



Strasbourg, 13 April 2005

ACFC/INF/OP/II(2004)002

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

**Second Opinion on Croatia,
adopted on 01 October 2004**

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EXECUTIVE SUMMARY

Croatia has taken a number of steps to improve the implementation of the Framework Convention following the adoption of the first Opinion of the Advisory Committee in April 2001 and the Committee of Ministers' Resolution in February 2002. This process has included important changes in both legislation and practice, and it has been facilitated by an increased dialogue between the authorities and representatives of national minorities.

There remain nevertheless problems in putting the new legal guarantees into practice. For example, the participation of national minorities in the judiciary and in administrative bodies is not yet adequate. The authorities should also pay more attention to the protection of minority languages in particular at the local level.

The work to remove obstacles to the return of persons belonging to the Serbian national minority to Croatia must be continued, and ethnic discrimination needs to be tackled more vigorously. Roma continue to face various problems and therefore the commendable initiatives in the National Programme for the Roma should be carried out without any undue delays.

SECOND OPINION ON CROATIA

1. The Advisory Committee adopted the present Opinion on 1 October 2004 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 State Report (hereinafter the State Report), received on 13 April 2004, and other written sources and on information obtained by the Advisory Committee from governmental and non-governmental contacts during its visit to Zagreb and Vukovar from 6-10 September 2004.
2. Section I below contains the Advisory Committee's main findings on key issues pertaining to the implementation of the Framework Convention in Croatia. 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 references 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 Croatia, adopted on 6 April 2001, and in the Committee of Ministers' corresponding Resolution, adopted on 6 February 2002.
4. The concluding remarks, contained in Section III, could serve as the basis for the Committee of Ministers' forthcoming conclusions and recommendations on Croatia.
5. The Advisory Committee looks forward to continuing its dialogue with the authorities of Croatia 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. Croatia has pursued a constructive approach to the monitoring process under the Framework Convention. It agreed to early publication of the first Opinion of the Advisory Committee and it was one of the first countries to host a follow-up seminar to discuss, with national minorities and representatives of the Advisory Committee, how these results could be put into practice. Also, several additional seminars on national minorities organised in Croatia have helped to raise awareness of the Framework Convention.

7. The authorities have continued to apply an inclusive approach in drafting the State Report, by consulting representatives of national minorities and by including some of their concerns in the Report. This is a welcome method of working but it merits being developed further, taking into account that some relevant non-governmental organisations maintain that the consultations should have been more inclusive and that the resulting State Report should have reflected their concerns more fully.

General legislative framework

8. Since the adoption of the first Opinion of the Advisory Committee, Croatia has improved markedly its legal framework concerning the protection of national minorities. The most significant step was the adoption, after repeated delays, of the Constitutional Law on the Rights of National Minorities in 2002. The Constitutional Law is in general a good legal framework for the protection of the rights of persons belonging to national minorities, including persons belonging to numerically small groups, and it addresses a number of legal gaps and inadequacies identified in the first cycle of monitoring of the Framework Convention, including in the field of participation of national minorities in decision-making processes.

Participation

9. The Constitutional Law has resulted in clear improvements, *inter alia*, in the participation of national minorities in Parliament and in local councils along the lines recommended by the Advisory Committee in its first Opinion on Croatia. In addition, the newly-established councils of national minorities can have an important role in the implementation of Article 15 and other principles of the Framework Convention, provided they develop into bodies with wide support amongst communities they represent and provided they have a clear role as well as the capacity and resources to provide significant and constructive input to the relevant decision-making processes.

10. The implementation of the Constitutional Law on the Rights of National Minorities has, however, been regrettably slow in some other key areas of participation. Shortcomings are particularly manifest as regards the participation of persons belonging to national minorities in the state administration and judicial bodies, where the monitoring of the current situation and the implementation of the legal guarantees are yet to be developed. Shortcomings in this sphere – which the Advisory Committee highlighted already in the first monitoring cycle – continue to impair the implementation of the rights contained in Article 15 and other provisions of the Framework Convention and merit more urgent attention by all bodies involved in judicial and other appointments. This issue also requires further attention by the relevant authorities in the design and implementation of related legislation, policies and practices.

