of national minorities living in Crimea have also voiced concerns about the difficulties they are facing to obtain plots of lands and relevant authorisations to erect cemeteries or religious buildings, which they consider essential for the maintenance of their identity.

#### *Recommendations*

95. The authorities should pursue their efforts to improve the procedure leading to the allocation of financial support for cultural initiatives with a view to making it more transparent, objective and participatory while avoiding undue duplication between the Ministry of Culture and the State Committee.

96. Further measures should be developed to assist national minority associations to establish and maintain cultural centres.

97. The authorities should address more decisively the problem of the deterioration of monuments and cemeteries of national minorities. They should endeavour to agree with the representatives of the national minorities concerned on priorities for action and, at the same time, consider increasing the support available for national minorities in this field.

## Article 6 of the Framework Convention

### Efforts to combat intolerance, racism and inter-ethnic hostility

#### *Findings of the first cycle*

98. In its first Opinion, the Advisory Committee noted that societal attitudes towards Roma were negative and recommended that the authorities take further initiatives aimed at promoting inter-cultural dialogue between the Roma and others.

99. Reports of discrimination, ill-treatment and hostility by law-enforcement officials towards Roma as well as asylum seekers and persons of foreign origin were brought to the attention of the Advisory Committee which called on the authorities to increase the vigour with which these incidents were investigated and the perpetrators prosecuted.

100. The Advisory Committee noted that disputes related to language issues, in particular inter-relations between the Ukrainian and Russian languages, had caused tensions in Ukraine and called on the authorities to adopt attitudes, statements and measures *vis-à-vis* language issues conducive to promoting a measured approach to this issue.

#### *Present situation*

##### *a) Positive developments*

101. Efforts have been made by the Ukrainian authorities to promote inter-cultural and inter-ethnic dialogue. A Presidential Order containing a list of actions and measures to be taken to promote intercultural dialogue in 2008 in Ukraine was adopted on 25 January 2008. The Advisory Committee also notes that the current Draft Concept on State Ethnic Policy provides for measures conducive to strengthening inter-cultural and inter-ethnic dialogue. For example, tolerance and intercultural dialogue should be included in the school curricula. The Ombudsman's initiative of having regular radio talk shows contributes to raising awareness *inter alia* about human rights and inter-community relations.

102. The Advisory Committee strongly welcomes the adoption in May 2007 of an Action Plan on Countering Racism by the Ministry of Interior. The Action Plan provides *inter alia* for the setting up of a special Unit, within the Ministry of Interior, aimed at monitoring neo-fascist, skinhead and racist movements in Ukraine. This Unit became operational in August 2007 and is made up of staff from the Ministry of Interior. Although there is some ambiguity in the terms of reference of the aforementioned special Unit, which is also due to monitor offences perpetrated by foreigners, the Advisory Committee finds it commendable that the Ministry of Interior is paying increasing attention to racist violence, xenophobia and intolerance within the Ukrainian society. Interministerial co-operation has reportedly been reinforced and human rights training for law-enforcement officers organised in co-operation with non-governmental organisations. The Advisory Committee has learnt, for example, that a series of round tables aimed at raising awareness about racism among the law-enforcement officers has recently been initiated.

##### *b) Outstanding issues*

103. The Advisory Committee is deeply concerned about the alarming increase in racist attacks, but also manifestations of anti-Semitism, including in the city of Kyiv, and manifestations of islamophobia in Crimea. These actions are targeted at asylum seekers, refugees, immigrants or foreign students belonging to visible minorities, as well as against

persons belonging to some national minorities, such as Crimean Tatars. The Advisory Committee has been informed by the Ministry of Interior that 91 racially-motivated criminal offences against foreigners occurred in the period between January and March 2008, two of which were murders. Some non-governmental sources put forward estimates which exceed these official figures. The Ombudsman has registered two racially-motivated incidents per day which, according to this institution, represents a worrying increase. The Advisory Committee has also been informed that no reliable data on racist attacks has been collected so far. This absence is largely due to the fact that most racist attacks are classified by the police as 'hooliganism' and that victims are often reluctant to report attacks to the police due to the lack of confidence in their work. The Advisory Committee considers that, in the absence of reliable statistics on racist and xenophobic attacks, it is difficult to combat these phenomena effectively.

104. In spite of the increase in racially-motivated crimes, there seems to have been only one case dealt with by courts under Article 161 of the Criminal Code, which provides for criminal responsibility in case of incitement to hatred.<sup>12</sup> The outcome of this case is not known to the Advisory Committee. Moreover, Article 67 of the Criminal Code provides for racial intent to be taken into account as an aggravating factor by the courts.<sup>13</sup> Article 161 has only exceptionally led to convictions. The Advisory Committee considers that there is an urgent need to clarify and strengthen legislative provisions concerning racist crimes and pursue their enforcement more vigorously. In this respect, it has been informed that proposals for the amendment of Article 161 are pending in Parliament. As suggested by the European Commission against Racism and Intolerance (ECRI), Article 161 should be widened so that the protection of a person's dignity would also include the grounds of race, colour, ethnic origin and language. Moreover, there is a need to raise awareness among judges and prosecutors on matters relating to racism and racially-motivated crimes.

105. The Advisory Committee regrets that certain authorities and some Ukrainian officials are still reluctant to acknowledge the extent of racially-motivated violence against persons belonging to visible groups and some national minorities in Ukraine and still refer to isolated cases of 'hooliganism'. It considers that official recognition of the gravity of the problem at all levels would contribute to addressing more effectively racist and xenophobic violence, including in developing legislative and other measures.

106. The Advisory Committee notes with concern that manifestations of anti-Semitism and anti-Semitic attacks have recently undergone a certain resurgence, as reported *inter alia* by persons belonging to the Jewish community. For example, anti-Semitic slogans were voiced during a march through the campus of the Kyiv Polytechnic University held on 23 March 2008. The Advisory Committee has also been informed that anti-Semitic attacks have often not been properly investigated.

107. Despite the general climate of tolerance, negative attitudes towards certain minority groups, including the Roma, persist. The Advisory Committee is also deeply concerned by the reported increase, since 2004, of inter-ethnic tensions between Crimean Tatars and Russians living in Crimea, a problem often having as a source land issues.

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<sup>12</sup> Article 161 of the Criminal Code provides for criminal responsibility for deliberate actions whose aim is inciting ethnic, racial or religious animosity and hatred aimed at humiliating the national honour and dignity of a person offending citizens' feeling based on their religious views.

<sup>13</sup> Article 67 of the Criminal Code establishes aggravated circumstances if an offence is preceded or accompanied by the consideration that the victim is in fact or by supposition a member of an ethnic group, nation, race or religion.



108. The Advisory Committee has been informed that textbooks often do not reflect regional specificities within Ukraine, including the presence of various national minorities in the regions concerned (see related comments under Article 12, below). The complete absence of information on the presence of national minorities in various regions is likely to contribute to the existing stereotypes against some minority groups, as suggested by recent research carried out in Crimea which indicated certain xenophobic tendencies of pupils in schools.

109. The Advisory Committee notes that tensions around the debate surrounding language issues persist and have had an adverse impact on the spirit of tolerance and intercultural dialogue. It is therefore important that any measure on language issues be adopted with due attention to the possible effect on inter-community relations.

#### *Recommendations*

110. The Advisory Committee urges the authorities to take further legislative measures and policies to combat racist manifestations. The relevant provisions of the Criminal Code need to be reviewed and brought in compliance with international standards. A system providing for the recording of incidents and the collection of reliable statistics on racist incidents should be put in place.

111. The authorities are urged to increase the vigour with which crimes motivated by racial, ethnic or religious hatred are investigated and prosecuted. The Ministry of Interior should pursue its activities aimed at raising awareness among law-enforcement officials about racism and racially-motivated crimes. Moreover, efforts should be made to provide training for prosecutors and judges on matters relating to racism as well as discrimination on grounds of race and belonging to a national minority.

112. The Advisory Committee encourages the authorities to ensure that adequate measures are taken to punish perpetrators of acts of anti-Semitism and to provide for constant monitoring of this phenomenon within the society.

113. The Advisory Committee urges the authorities to step up their activities aimed at fighting stereotypes and raising awareness among the general population of the importance of tolerance and respect for diversity.

### **Countering hate speech in the media**

#### *Findings of the first cycle*

114. In its first Opinion, the Advisory Committee noted that, despite reported improvements and sanctions imposed upon newspapers publishing anti-Semitic articles, information was still being presented by some media outlets in a manner which was likely to strengthen stereotypes associated with persons belonging to certain minorities, including Roma and Jews. The Advisory Committee recommended that training for journalists should be expanded in this field.