11. Shortcomings in the effective participation in economic life, identified in the first Opinion of the Advisory Committee as an issue of serious concern, continue to be a problem for many persons belonging to national minorities. This is in many cases due to the fact that persons belonging to national minorities reside in areas with particularly serious economic problems and high unemployment affecting both the majority and minority population. These geographic areas merit particular attention in terms of the preparation, implementation and assessment of various development programmes, to which persons belonging to national minorities should be associated.

Return process

12. Croatia has made real progress in addressing a number of problems relating to the return process identified in the first cycle of monitoring of the Framework Convention. For example, persons belonging to national minorities have been given improved access to reconstruction programmes and senior public officials have made laudable statements encouraging persons belonging to national minorities to return to Croatia. There are, however, still real obstacles hindering sustainable return of persons belonging to the Serbian national minority, such as incidents of hostility in certain localities and remaining housing concerns, including those involving former tenancy rights holders. The authorities should pursue their commitment to resolve these outstanding issues with vigour and do their utmost to make sure that their support for the return process is felt also at the local level in accordance with Article 6 and other principles contained in the Framework Convention.

Discrimination

13. Croatia has taken steps to develop its legal framework to combat discrimination following the recommendations by the Advisory Committee in the first monitoring cycle. In the light of the credible reports of discrimination in the field of employment, the amendments to the Labour Code, adopted in 2003, prohibiting direct and indirect discrimination, are particularly important and their enforcement needs to be pursued and monitored vigorously. In order to improve further the implementation of Article 4 of the Framework Convention, the legislative work in this sphere needs to be continued and, taking into account the lack of reliable statistics, enhanced methods of monitoring developments in this field should be introduced.

Role of the judiciary

14. The judiciary has a key role in ensuring that the rights contained in the Framework Convention are implemented. It is therefore imperative that the reported shortcomings in this sphere, ranging from serious backlogs to ethnic bias within certain courts of first and second instance, are addressed through training and other initiatives. It is to be hoped that the concentration of war crimes trials in selected courts of general jurisdiction will lead to improvements in the procedures. In this connection, the rights of persons belonging to the Serbian national minority should be fully protected. Improvements in the representation of persons belonging to national minorities within the judiciary would also be likely to contribute to confidence by persons belonging to national minorities in the judiciary.

Office of the Ombudsman

15. The important work of the Ombudsman's office in the field of discrimination and other human rights issues linked to the implementation of the Framework Convention needs to be better recognised. The office should be provided with additional support and its presence in the regions where minorities reside compactly should be consolidated.

Citizenship

16. Those persons belonging to national minorities who have no confirmed citizenship status are particularly vulnerable to discrimination and other human rights problems. Croatia should address such human rights concerns and take further steps to regularise the status of these individuals. In this connection, Croatia should ensure that the citizenship criteria and the citizenship process in general do not contain undue obstacles and take better into account the particular challenges, pointed out already in the first Opinion of the Advisory Committee, that many Roma, women in particular, and persons belonging to other national minorities continue to face in terms of obtaining documentation and meeting other conditions. In these circumstances, it is important to ensure that the Croatian legislation and practice pertaining to national minorities, including the Constitutional Law on the Rights of National Minorities, contain no undue citizenship requirements.

Education

17. The Croatian Law on Education in Languages and Scripts of National Minorities provides a number of valuable elements in terms of the implementation of the rights contained in Articles 12 and 14 of the Framework Convention. However, it does not provide clear conditions and procedures for the implementation of educational models envisaged in the law, including the establishment of schools with education in minority languages. The resulting legal uncertainty, which was pointed out already in the first Opinion of the Advisory Committee, is compounded by the disputes as to the respective responsibilities of state, county and municipal authorities for such schools. Clarification of the applicable rules and responsibilities would be valuable, including in solving the existing disputes in relation to Serbian language schools in Vukovar. This should be done in a manner in which the legitimate concern for inter-ethnic dialogue is balanced with the need to ensure that minority language education is organised in accordance with the law and the principles contained in the Framework Convention, taking into account the existing demand.