#### *a) Positive developments*

115. The Advisory Committee has been informed that awareness-raising measures are being developed among journalists about hate speech or speech likely to produce the effect of legitimising, spreading or promoting racial hatred, xenophobia, anti-Semitism and intolerance. It is also pleased to note that a code of conduct and ethics for journalists has been adopted in Ukraine. Moreover, a new draft Law on Journalists' Professional Activities

currently under consideration provides for the setting up of a journalists' ethical board within media outlets. It is also positive that the State Committee carries out regular monitoring of hate speech in the media and is asked by the Government to give legal advice as to which statements can be considered to breach the law.

116. The Advisory Committee welcomes the ratification by Ukraine of the Council of Europe Convention on Cybercrime and its Additional Protocol, which provides for the criminalisation of acts of a racist and xenophobic nature perpetrated through computer systems.<sup>14</sup> The Advisory Committee has been informed about injunctions delivered by courts on newspapers with anti-Semitic and xenophobic content published by the Interregional Academy of Personnel Management (MAUP). Unfortunately, the MAUP publications affected by these injunction orders have reportedly resumed.

117. A special Unit within the Ministry of Interior has been created and the Advisory Committee welcomes that this Unit is expected to monitor hate speech, in the print and broadcast media, including on the Internet. The terms of reference of this Unit are, however, worded too widely since they cover "problematic materials", which could entail excessive interference with freedom of expression and freedom of media as guaranteed by the European Convention on Human Rights.

#### *b) Outstanding issues*

118. The Advisory Committee was informed that media coverage of issues concerning persons belonging to national minorities is often reduced to matters relating to the Russian minority and its language concerns. By contrast, media coverage of issues affecting other minorities is generally very limited. This may be explained by a lack of interest in minority-related issues by both private and public mainstream media. When such information is presented, persons belonging to minorities as well as foreigners, asylum seekers and refugees, are often depicted in a negative way and with stereotypes.

119. The Advisory Committee is deeply concerned by reports which indicate instances of openly xenophobic and racist statements. Some statements with attributes of hate speech have been reported in the national as well as in the local media, including in newspapers published in Crimea against Crimean Tatars. The Advisory Committee highlights in this respect the importance of awareness-raising measures for journalists to prevent racism, intolerance and stereotyping, but also to ensure that issues of concern to minority groups are accurately and properly reflected in the media.

120. The continuing practice of unnecessarily identifying the ethnic origin of criminal offenders in media reporting contributes to the strengthening of negative stereotypes of persons belonging to certain minorities, in particular the Roma. This appears to be more frequent in regional newspapers.

#### *Recommendations*

121. The Ukrainian authorities should take further measures to encourage the media, with full respect for their editorial independence, to avoid stereotyping and negative portrayal of persons belonging to different national minorities, immigrants, asylum seekers, refugees and foreigners. Efforts should be strengthened to provide training for journalists and media

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<sup>14</sup> The Additional Protocol to the Convention on Cybercrime (CETS No. : 185) ratified on 21 December 2006 entered into force in respect of Ukraine on 1 April 2007.

professionals with a view to raising awareness on issues relating to racism and intolerance, drawing on the Committee of Ministers' Recommendation N° R (97)21 on the media and the promotion of a culture of tolerance.

122. The authorities could encourage media actors to introduce a self-regulatory body providing for an independent and effective complaint mechanism in relation to broadcast and print media, which could encourage media outlets to refrain from using negative terminology and reporting based on negative stereotypes concerning minorities. The terms of reference of the special Unit within the Ministry of Interior should be clarified to cover hate speech explicitly and should be more narrowly construed to avoid undue interference with freedom of the media.

123. The existing provisions prohibiting incitement to national, racial or religious hatred in the media need to be implemented more decisively by the complaint mechanisms, which need in turn to be strengthened in the spirit of the Committee of Ministers' Recommendation N° R (97)20 on "Hate Speech".

### **Instances of vandalism of religious and minority sites**

#### *Findings of the first cycle*

124. In its first Opinion, the Advisory Committee regretted that there had been cases of vandalism of religious sites of minorities. The Government was urged to pay careful attention to the prevention, investigation and prosecution of such incidents.

#### *Present situation*

125. The Advisory Committee notes with concern that there has been a worrying number of acts of vandalism on property belonging to some national minorities in various parts of Ukraine. Representatives of national minorities living in Crimea reported a number of instances of vandalism perpetrated against monuments and cemeteries belonging to national minorities, in particular to Karaims, Krimcaks and Crimean Tatars. Property belonging to the Jewish community has also been vandalised in various parts of Ukraine. Despite elements suggesting that vandalism is often targeted at religious or minority groups, the Advisory Committee was also informed that these acts of vandalism are not always duly investigated by law-enforcement officers.

#### *Recommendation*

126. The Advisory Committee urges the authorities to do their utmost to stop instances of vandalism of religious and other minority sites in all parts of Ukraine. Efforts by law-enforcement officers to thoroughly investigate such acts should be increased and perpetrators of these acts brought to justice.

## **Article 9 of the Framework Convention**

### **Legislation on television and radio broadcasting and minority languages**

#### *Findings of the first cycle*

127. In its first Opinion, the Advisory Committee recognised that Ukraine could legitimately demand broadcasting licensing of broadcasting companies and that the need to promote the official language could be one of the factors to be taken into account in that

context. However, an overall exclusion of the use of national minority languages in the nation-wide public service and private broadcasting sectors was not compatible with Article 9 of the Framework Convention. Despite the apparently strict wording of the Law on Television and Radio Broadcasting, the Advisory Committee noted that, in practice, a level of flexibility prevailed in terms of the interpretation of this legislation as regards broadcasting at the state-level and that, as a result, broadcasting in languages other than the official language appeared to be tolerated to a certain degree as far as private broadcasting was concerned. It also welcomed the fact that, in practice, a number of radio and TV broadcasters were using minority languages at the regional level.

128. The Advisory Committee regretted the existing level of legal uncertainty in the Law on Television and Radio Broadcasting and noted, for example, that crucial matters, such as the imposition of specific language-related quotas for broadcasting in Ukrainian in various regions, were largely left to the discretion of the National Television and Radio Council. The Advisory Committee therefore called on the authorities to review the provisions pertaining to the use of the languages of national minorities in nation-wide and regional broadcasting in the Law on Television and Radio Broadcasting, with a view to clarifying them and to ensuring that they were fully compatible with the principles contained in Article 9 of the Framework Convention.

#### *Present situation*

##### *a) Positive developments*

129. It is positive that specific language-related quotas are no longer left to the sole discretion of the National Television and Radio Council. Indeed, Article 10 (4) of the Law on Television and Radio Broadcasting explicitly stipulates that nation-wide operators must now broadcast a minimum percentage of their programming into Ukrainian within each 24 hour slot. This is positive in terms of legal certainty, but regrettably the threshold chosen (75%) may be problematic in certain contexts (see related comments under paragraphs 132-134, below).

130. According to information provided by the National Television and Radio Council, which is the authority responsible for licensing decisions and overseeing license conditions, no sanction has yet been taken yet against operators for violation of the new language quota. The Advisory Committee is of the opinion that the imposition of sanctions should indeed be avoided as much as possible in this field since they may have a detrimental effect on freedom of media.

##### *b) Outstanding issues*

131. As a general point, the Advisory Committee is concerned that initiatives to promote the use of the State language in the media are apparently developed outside the context of the overall efforts to develop a comprehensive and coherent policy for the rights of persons belonging to national minorities. The Advisory Committee is deeply concerned about the adverse effect that the new language quotas may have on the right for persons belonging to national minorities to have access to radio and television programmes in their languages. Representatives of several national minorities, such as the Greeks, the Bulgarians and the Russians have indeed indicated that the imposition of quotas was making it extremely difficult to obtain a license for broadcasting programmes in minority languages, including at the regional level, given the obligation to broadcast such a large volume of programmes in Ukrainian. During its visit, the Advisory Committee was also repeatedly informed about plans

to increase the quota for nation-wide programmes from 75 to 85% within the next two years. Although the National Television and Radio Council representatives reported being unaware of these plans, the Advisory Committee considers that such an increase would clearly be inappropriate for minority language broadcasting in the current situation given the difficulties encountered to meet the existing requirements and bearing in mind that the proportion of persons belonging to national minorities represents more than 50% of the population in several regions.

132. The Advisory Committee has received conflicting information about whether the aforementioned language quotas entrenched in Article 10 (4) of the Law on Television and Radio Broadcasting would also apply to private operators. While the National Television and Radio Council indicated that private stations were not subject to such a quota, independent sources submitted that the quotas were also included in the licenses granted to private broadcasters. Indeed, Article 2 of the Law on Television and Radio Broadcasting prescribes that this Law covers both public service and private broadcasters. Against this background, the Advisory Committee takes the view that the imposition of a 75% quota on private broadcasters would raise issues of compatibility with the provisions of Article 9 (1) and (3) of the Framework Convention. Measures to promote the use of the state language should indeed be principally pursued through incentive-based, voluntary methods since the imposition of rigid translation or dubbing requirements cause undue difficulties for persons belonging to a national minority.

133. According to recent information, the National Television and Radio Council decided that foreign programmes distributed in Ukraine via cable networks would all have to be adapted to Ukrainian legislation, that is to have their programmes dubbed or translated into Ukrainian. A number of protests have been voiced against this decision, including by representatives of the Russian minority, who claim that, if implemented, this decision would prevent all retransmission from foreign channels since it is technically impossible to translate or dub all programmes.

#### *Recommendations*

134. The authorities should review the new language quota provisions pertaining to public service operators to ensure that the right of persons belonging to national minorities to impart or receive information in minority languages is not subject to excessive limitations. They should also consider the possibility to look for voluntary, incentive-based methods and a more flexible approach in relation to regional channels with smaller audiences, instead of rigid quotas to encourage the use of Ukrainian.

135. Ukraine should clarify the legal regime applicable to private operators, including through the amendment of Article 10 of the Law on Television and Radio Broadcasting, with a view to removing any language quota imposing translation requirements of minority language programmes into Ukrainian.

136. The authorities should review their decision to oblige operators of cable networks to translate into Ukrainian all foreign programmes broadcast in minority languages with a view to ensuring that decisions taken in this field do not pose undue obstacles to the reception of programmes in minority languages from abroad.

## Law on Cinematography

### *Present situation*

### *Outstanding issues*

137. In its Decision N° 13-rp/2007 of 20 December 2007, the Constitutional Court of Ukraine ruled that the legal regime governing the use of the State language and the languages of national minorities was also applicable to the sphere of cinematography. The Court thus confirmed the constitutionality of Article 14(2) of the Law on Cinematography, which provides that before distribution in Ukraine foreign films must be dubbed, post-synchronised or sub-titled into the State language. The same provision provides that these films can also be dubbed, post-synchronised or sub-titled into minority languages in addition to Ukrainian. Failure to comply with this requirement implies that the permission to distribute and show foreign films is not given.

138. While recognising that there may be a legitimate aim to make foreign films more widely available in Ukrainian, there is reason for concern that the requirement to dub, post-synchronise or sub-title every foreign film into Ukrainian may prove disproportionate for those films which are produced in Russian and in other minority languages. This is of particular concern for those which are produced domestically since it is not clear that they would be exempted from the translation obligation. The Advisory Committee finds it especially problematic from the point of Article 9 of the Framework Convention that the notion of “film distribution” rooted in Article 3 of the Law on Cinematography not only covers the showing of films in special premises like cinemas, but also Television broadcasting channels. This means that all foreign films broadcast on television channels will have to be translated even if the aforementioned language quota in Ukrainian is met. This will undoubtedly create an additional heavy burden for minority language broadcasts, which is likely to impair the implementation of the rights contained in Article 9 of the Framework Convention.

### *Recommendation*

139. The authorities should ensure that the production and projection of films in minority languages are not hampered by excessive requirements in terms of dubbing, post-synchronisation and sub-titles into Ukrainian in cinemas, and that television broadcasters are excluded from language requirements pertaining to cinematography.

## Print media

### *Findings of the first cycle*

140. In its first Opinion, the Advisory Committee noted with satisfaction that freedom of persons belonging to national minorities to receive and impart information and ideas in their language, without interference by public authorities, was largely respected in Ukraine. It also noted that a considerable number of newspapers and other publications were published in the languages of national minorities, although financial difficulties were a major obstacle, in particular with respect to the media of numerically small and dispersed minorities. The Advisory Committee underlined that the system of registration of newspapers and other print media should be carried out in a manner that fully protects freedom of the press and does not hinder the creation and use of printed media by persons belonging to national minorities.

*Present situation*

*a) Positive developments*

141. A great variety of print media for national minorities continues to exist in Ukraine. For example, according to the State Report, there are 59 such media which are registered with a nation-wide circulation and 145 with a local circulation. Furthermore, out of 4335 printed media, 2728 are in Russian, 10 in Hungarian, 2 in Bulgarian, 5 in Polish, 6 in Romanian, 4 in Crimean Tatar, 1 in Moldovan, 3 in German, 1 in Byelorussian and 1 in Yiddish. There are also a number of bilingual and multilingual print media, including a large number in Russian/Ukrainian.

*b) Outstanding issues*

142. Representatives of several national minorities regret that only a very limited number of newspapers published in their languages receive financial support from the State budget: the State Committee co-finances only six publications in minority languages, namely in Armenian, Crimean Tatar, Yiddish, Polish, Bulgarian and Romanian. The Advisory Committee notes that a number of national minorities, including numerically smaller groups, are facing considerable difficulties to finance their newspapers which are an important means to preserve their language and culture. Therefore the need for public support in this field is considerable, but there are apparently no clear criteria for selecting those minority newspapers which will receive public funding.

*Recommendation*

143. Ukraine should consider increasing its financial support for newspapers published in minority languages, especially for numerically smaller groups, in order to meet better the significant needs in this field. In so doing, the authorities should try to develop, in consultation with national minorities, objective criteria to identify the publications which can receive public support.

## **Article 10 of the Framework Convention**

### **Language policy**

*Findings of the first cycle*

144. In its first Opinion, the Advisory Committee noted that existing Ukrainian legislation provided for the right of persons belonging to national minorities to use their languages orally and in writing but, at the same time, noted that there had been certain initiatives to introduce norms that limited this right, including in the private sphere.

145. The Advisory Committee also noted that there were plans to adopt a new Law on Languages to promote *inter alia* the use of the Ukrainian language. In this connection, it stressed that while the aim to protect the official language was a legitimate one, it was essential to carry out this protection in a manner that would fully protect the rights contained in Articles 10, 11 and other pertinent provisions of the Framework Convention.

*Present situation**a) Positive developments*

146. Ukraine is trying to address language issues in a more systematic and coherent way *inter alia* through the development of a Concept for National Linguistic Policy. Although different versions of the then Draft Concept have been commented on during its visit to Ukraine, the Advisory Committee understands that this text was adopted after its visit. It is positive that, in addition to the legitimate aim to promote the use of the Ukrainian language in different settings, this document intends to curb the decline observed in the use of languages spoken by persons belonging to national minorities.

147. The Advisory Committee finds it positive that the basic principles on which the authorities are trying to develop a more comprehensive language policy are the wording and content of Article 10 of the Constitution,<sup>15</sup> as interpreted by the Constitutional Court notably in its ruling N°10-rp/99 on the use of the Ukrainian language.<sup>16</sup>

*b) Outstanding issues*

148. According to information from various sources and numerous representations made during the visit of the Advisory Committee to Ukraine, increased tensions have been noted around language policy in recent months. For example, a number of regional and local authorities in the Eastern and Southern parts of Ukraine, such as the Donetsk and Kharkiv regions as well as the cities of Donetsk, Sevastopol, Kharkiv and Yalta, have taken the initiative to declare Russian a regional language in their areas of jurisdiction as an alleged reaction to the state authorities' recent move to impose the use of Ukrainian in a number of public and private settings. Such initiatives were immediately considered unconstitutional by the Presidency and the Government, who have recalled that the State language is Ukrainian and that its use is compulsory for State bodies and bodies of local self-government across the whole territory of Ukraine. Regional prosecutors have reportedly challenged such decisions in courts in most of the regions and cities concerned. Other elements corroborating these tensions include the prohibition, in March 2006, by the Central Election Commission, of the decision taken by the Crimean Supreme Council to hold a referendum to give Russian the status of a second State language in Crimea.

149. The Advisory Committee was informed that, in discussions surrounding the development of a national linguistic policy, the authorities sometimes depicted proposals to raise the status of the Russian language at the regional level and to move towards a multilingual system at national or regional levels as a threat to the unity of Ukraine, which may lead to inter-ethnic tensions and ultimately separatism. Measures which are currently envisaged to protect the languages of national minorities are mostly confined to recalling the right to use these languages in private and in public, but only to the extent that this does not

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<sup>15</sup> Article 10 of the Constitution of Ukraine reads as follows:

- 1) *The state language of Ukraine is the Ukrainian language.*
- 2) *The State ensures the comprehensive development and functioning of the Ukrainian language in all spheres of social life throughout the entire territory of Ukraine.*
- 3) *In Ukraine, the free development, use and protection of Russian, and other languages of national minorities of Ukraine, is guaranteed.*
- 4) *The State promotes the learning of languages of international communication.*
- 5) *The use of languages in Ukraine is guaranteed by the Constitution of Ukraine and is determined by law.*

<sup>16</sup> See Bulletin of Constitutional Case-Law 2000/1, UKR-2001-002, Council of Europe Publishing



affect the further development of the Ukrainian language in all areas of public life. No substantial active measures are therefore foreseen to support the use of these languages. Against this background, the Advisory Committee considers that much remains to be done to reconcile the legitimate interest to promote the use of the State language as one of the means to ensure national cohesion, without at the same time hampering the free use of national minority languages as required by the Framework Convention. In this context, there is clearly a gap between those who consider that Russian is just one minority language among many others and those advocating that Russian must continue to play an important role as being the language spoken by a very high proportion of the Ukrainian population and having traditionally been the language of inter-ethnic communication in Ukraine.