18. The lack of up-to-date textbooks in some minority languages, noted as an issue of concern in the first Opinion of the Advisory Committee, continues to hamper the implementation of Articles 12 and 14 of the Framework Convention. The authorities should redouble their efforts in this sphere in order to address this problem, including through bilateral co-operation.

Use of minority languages in relations with administrative authorities

19. The Constitutional Law on the Rights of National Minorities expanded the right to use minority languages in contacts with administrative authorities and thereby strengthened the legal guarantees for the implementation of Article 10 of the Framework Convention, along the lines suggested by the Advisory Committee in the first monitoring cycle. The new legal guarantees have, however, not been properly implemented in all relevant units of self-government, and the authorities at all levels should take more proactive measures to ensure that throughout Croatia local statutes and practices are in full compliance with the law.

Data collection

20. The adequate implementation of minority rights requires in many fields data on the number of persons concerned, and in this respect the 2001 population census of Croatia was of central importance as was highlighted in the first Opinion of the Advisory Committee. The reliability of the census results, which show a drastic decrease in the number of Serbs and certain other national minorities in relation to the previous census, has however been contested by many representatives

of national minorities. It is alleged that fear of discrimination prompted many to hide their minority identity and that persons belonging to national minorities of Croatia who resided outside the country were not adequately included in the census process. Independent research, including that launched by the Council for National Minorities, to analyse the census process and its results, merits support as it could be a valuable way to address the concerns expressed and to identify ways of collecting supplementary data on national minorities in accordance with Article 3 and other articles of the Framework Convention.

The National Programme for the Roma

21. Croatia has adopted a National Programme for the Roma, as was recommended in the first Opinion of the Advisory Committee. The drafting process was inclusive and the Programme contains a range of commendable initiatives aimed at preventing ethnically motivated hostility and improving the protection of the rights of Roma in education, employment, health and other key sectors where they face considerable problems. While some selected elements of the Programme have been launched and while there is a clear commitment to it in certain parts of the administration, stronger financial and other support is required for its overall implementation and for the Programme to yield tangible improvements in the protection of Roma. This should be facilitated through evaluation and monitoring of the implementation of the Programme, in accordance with set time-framed targets.

II. ARTICLE-BY-ARTICLE FINDINGS

ARTICLE 3 OF THE FRAMEWORK CONVENTION

Constitutional definition of the term national minority

Findings of the first cycle

22. In its first Opinion on Croatia, the Advisory Committee regretted that only some of the national minorities covered by the Constitutional Law on National Minorities were explicitly mentioned in the preamble of the Constitution of Croatia while the rest were referred to as “others”, and it noted that this limited listing was reflected in the electoral system of the country.

Present situation

a) Positive developments

23. The list contained in the preamble of the Constitution remains unchanged. However, the new Constitutional Law on the Rights of National Minorities does not contain any list of national minorities but defines, in its Article 5, in general terms the Law’s personal scope of application. Furthermore, 12 national minorities not mentioned in the preamble of the Constitution were included in 2003 in the scope of Article 16 of the Law on Election of Representatives to the Croatian Parliament concerning representation of persons belonging to national minorities in the legislature. This is a welcome development (see also related comments under Article 15 below).

b) Outstanding issues

24. While the legal impact of the inclusion or non-inclusion of a national minority in the said listing has thereby been diminished, it continues to carry symbolic significance amongst the national minorities concerned.

Recommendations

25. The authorities should take seriously the concerns expressed by those persons belonging to national minorities who are not explicitly mentioned in the preamble to the Constitution. The authorities should also make sure that the implementation of the norms pertaining to the rights of persons belonging to national minorities covers all national minorities protected in accordance with the Constitutional Law on the Rights of National Minorities.

Citizenship criterion in the definition of the term national minority

Findings of the first cycle

26. In its first Opinion on Croatia, the Advisory Committee encouraged the authorities to include persons belonging to additional groups, including non-citizens as appropriate, in the application of the Framework Convention on an article-by-article basis.