150. The Advisory Committee notes with concern that, in the absence of significant progress on defining a common language policy, a number of targeted measures continue to be taken in various fields to promote the State language although such measures carry some potentially important restrictions on the right to use minority languages freely and without interference in private and in public. For example, representatives of national minorities and NGOs have reported to the Advisory Committee that explanatory notices of medicines previously available also in Russian were now almost exclusively printed in Ukrainian. Also, commercial advertising in all media must reportedly be done in Ukrainian, including when such advertisements are shown in-between programmes broadcast in languages of national minorities.

#### *Recommendations*

151. Efforts to develop a coherent language policy for Ukraine should be pursued in a transparent and participatory manner to reach broader agreement among those concerned on the main principles underpinning a future comprehensive Concept for National Linguistic Policy.

152. While designing measures to promote the State language, increased attention should be paid to limiting adverse effects of such policies on the free use of minority languages in private and in public, notably by making sure that related restrictions pursue a legitimate public interest and are proportionate to this goal. Further measures to support the use of minority languages in private and in public should also be considered.

### **Use of minority languages in relations with administrative authorities**

#### *Findings of the first cycle*

153. In its first Opinion, the Advisory Committee considered that Article 5 of the Law on Languages contained far-reaching guarantees for the implementation of Article 10, paragraph 2 of the Framework Convention as far as persons speaking Russian were concerned. However, the said provision implied more limited guarantees for persons speaking other minority languages. In the light of Article 8 of the Law on National Minorities and Article 3 of the Law on Languages, the Advisory Committee also considered the legal proportion for the right to use a minority language other than Russian in contacts with administrative authorities too high and the discretion left to the authorities/bodies concerned too wide.

*Present situation**Outstanding issues*

154. The legislative framework governing the use of minority languages in relations with administrative authorities has remained unchanged and no progress has been reported in practice since the first monitoring cycle. Article 5 of the Law on Languages provides that citizens have the right to address public bodies “in Ukrainian or another language of their work, in Russian or in a language acceptable to the parties”, and the right to address administrative authorities in minority languages other than Russian still requires either that the language in question is used as a working language by the said body, or that the official concerned agrees to the use of the language. Furthermore, Article 8 of the Law on National Minorities and Article 3 of the Law on Languages still provide that a minority language can be used by various public bodies as a working language only in the localities where a minority constitutes a majority. As the Advisory Committee already pointed out, this proportion is too high from the point of Article 10 of the Framework Convention. Furthermore, the legislative provisions continue to leave too wide a discretion to the public bodies and civil servants concerned to accept a communication in a minority language.

*Recommendation*

155. Ukraine should review its relevant legislation, including by decreasing the threshold currently applicable, and introducing more objective criteria to trigger the right to use a minority language in relations with administrative authorities.

**Judicial proceedings***Present situation**Outstanding issues*

156. In 2005, Ukraine passed amendments prescribing the systematic use of the Ukrainian language in all judicial proceedings, although there remains a lack of clarity as to the exact scope of this legislation. Although in practice, Russian still seems to be used to a large extent, especially in criminal and administrative proceedings, information from various sources suggests that the switch to Ukrainian has led, in certain regions, to difficulties for parties who do not have the necessary linguistic skills, including as regards legal terminology in Ukrainian.

*Recommendation*

157. Ukraine should develop accompanying measures, including language courses for legal personnel and lawyers and possibly translation of case documents, to ensure that the introduction of Ukrainian in judicial proceedings takes place smoothly, without undue effect on the interests of the parties. Particular attention should be paid to providing the assistance of an interpreter to persons belonging to national minorities in accordance with Article 10, paragraph 3 of the Framework Convention.

## **Article 11 of the Framework Convention**

### **Personal names**

#### *Findings of the first cycle*

158. In its first Opinion, the Advisory Committee noted disturbing reports suggesting that an amended Ukrainian version of their names had, in some cases, been imposed upon persons belonging to national minorities, including in official records and documents and without explicit prior approval by the person concerned.

#### *Present situation*

#### *Outstanding issues*

159. Despite the existence of legislative provisions protecting the right of persons belonging to national minorities to use their surnames and first names in a minority language, and the right to have official recognition of them, there is reason for concern about continuing reports, including from representatives of national minorities, that the practice of imposing the Ukrainian form of names and surnames continues, including in personal documents such as passports. Domestic legal remedies seem to be available in practice to the persons concerned, but the procedures may be lengthy and judicial decisions are reportedly not always implemented.

#### *Recommendation*

160. Ukraine should review administrative practices concerning the recording of personal names of persons belonging to national minorities and develop targeted awareness-raising measures within the authorities to ensure that they cease to impose the Ukrainian version of personal names without the explicit prior approval of the persons concerned.

### **Bilingual topographical indications and other inscriptions**

#### *Findings of the first cycle*

161. In its first Opinion, the Advisory Committee noted that Article 38 of the Law on Languages provided a possibility to introduce place names in a minority language, but only if the minority in question constituted a majority in the locality at issue. It noted that the numerical threshold contained in the said provision was such that it constituted an obstacle with respect to certain minority languages in areas traditionally inhabited by substantial numbers of persons belonging to a national minority and invited the authorities to revise the scope of this provision.

#### *Present situation*

##### *a) Positive developments*

162. The authorities indicated in the State Report that the process of restoring historical names in compact settlements of national minorities continues. For example, bilingual indications have now been introduced in all settlements of Gertsayiv, Storozhynets and Glybotski districts of the Chernivtsi region, where a sizeable part of the population belong to the Romanian minority. In Transcarpathia, historical names have been restored in 50 settlements, notably in those districts where a sizeable part of the population belong to the Hungarian minority.

*b) Outstanding issues*

163. Article 38 of the Law on Languages has not been amended to ease the possibility to restore traditional local names, street names and other topographical indications. The threshold requiring that the national minority in question represents the majority of the local population, which is too high from the point of Article 11 (3) of the Framework Convention, remains in force, and continues to represent an obstacle with respect to certain minority languages, in areas traditionally inhabited by substantial numbers of persons belonging to a national minority.

164. Bearing in mind that the decision to introduce a bilingual place name by restoring a traditional name lies with the local self-government, and that this decision can only be taken when the aforementioned threshold is met, it is virtually impossible for a number of national minorities to have their traditional names restored. This is particularly the case for the Crimean Tatars, which never make the local majority and regret that century old Tatar names in several villages are not restored.

*Recommendation*

165. The authorities should pursue their efforts to restore traditional local names, street names and other topographical indications when such claims are made by representatives of national minorities and review the applicable legislation to facilitate this process.

**Article 12 of the Framework Convention****Textbooks and teacher training***Findings of the first cycle*

166. In its first Opinion, the Advisory Committee noted that the contents of history textbooks did not always portray adequately the role played and the positive contributions made by national minorities. The Advisory Committee also noted difficulties in ensuring adequate access to textbooks for persons belonging to national minorities and objections from the authorities to the introduction of teaching in minority languages on the grounds of an alleged lack of qualified teachers.

*Present situation**a) Positive developments*

167. According to the State Report, additional textbooks have been developed since 2002 for educational institutions with minority languages such as new educational materials in Romanian for pupils from grades 1 to 4 and new ABC-books in Polish, Hungarian, Bulgarian and Crimean Tatar. The Ministry of Education has expressed commitment to continue to produce textbooks in minority languages to meet the remaining needs in this sphere.

*b) Outstanding issues*

168. As was mentioned to the Advisory Committee by representatives of civil society and national minorities, the history and culture of national minorities is virtually absent from history and other textbooks. The Ministry of Education reportedly considers that it would be too demanding to introduce elements of history on all national minorities in the general curricula and that there is no need to highlight in a particular chapter the particular

contribution made by national minorities to the Ukrainian State. Against this background, the Ombudsman recommends to revise the content and study of the history of Ukraine taking into account the history of all peoples of Ukraine.

169. The lack of quality textbooks continues to be an issue of deep concern for several national minorities, such as the Romanians, the Moldovans and the Crimean Tatars. Textbooks are said to be outdated, insufficient in numbers and poorly translated from Ukrainian, a state of affairs which may contribute to decisions by parents to send their children to Ukrainian schools (see related comments under Article 14, below). One reason behind this seems to be the requirement to use exclusively textbooks published by the Ukrainian Ministry of Education or textbooks approved by this Ministry from domestically produced ones, a requirement which excludes all foreign textbooks. Also literature materials intended for school libraries are allegedly subject to a cumbersome acceptance procedure by the Ukrainian authorities, which makes it very difficult for educational institutions with minority languages to acquire them even via international donations.

170. There remains a lack of qualified teachers for teaching in minority languages and this argument is sometimes used by the authorities to discourage the opening or maintenance of educational institutions with minority languages (see related comments under Article 14, below). Against this background, there does not seem to be a policy to address this problem by strengthening the existing training capacities in the various pedagogical institutes. On the contrary, according to the Romanian and Bulgarian minorities, the capacities of the pedagogical institutes of Transcarpathia and Odessa have even been reduced.

#### *Recommendations*

171. The authorities should review the existing textbooks and the compulsory curriculum in consultation with minority representatives, with a view to ensuring a better reflection of the history, culture and traditions of national minorities.

172. Adequate financing should be allocated and further measures should be taken by the authorities, including through bilateral co-operation, to develop and acquire quality textbooks for educational institutions with minority languages. Consideration should be given to easing existing undue procedural requirements for accepting literature materials from abroad.

173. Efforts should be intensified to ensure that a sufficient number of qualified teachers are trained to meet the needs of educational institutions with minority languages.

### **Access to higher education**

#### *Findings of the first cycle*

174. In its first Opinion, the Advisory Committee noted that persons belonging to the Romanian minority had been calling for the creation of a multicultural university in the Chernivtsi *oblast*, and invited the authorities to consider the feasibility of this initiative in dialogue with those concerned, together with other options aimed at promoting equal opportunities for access to education at all levels for persons belonging to Romanian and other national minorities.

*Present situation**Outstanding issues*

175. As concerns access to higher education, the Advisory Committee understands that, following the Constitutional Court's ruling N°10-rp/99 on the use of the State language, efforts have been pursued to move towards University teaching in the Ukrainian language only, although this policy does not seem to have been consistently implemented to date, especially with regard to the Russian language.

176. No follow-up has been given by the authorities to the proposal to set up a multicultural university in the Chernivtsi *oblast* ; consequently Romanian students are obliged to study topics other than Romanian philology in Ukrainian exclusively. The University of Chernivtsi was indeed granted the status of State university, which implies that teaching must take place in Ukrainian only.

*Recommendation*

177. The authorities should ensure that efforts to introduce a more consistent use of the Ukrainian language in higher education do not result in removing all possibilities to study certain topics in minority languages or bilingually, especially in regions with a sizeable minority population. Increased attention should be paid to transitional measures to avoid negative consequences on the access to and quality of higher education for students belonging to national minorities.

**Roma children in schools***Findings of the first cycle*

178. In its first Opinion, the Advisory Committee noted that attendance figures for Roma children were low at all levels of education, and called on the authorities to pay increased attention to this issue, with a view to designing new initiatives to improve the situation of Roma in education.

*Present situation**Outstanding issues*

179. The Advisory Committee has been informed that there is still a high level of absenteeism and lower school performance from Roma children when compared with non-Roma children. For example, according to the Uzhgorod authorities, only 30% of Roma children regularly attend school in this region. Roma representatives and non-governmental organisations claim that more needs to be done by the State authorities to reduce the drop-out rate of Roma children. In particular, further efforts should be made to encourage the attendance of Roma children in pre-school education, which is often a prerequisite for their successful integration in mainstream schools.

180. The Advisory Committee is deeply concerned about reports pointing to the continuous existence of schools and/or classes of a much lower quality attended by Roma children exclusively. Roma are indeed often said to face discriminatory attitudes by some local authorities and/or school management when they try to enroll in mainstream schools. Such attitudes and practices lead to school segregation, which must be addressed as a matter of priority.

181. Difficulties in ensuring equal access to education for Roma are also apparent in higher education. Only a handful of Roma students seem to be studying in the Universities of Ukraine. Given the high level of illiteracy among adult Roma, the provision of adult education appears insufficient. There is also a lack of adequately trained teachers of Roma background who may play an important role in raising awareness within the Roma community of the importance of education.

#### *Recommendations*

182. The Ukrainian authorities should take steps to provide appropriate support, including of a financial nature, for pre-school education and other initiatives aimed at preventing absenteeism and school drop-out. The presence of teachers and assistants from the Roma community could be developed within the school system.

183. Further efforts should be made to integrate Roma pupils in mainstream schools and prevent the development of segregated schools/classes. Resolute steps need to be taken as a matter of priority to eliminate any discriminatory practices in enrollment of the Roma children into mainstream schools.

184. There is a need to develop further measures, including special measures, to increase the number of Roma students in higher education.

### **Article 14 of the Framework Convention**

#### **Minority language teaching**

##### *Findings of the first cycle*

185. In its first Opinion, the Advisory Committee noted that the Constitution and legislation guaranteed for persons belonging to national minorities the right to receive instruction in their language or to study their language, but regretted that these guarantees were formulated in a general fashion and that the legislation at issue contained no precise numerical or other threshold that would trigger the introduction of instruction in, or of, a minority language in a school.

186. The Advisory Committee noted that, as a result of a general reform process, the share of the instruction in the Ukrainian language had considerably increased at all levels of education while, in particular, the share of Russian language teaching was decreasing. While agreeing that a reform of the system of language education was warranted, the Advisory Committee underlined that it should not result in undue limitations of the rights of persons belonging to national minorities under Article 14 of the Framework Convention, and that the above-mentioned threshold should be applied in an equitable manner in relation to all languages of persons belonging to national minorities, including the Russian language and those of numerically smaller minorities. It also noted specific challenges in Crimea, in particular concerning the extension of the Crimean Tatar language as the language of instruction.

*Present situation**Outstanding issues*

187. Since 2003, the Ministry of Education has encouraged educational institutions with instruction in a minority language to introduce more subjects taught in Ukrainian. While recognising that this measure could gradually increase children's proficiency in the State language, the Advisory Committee was given to understand that there were diverging views on the advisability of such measures even within certain national minorities. It is therefore important that close consultation be developed with minority representatives and the school authorities, including at the local level to ensure broad acceptance of forthcoming reforms. It is also essential that future policy developments in this field are carefully considered and properly reflected within the overall context of the Draft Concept for State Ethnic Policy, which is currently pending in the Cabinet of Ministers (see related comments under Article 3, above).

188. Against this background and in the absence of a thorough discussion with representatives of national minorities, the Ministry of Education adopted, in December 2007, Decree N° 1171 requiring all final examinations in secondary education and entrance examinations to higher education institutes to be conducted in Ukrainian, even for those students who complete their curricula in educational institutions with minority languages. As a result of protests from different national minorities and adverse reactions in various regions, the Ministry of Education recently decided to provide for a two year transitional period. Entrance examinations will therefore also be available in Russian, Hungarian, Moldovan, Romanian, Polish and Crimean Tatar until 2010. The Advisory Committee takes the view that this reform was introduced without due consideration being given to the need to protect the interests of the pupils concerned. Indeed any strengthening of the State language in educational institutions with minority language needs to be coupled with accompanying measures to help children acquire a better language proficiency from an early age. This cannot be achieved by a sudden change of the rules pertaining to language examinations in secondary education and entrance examinations.

189. The trend towards the closure of Russian schools has been pursued and representatives of the Russian minority complain that this is also the case in regions where Russian speakers form a significant part of the population or even the local majority. The authorities contend that this trend is to be seen as an effort to redress past practices which overlooked the need for education in Ukrainian. They also consider that this trend reflects a declining interest from parents to send their children to Russian schools. In Crimea, where the Russian language has been the dominant language in a large majority of schools in contrast to the limited availability of instruction in other minority languages and in Ukrainian, there are at present 15 schools operating in Crimean Tatar, seven in Ukrainian and nearly 600 in Russian. Although there have been laudable efforts made by the authorities to open educational institutions in Crimean Tatar language following the return of the formerly deported people, the number of these schools is reportedly insufficient to cover the needs of the Crimean Tatars.