Present situation

a) Positive developments

27. The Advisory Committee welcomes the fact that the Croatian authorities have, in the course of the monitoring exercise under the Framework Convention, engaged in dialogue with the Advisory Committee also on the protection of individuals who do not have confirmed citizenship of Croatia.

b) Outstanding issues

28. The Constitutional Law on the Rights of National Minorities could be interpreted as providing an *a priori* exclusion of non-citizens from its scope of application: It defines in general terms under Article 5 the term national minority for the purposes of the said law as a “group of *citizens* whose members traditionally inhabit the territory of the Republic of Croatia, its members having ethnic, linguistic, cultural and/or religious characteristics different from other citizens and are led by the wish to preserve these characteristics” (emphasis added). Furthermore, Article 4 of the Constitutional Law states that every “*citizen of the Republic of Croatia* has the right to declare freely to be a member of a national minority” (emphasis added).

29. The Advisory Committee agrees that a citizenship criterion can be a legitimate requirement in relation to certain measures taken in accordance with the principles of the Framework Convention. This is the case for example as regards provisions guaranteeing minority representation in the legislature, in accordance with the Constitutional Law and the Law on the Election of Representatives to the Croatian Parliament. A generally applicable citizenship criterion is, however, problematic in relation to guarantees in some other key fields covered by the Framework Convention, such as non-discrimination and education, especially taking into account that a number of Roma and other persons affiliated with national minorities reside in Croatia without a confirmed citizenship and have had difficulties in acquiring citizenship (see related comments under Article 4 below).

Recommendations

30. Croatia should consider amending the Constitutional Law on National Minorities in so far as it provides an *a priori* exclusion of non-citizens from its scope and the authorities should ensure that in the relevant sectoral legislation and practice such a requirement is invoked judiciously and only in cases where it pursues a legitimate aim.

Data collection*Findings of the first cycle*

31. In its first Opinion on Croatia, the Advisory Committee encouraged the authorities to ensure that collection of data on individuals’ affiliation with national minorities be coupled with adequate legal safeguards and that the right not to be treated as a person belonging to a national minority is also protected.

32. As regards the population census of 2001, the Advisory Committee expressed the hope that it would result in accurate statistics and that persons belonging to national minorities of Croatia who reside outside of Croatia would have the possibility of taking part in the census.

Present situation

a) Positive developments

33. Croatia has improved guarantees pertaining to data collection, notably by adopting the Law on the Protection of Personal Data in 2003. The authorities are also committed to following the principles of Article 3 of the Framework Convention in the on-going process of setting up a central registry of civil servants, which will contain confidential information on the civil servants' affiliation with a national minority only if the individuals concerned so wish.

b) Outstanding issues

34. The 2001 census results have a direct impact on the implementation of some of the provisions of the Constitutional Law on the Rights of National Minorities and of several other key laws, including the Law on the Official Use of Minority Languages and Scripts and the Law on Local Elections. The results showed a drastic decrease in the number of persons declaring that they belong to a national minority in relation to the 1991 census, including as regards the Serbs (whose share of the population dropped from 12.2% to 4.54%), Hungarians (from 0.5% to 0.37%) and Slovenes (from 0.5% to 0.3%) and Ukrainians (from 0.1% to 0.04%). While no detailed research on the issue is yet available, it is clear that the reductions appear to reflect in part the demographic changes that have occurred, including as a result of the war. It should however also be noted that conduct of the census itself has been the subject of criticism, including as regards the limited extent to which those Croatian Serbs who currently reside outside the country were included in the census and the extent to which Roma and other national minorities were involved in the process, for example, as census takers. It also appears likely that some participants decided to use their right not to reveal their affiliation with a national minority due to their past experience of discriminatory practices or hostility towards certain national minorities.

35. The Council for National Minorities has concluded that various factors around the census results merit being examined further and it has launched an independent research project to analyse the census process and its results. This may provide important results that could help to address the concerns expressed and to identify ways to obtain additional disaggregated data on national minorities in accordance with Article 3 of the Framework Convention.

Recommendations

36. The Croatian authorities should support independent research, including the research launched by the Council for National Minorities, to analyse the census process and its results. Results of such research could be used to address concerns expressed in relation to the census and to identify ways to obtain increasingly reliable and up-to-date disaggregated data on national minorities in accordance with Article 3 of the Framework Convention. At the same time, the authorities should ensure that the census results are not given undue weight in the design and implementation of minority policies.