190. Regarding educational institutions with other minority languages, the Ministry of Education takes the view that existing figures do not reflect a decline. Despite these assurances, the Advisory Committee heard disconcerting reports by representatives of national minorities suggesting that local authorities have shown a lack of support for minority language education. For example, representatives of the Romanian minority deplore the fact



that an increasing number of Ukrainian classes in certain Romanian schools are being opened at the expense of the Romanian language, notably in Transcarpathia. Polish minority representatives regret that in certain villages with an overwhelming Polish majority, local authorities continue to object to the introduction of bilingual education. Bulgarian minority representatives note that in areas with a significant Bulgarian population, most of the schools are only allowed to offer 1 to 2 hours a week of courses in Bulgarian. The Advisory Committee is concerned that such developments, coupled with the aforementioned shortage of textbooks and qualified teachers, combined with the obligation to take entrance examination to higher education in Ukrainian, can discourage parents from sending their children to educational institutions with minority languages.

191. The Advisory Committee regrets that the legal framework has not yet been reviewed to improve legal certainty. As a result, Article 53, paragraph 5 of the Constitution and Articles 25-29 of the Law on Languages, which guarantee the right to receive instruction in a minority language or to study a minority language, remain difficult to apply in practice. Indeed, the obligation for the authorities to provide for the creation of a class or a school with education in a minority language, if certain objective conditions are met, is currently not provided for in clear terms and no effective legal remedy seems to be available against arbitrary refusals by the local authorities. In this context, the Advisory Committee recalls that the main criteria for the introduction of minority language education should be the existence of a “sufficient demand” rather than the ethnic composition of the region at issue.

#### *Recommendations*

192. The authorities should start a broader reflection on the role and place of minority language teaching in the overall educational system and in the light of ongoing reforms intended to strengthen the State language. In this context, long-term efforts must be made by the authorities to help children achieve a better proficiency in the State language without jeopardising the possibility for these children to pursue studies in their language.

193. The aforementioned reflection should also cover the role and place of minority languages in higher education since a gradual transition towards Ukrainian in higher education will have an impact also on secondary education.

194. There is a need to provide clearer legal guarantees for the right of persons belonging to national minorities to receive instruction in their language when certain conditions are met, in particular when there is a sufficient demand as provided for by Article 14 paragraph 2 of the Framework Convention. Such criteria must be applied in an equitable manner by local authorities and refusals must be subject to challenge through an effective legal remedy.

### **Article 15 of the Framework Convention**

#### **Minority representation in elected bodies**

##### *Findings of the first cycle*

195. In its first Opinion, the Advisory Committee noted that the Law on Elections of People’s Deputies of 1997 contained commendable specific rules aimed at protecting national minorities in the context of the drawing of constituency boundaries, but regretted that they had not been retained in the new Law on Elections, adopted in 2001.

196. As concerns the situation in the Autonomous Republic of Crimea, the Advisory Committee noted that the representation of national minorities in the legislature was a most contentious issue. Whereas, in 1994, the Crimean Tatars had reserved seats in the said legislature, such guarantees were subsequently left out and as a result their presence had been drastically reduced.

*Present situation*

*a) Positive developments*

197. Representation of the Crimean Tatars at the regional level, although not fully reflecting their actual share of the Crimean population, has reportedly improved since the first monitoring cycle due to the introduction of the proportional election system. As a result, seven out of 100 MPs of the Crimean Parliament (*Verkhovna Rada*) and approximately 1,000 local councillors are now Crimean Tatars.

*b) Outstanding issues*

198. The Ukrainian Parliament adopted the Law on Election of People's Deputies of Ukraine on 25 March 2004, replacing the Law that entered into force in 2001. Among the most significant changes was the introduction of an election system of pure proportional representation, replacing the previous mixed system whereby half of the MPs were elected from single mandate constituencies in a first past the post system, and the second half in a proportional system. As from the 2006 general elections, all 450 seats have therefore been filled by proportional representation in one nationwide constituency.<sup>17</sup> The threshold for securing seats has been reduced from 4% to 3%.

199. According to representatives of some national minorities, such as the Romanians, the Hungarians and the Jews, the aforementioned amendments to the electoral legislation have had an adverse impact on the representation of national minorities in Parliament and other elected bodies at the regional level. They regret that it has become almost impossible for national minorities to have deputies elected, since a nationwide constituency makes it hardly possible for a regional party or a party advocating the interests of a particular national minority to meet a 3% nationwide threshold, also due to the fact that the legislation on political parties requires that political parties register branches in at least half of the regions of the country.<sup>18</sup> They contend that this state of affairs is aggravated by the fact that independent candidates are no longer accepted, and that national minority associations cannot take part in elections, as this right is reserved to political parties. In this context, they deplore the fact that Article 14 of the 1992 Law on National Minorities, which entitles minority associations to designate their candidates for the elections, is not implemented even though it is still in force. Against this background, the Advisory Committee is of the opinion that there is a need for the authorities to harmonise these various pieces of legislation.

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<sup>17</sup> Article 1.1 of the Law on Election of People's Deputies of Ukraine states that "*Deputies shall be elected on principles of a proportional system*" in a "*national constituency*".

<sup>18</sup> In its Opinion on the Ukrainian Legislation on Political Parties of 5-6 July 2002, the Venice Commission already criticised the requirement that all political parties should be active nationwide and not only in a region of the country or locally as this «(...) constitutes a legal impediment to forming parties which concentrates on matters concerning regional issues (for example, the Autonomous Republic of Crimea)» and consequently suggested that this requirement should at least be loosened as it represents a serious restriction to the political activity at regional and local level (CDL-AD(2002)17, ad §§ 9 and 15).

200. The Advisory Committee notes that both the Venice Commission<sup>19</sup> and the Parliamentary Assembly of the Council of Europe<sup>20</sup> have already voiced concerns about the shortcomings of the new electoral system, in terms of regional representation, in a country the size of Ukraine. Election systems of pure proportional representation are indeed not common in Europe, and those countries which have such a system are often small in geographical and demographic terms, while most countries with proportional systems would have some kind of geographical divisions in constituencies. Both the Venice Commission and the Parliamentary Assembly have therefore suggested the introduction of remedial measures, such as the establishment of different constituencies in the country or the possibility for voters to indicate their preferences for particular candidates included in the election lists proposed by political parties. The Advisory Committee has already stated on previous occasions that, when considering reforms leading to constituency changes, State Parties should ensure that they do not undermine the opportunities of persons belonging to national minorities to be elected.<sup>21</sup>

201. In view of the serious obstacles faced by persons belonging to national minorities as a result of the new election system and the legislation on political parties, in a multi-ethnic country like Ukraine with a great deal of regional diversity, the Advisory Committee takes the view that the current situation does not fully reflect the requirement to promote full and effective participation in public affairs, as entrenched in Article 15 of the Framework Convention, and the requirements of Article 14 of the Law on National Minorities.

#### *Recommendation*

202. The authorities are invited to consider various modalities to remedy the new legal obstacles to wider representation of national minorities and more effective participation of persons belonging to national minorities in elected bodies in the context of a forthcoming review of the electoral system and legislation on political parties.

### **Consultative mechanisms**

#### *Findings of the first cycle*

203. In its first Opinion, the Advisory Committee welcomed the commitment of the Ukrainian authorities to minority consultation which had been demonstrated by the establishment of the Council of Representatives of Public Organisations of National Minorities. At the same time, it expressed some criticism towards its functioning and emphasised that this body convened only rarely and did not constitute a forum for regular dialogue.

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<sup>19</sup> See Opinion of the Venice Commission on the Law on Elections of People's Deputies of Ukraine adopted on 16-17 December 2005, ad § 23; Opinion of the Venice Commission on the Draft Law on Election of People's Deputies of Ukraine adopted on 12-13 December 2003 (CDL-AD(2004)001, ad §§ 6, 7 and 42); Recommendations of the ODHIR/Venice Commission International conference "The European Democratic Heritage and the Development of electoral Legislation in Ukraine", ad item 1.

<sup>20</sup> The Parliamentary Assembly even urged the Ukrainian authorities to address as soon as possible the problem of the parliamentary election system given that « (...) a fully proportional system with closed party list and with all of Ukraine being treated as one single constituency (...) does not guarantee the election of a parliament representing Ukrainian society in all its diversity » (see PACE Resolution 1549(2007) on the Functioning of Democratic Institutions in Ukraine, ad §§ 12 and 15.4)

<sup>21</sup> See thematic Commentary of the Advisory Committee on the effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs adopted on 27 February 2008, ad § 88 and other references quoted in this context ([www.coe.int/minorities](http://www.coe.int/minorities)).

*Present situation**a) Positive developments*

204. The Advisory Committee welcomes the fact that the Council of representatives of All-Ukrainians public minority associations (hereinafter 'the Council'), which is a consultative body to the State Committee, resumed its work in February 2008. The Council's main activity, as stipulated in its regulations, is to elaborate proposals and to take part in the implementation of national policies of relevance to national minorities.

205. The Advisory Committee has been informed that only organisations having obtained the all-Ukrainian status can become members of the Council. To date, the Council comprises 39 out of 1,300 minority associations existing in Ukraine. The Council is currently considering a possible membership of the association of Kurds in its structure and this inclusive approach is laudable. It is also positive that the Council is no longer chaired by the Head of the State Committee, a development which has reinforced its independence.

206. The Advisory Committee is pleased to note that consultation with minority representatives on issues pertaining to racism and intolerance has been foreseen in the aforementioned Ministry of Interior's Action Plan (see also related comments under Article 6, above).

*b) Outstanding issues*

207. The Advisory Committee is concerned by the fact that persons belonging to the Roma minority have been asked by the authorities to nominate only one Roma organisation as a unique partner for consultation. In the Council itself, other minorities such as the Bulgarians, the Germans and the Russians are represented by several organisations and this does not pose particular problems. The Advisory Committee considers that all Roma organisations with all-Ukrainian status should also be given the opportunity to be represented in the Council and be considered possible partners for consultation by the authorities, even if this results in a variety of views expressed by this community.

208. The interaction between the Council and the State Committee appears to be insufficient. The Advisory Committee was informed that the Council was adopting its own agenda and convening when it so wished but it seems that the State Committee does not systematically follow up on decisions and recommendations taken by this body. The State Committee should also seek the views of the Council in a more consistent way before transmitting its own opinions and advice to the Government.

209. The Advisory Committee regrets that the Council has only rarely been consulted on draft laws, policies and other issues pertaining to national minorities. For example, no significant consultation has been carried out by the State authorities on the Draft Concept for State Ethnic Policy and the ensuing draft amendments to the Law on National Minorities. It is also regrettable that representatives of several all-Ukrainian associations of national minorities, and even some state authorities, confirmed to the Advisory Committee that they had not been consulted when the State Report on the implementation of the Framework Convention had been drawn up. In this respect, the Advisory Committee recalls the importance of minority consultation when preparing State Reports or other written

communications required under the Framework Convention or other international treaties pertaining to minority issues as stated in its thematic commentary on minority participation.<sup>22</sup>

210. The Advisory Committee regrets that the Crimean's Inter-ethnic Council, which is a regional minority consultative body, has not been restored to date. It could constitute a useful forum to discuss ways and means to defuse current inter-ethnic tensions.

#### *Recommendations*

211. Efforts should be made to ensure more effective consultation of all national minorities on issues pertaining to minority protection. The Advisory Committee therefore encourages the State Committee, and other state institutions, to consult the Council more regularly when issues of relevance to national minorities are being considered.

212. A more inclusive participation of Roma organisations should be ensured in the work of the Council and in the context of *ad hoc* consultations by the authorities.

213. The Advisory Committee encourages the authorities of Crimea to consider restoring the Crimean's Inter-ethnic Council or a similar body to discuss inter-ethnic issues in Crimea in a more participatory manner.

### **Specialised governmental bodies**

#### *Findings of the first cycle*

214. The Advisory Committee noted that the constant flux in the structure of state bodies dealing with national minorities had a negative impact on the effectiveness and consistency of their work.

#### *Present situation*

##### *a) Positive developments*

215. The State Committee, which replaced the State Committee for Nationalities and Migration in March 2007, is the main body dealing with issues pertaining to national minorities in Ukraine. The State Committee is *inter alia* due to design and implement policies relating to inter-community relations, national minorities and deported peoples. It is also positive that a Council of Ethno-national Policy has been set up within the Presidency as this may give greater visibility to minority issues. A specialised body with minority issues also exists in the Autonomous Republic of Crimea, namely the Republican Committee on International Relations and Deported citizens.

##### *b) Outstanding issues*

216. Many interlocutors - including within the authorities - have regretted that governmental institutions dealing with national minorities have continued to be in a state of flux due to numerous restructurings and reshufflings. This unfortunate state of affairs has negatively affected the implementation of policies and the preparation of legislative reforms. For example, there seems to be scope for better coordination between the State Committee

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<sup>22</sup> Please see further the thematic Commentary of the Advisory Committee on the effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs adopted on 27 February 2008 ([www.coe.int/minorities](http://www.coe.int/minorities)).

and the newly created Presidential Council of Ethno-national Policy. The Advisory Committee hopes that the State Committee will now prove to be a suitable body with the possibility to follow up over time the implementation of policies and programmes designed for national minorities.

217. The Advisory Committee has received complaints about insufficient funding provided by the State Committee for activities pertaining to national minorities (see also comments under Article 5, above). The unfavorable financial situation of the State Committee is reportedly partly related to its status. Whereas there used to be a specific Ministry dealing with minority issues in the past, which had the possibility to receive its own budget line from the State budget, this is not the case anymore. As a result, the State Committee now has more limited influence on the Government's agenda, on policy-making as well as on the allocation of financial resources for minority-related activities.

#### *Recommendation*

218. Ukraine should consolidate its governmental structures dealing with national minorities to achieve greater continuity, effectiveness and consistency in their work. The authorities should in particular consider strengthening the status of the State Committee, which would increase its effectiveness, including influencing policy making and allocation of budgetary funds.

### **Participation in socio-economic life**

#### *Findings of the first cycle*

219. In its first Opinion, the Advisory Committee noted with concern that there had been shortcomings as concerns the effective participation of persons belonging to national minorities in economic life. Unemployment was deemed to disproportionately affect persons belonging to national minorities, including the Crimean Tatars.

220. The Advisory Committee also considered that the effective participation of persons belonging to formerly deported peoples in cultural, social and economic life was hampered by the issue of access to land.

#### *Present situation*

##### *a) Positive developments*

221. The Advisory Committee welcomes the fact that financial resources are allocated from the state budget to address the needs of formerly deported persons in relation to their return. According to the State Report, these funds have been invested to build houses and educational institutions, to install running water, gas supply and electricity. The elimination of obstacles related to the acquisition of citizenship of formerly deported persons has facilitated their access to certain rights and property restitution.

222. There have been laudable initiatives taken at the regional level, notably in the Odessa and Uzhgorod regions, to coordinate a series of measures intended to improve the socio-economic situation of the Roma (see related comments under Article 4, above).

*b) Outstanding issues*

223. The Advisory Committee notes with concern that persons belonging to some national minorities experience particularly severe socio-economic difficulties. Increased efforts should therefore be made to provide adequate guarantees in the field of housing, employment, health and social services for persons belonging to disadvantaged minorities. Access to employment by the Roma and especially Roma women is often made more difficult due to their lack of adequate education (see also related comments under Articles 12 above). Efforts to remedy this situation have been very limited, including in the legislative field, and the situation has barely evolved since the adoption of the first Opinion on Ukraine in 2002. For example, while the Law on Employment<sup>23</sup> foresees additional guarantees for social categories of persons in a disadvantaged position, such as single mothers, it provides no measures aimed at persons belonging to disadvantaged minority groups. The lack of official statistics on employment figures within disadvantaged minority groups is also an obstacle to the elaboration of adequate policies in this area (see related comments under Article 4, above).

224. While recognising that unemployment is a general problem in Ukraine, persons belonging to certain national minorities, such as the Crimean Tatars and the Roma, suffer from unemployment to a greater extent. This situation may often be aggravated by direct and indirect discriminatory practices and the low level of education of persons belonging to these disadvantaged groups. The absence of reliable statistics in the field of employment of the most disadvantaged groups is an obstacle in analysing the actual situation and drawing up adequate policies and measures to address their unemployment (see also related comments under Article 4, above).

225. The Advisory Committee is concerned with the socio-economic and health situation of the Roma, who often live in extreme poverty in segregated settlements without adequate sanitary conditions, electricity, heating, sewage and transport facilities. Sub-standard housing and poor living conditions of the Roma have a negative impact on their health. Cases of serious illness, such as tuberculosis and diphtheria, have been reported. Non-governmental organisations indicate that little effort has been made to provide health care to persons most affected. Moreover, instances of refusal by some doctors to provide medical assistance to persons belonging to the Roma minority have been brought to the attention of the Advisory Committee.

226. Problems relating to access to land by the Crimean Tatars, which seem to be at the root of inter-ethnic tensions, have largely remained unsolved in Crimea. According to the Crimean Tatars, compensation received is often inadequate and land allocated is often of lower quality and/or located far from the lands where they previously lived. The absence of a land register seriously complicates the matter, as land has often been seized over time and former owners have no means to claim their property rights. The Advisory Committee is concerned that no legal norms concerning restitution of property have been adopted so far, which adds to the current legal uncertainty. The Advisory Committee has been informed that a Draft Law on the Rights of Deported Persons has been prepared and that this piece of legislation should constitute a legal basis facilitating the process of land restitution. It is essential that any future law in this respect is drawn up in consultation with representatives of formerly deported peoples and in line with the applicable international standards.

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<sup>23</sup> Law on Employment ('Zakon Ukraini pro zajnjatis naselenja'), 1 March 1991, N 803-XII.

*Recommendations*

227. The authorities should ensure equal access of persons belonging to national minorities to the labour market and develop targeted policies, possibly including positive measures to improve the situation in respect of groups such as the Roma and the Crimean Tatars.

228. The Advisory Committee urges the relevant authorities, in particular the Ministry of Health, to take resolute steps to provide effective health services to all persons belonging to national minorities and to provide adequate medical assistance to those persons who are more at risk, such as the Roma.

229. The Advisory Committee calls for further efforts to address the problem of substandard housing and lack of access to basic infrastructure should be intensified. Such measures should preferably be designed in the framework of a comprehensive Roma Strategy with an effective, transparent and participatory monitoring mechanism, drawing on Action Plans carried out at the regional level.

230. The Advisory Committee invites the authorities to speed up their work to adopt transparent legal norms governing land restitution to the formerly deported peoples, including the Crimean Tatars. The authorities should ensure that such legislation is developed in consultation with those concerned and takes into account relevant international norms.

**Article 18 of the Framework Convention****Bilateral co-operation***Findings of the first cycle*

231. In its first Opinion, the Advisory Committee called on the authorities to continue their efforts to ensure that visa requirements were implemented in a manner that did not cause undue restrictions to the rights of persons belonging to national minorities to establish and maintain trans frontier contacts. Problems concerning travel documents of students belonging to the Romanian minority studying in Romania were also encountered.

232. The Advisory Committee welcomed the setting up of several bilateral commissions examining the implementation of the treaties pertaining to minority protection.

*Present situation**a) Positive developments*

233. Bilateral commissions based on agreements concluded between Ukraine and neighbouring countries, such as Hungary, Romania and Slovakia, have pursued their activities. For example, the implementation of the bilateral agreement between Romania and Ukraine has been monitored by the bilateral commission since 2006, with the involvement of the representatives of the Council of Europe and the Office of the OSCE High Commissioner on National Minorities, as observers. Special protocols providing for co-operation in the field of minority education have been included in some bilateral agreements. Moreover, co-operation in the field of minority protection between Ukraine and other countries, namely Belarus, Germany, Lithuania and Moldova, has been initiated.



*b) Outstanding issues*

234. The Advisory Committee has been informed that persons belonging to the Romanian minority were facing administrative complications to maintain frequent transfrontier contacts following Romania's accession to the European Union. A limited number of border-crossings and an increase in visa fees were mentioned as the main reason behind these difficulties.

235. Increased tensions have been noted in bilateral relations between Ukraine and the Russian Federation, including on language issues. These tensions have reportedly had an impact on the work of the Russian-Ukrainian bilateral Commission.

*Recommendations*

236. The Advisory Committee encourages the authorities to pursue their efforts with neighbouring countries to ensure that new EU visa requirements are implemented in a manner that does not cause undue restrictions on the right of persons belonging to national minorities to establish and maintain contacts across frontiers.

237. The authorities could explore ways and means to strengthen bilateral co-operation on minority issues with the Russian Federation.

### **III. CONCLUDING REMARKS**

238. The Advisory Committee considers that the present concluding remarks could serve as the basis for the conclusions and recommendations to be adopted by the Committee of Ministers with respect to Ukraine.

#### **Positive developments**

239. Ukraine has continued to pay attention to the protection of national minorities and some steps have been taken to reform the existing legislative framework pertaining to minority protection. For example, the draft Concept on Ethnic Policy, which provides for a number of measures conducive to strengthening inter-cultural and inter-ethnic dialogue, has been finalised and a wide public discussion is now due to start on this document. Some improvements have been noted with regard to the Crimean Tatars and other formerly deported peoples, such as the granting of Ukrainian citizenship to the vast majority of those who have returned to Ukraine.

240. Regional initiatives and programmes targeting persons belonging to some minorities, such as the Roma and the Crimean Tatars, have been implemented in some regions with a view to improving their situation in various fields, including health care and education.

241. Ukraine has continued to provide state funding for cultural initiatives of national minorities and the procedure relating to the allocation of financial support has been made more open and transparent.

242. Efforts have been made by the Ukrainian authorities to promote inter-cultural and inter-ethnic dialogue, as well as to monitor hate speech in print and electronic media, including on the internet. A promising Action Plan on Countering Racism was adopted in 2007.

243. The process of restoring historical names in minority languages in compact settlement of national minorities has been pursued.

244. Additional textbooks for educational institutions with minority languages have been developed since 2002 and the authorities have pledged to intensify their efforts in this field.

245. The consultative council of minority representatives has recently resumed its work and gained more independence. It is being increasingly consulted by the authorities on issues affecting them.

#### **Issues of concern**

246. Apart from isolated legislative initiatives, there have been no major developments in the legislation pertaining to national minorities. The current legislative framework is outdated, lacks coherence and contains a number of shortcomings. There is, therefore, an urgent need to adapt the national legislation, including the law on national minorities, in accordance with relevant international standards, including the Framework Convention.

247. The right balance needs to be struck between the legitimate aim to promote the use of the Ukrainian language in various fields of life and the necessity to provide for the right to use minority languages both in private and public spheres. Ongoing reforms should be pursued in accordance with a coherent and comprehensive language policy, which remains to be developed. It is essential that the principles underlying such a policy enjoy broader consensus to ensure a stronger sense of ownership by the population, including persons belonging to national minorities.

248. Ukraine has still not adopted comprehensive civil and administrative provisions pertaining to discrimination and the lack of reliable statistical data on instances of discrimination makes it difficult to develop targeted policies in this field.

249. The Roma have continued to face severe social and economic difficulties, which hamper their integration into Ukrainian society. Further efforts to encourage the attendance of Roma children in pre-school education as well as to integrate them in mainstream schools are required.

250. There has been a worrying increase in the number of racially-motivated violent incidents and manifestations of anti-Semitism and islamophobia, including against persons belonging to certain national minorities. It is essential to increase the vigour with which such incidents are investigated and the perpetrators prosecuted. Awareness-raising measures should be developed among the authorities concerned.

251. A lack of financial support from the State makes it difficult for some national minorities to maintain and restore their cultural monuments and cemeteries. Instances of vandalism of religious and minority sites have been signalled, including in Crimea.

252. The legal possibility to apply rigid language quotas to promote the use of the State language in radio and television broadcasts raises serious problems under the Framework Convention, especially with regard to private operators. There is a need to address increasing difficulties to produce and broadcast programmes in minority languages and to address recent language restrictions in the field of cinematography.

253. The share of instruction in the Ukrainian language has continued to increase at all levels of education at the expense of minority languages. The fact that all final examinations in secondary education and entrance examinations to higher education institutes will have to be conducted in Ukrainian only, may lead to undue limitations of the right of persons belonging to national minorities to receive instruction in their language.

254. The shortage of quality textbooks and qualified teachers for teaching in minority languages persists.

255. The participation of persons belonging to national minorities in public affairs has undergone a step back following changes in the election system in 2004, which created additional obstacles for the representation of persons belonging to national minorities in elected bodies. A more inclusive participation of Roma organisations should be ensured in the work of the Council of representatives of associations of national minorities, as well as in the context of *ad hoc* consultations by the authorities.

256. Problems relating to access to land by Crimean Tatars have largely remained unsolved in Crimea. No legal norms relating to restitution of property to formerly deported peoples have been adopted so far.

### **Recommendations**

257. In addition to the measures to be taken to implement the detailed recommendations contained in Sections I and II of the Advisory Committee's Opinion, the authorities are invited to take the following measures to improve further the implementation of the Framework Convention:

- Amend without further delay the legislative framework pertaining to minority issues and bring it in line with relevant international norms;
- Complement civil and administrative provisions pertaining to discrimination and introduce special measures to promote full and effective equality;
- Strengthen efforts to improve the social and economic situation of persons belonging to disadvantaged minorities, particularly the Roma and the Crimean Tatars;
- Increase the vigour with which racially-motivated incidents are investigated and the perpetrators prosecuted while stepping up awareness-raising activities among law-enforcement officers, prosecutors and judges;
- Ensure that policies to promote the use of the State language do not disproportionately restrict the use of minority languages;
- Consider the possibility to resort to incentive-based measures and voluntary methods to promote the use of the state language in the media and review the imposition of rigid language quotas;
- Ensure that initiatives aimed at promoting the Ukrainian language in education do not result in undue limitations for the right to minority language education;
- Increase efforts to provide quality textbooks and qualified teachers in minority languages;
- Take measures to ensure wider participation of persons belonging to national minorities in elected bodies and improve the functioning of existing consultative bodies;
- Take further steps to address the problems faced by the Crimean Tatars in relation to land claims by adopting legal norms relating to property restitution and providing for adequate compensation.