Status of Muslims

Present situation

a) Positive developments:

37. Persons identifying themselves as Bosniacs were for the first time categorised as such in the 2001 census results, after having been previously placed in the census results under the category “Muslims”. This is a development to be welcomed in the light of Article 3 of the Framework Convention.

b) Outstanding issues

38. It appears that the status of Muslims has not been clearly addressed. The number of those who declared their “nationality” as Muslims (19,677) was included, not in the list of national minorities, but as a “note” to the official census results¹. It remains unclear to what extent they are entitled, in the view of the authorities, to the protection of the Framework Convention and have the right to invoke provisions contained in the Constitutional Law on the Rights of National Minorities, including those pertaining to councils of national minorities.

Recommendations

39. The authorities should clarify, in co-operation with the persons concerned and taking into account the results of research on the census, their approach to the category “Muslims” in a manner which accords with the right to self-identification under Article 3 of the Framework Convention.

ARTICLE 4 OF THE FRAMEWORK CONVENTION

Legislative developments in the field of discrimination

Findings of the first cycle

40. In its first Opinion on Croatia, the Advisory Committee called on the authorities to ensure that rules concerning implementation of legislation contain no discriminatory provisions and that efforts should be taken to develop anti-discrimination legislation to cover all relevant societal setting.

Present situation

a) Positive developments

41. Croatia has adopted improved guarantees against discrimination and intolerance through amendments to the Criminal Code, adopted in 2003 and 2004, as well through amendments to the Labour Code, adopted in 2003, prohibiting direct and indirect discrimination and it has addressed problems related to certain normative acts containing discriminatory provisions.

b) Outstanding issues

42. A lack of detailed legislation against discrimination persists in certain key fields, such as education and housing.

43. Another problem is that the authorities do not possess adequate data on the implementation of the laws pertaining to discrimination, including on the number of civil and criminal cases brought

¹ This is to be distinguished from the number of persons who declared themselves as Muslims in the category concerning their religious affiliation (56,777 in the census of 2001).

before the judiciary and information on the resulting decisions. The overall impression is however that the relevant legislation is rarely invoked in comparison to the minorities' estimates of the actual number of cases involving discrimination, notably as regards Roma and Serbs.

Recommendations

44. The authorities should develop further non discrimination legislation in key fields such as education and housing. Croatia should also introduce enhanced and inclusive methods of monitoring developments in this field.

Repossession of property

Findings of the first cycle

45. In its first Opinion, the Advisory Committee encourages the authorities to address discrimination that was particularly prevalent in the context of return of persons belonging to national minorities, including in decisions related to the repossession of property.

Present situation

a) Positive developments

46. Croatia has made significant progress in solving cases of repossession of property by the returnees belonging to national minorities and in addressing discriminatory elements that have hampered this process.

b) Outstanding issues

47. There remain substantial problems in the return process including damage and looting caused by the temporary users of the property and claims by temporary occupants for compensation for alleged improvements they have made to the property during their occupancy. Furthermore, delays in the processing of repossession cases, including by the judiciary, and in the execution of certain eviction orders, have caused significant problems in some instances.

Recommendations

48. The authorities should complete the work on the pending repossession cases in accordance with the deadlines set and ensure that the cases of looting and claims for damages are handled in a non-discriminatory manner.

Former tenancy rights holders

Findings of the first cycle

49. In its first Opinion on Croatia, the Advisory Committee urged the authorities to pay particular attention to the problems related to the former tenancy rights holders belonging to national minorities.

Present situation

a) Positive developments

50. Croatia has introduced two programmes to provide housing assistance to the former tenancy/occupancy rights holders, most of whom are Serbs. These programmes were welcomed as important elements in building conditions for sustainable return especially in urban areas.

b) Outstanding issues

51. The authorities showed limited commitment to the implementation of the above-mentioned programmes up until the launching of an information campaign in co-operation with the international community in September 2004, less than four months before the dead-line for applying for such assistance outside the areas of special state concern.

52. In addition to the issue of housing needs *per se* of the former occupancy/tenancy rights holders, some persons belonging to national minorities have challenged the legality of the past termination of their occupancy/tenancy rights. In one such case, the European Court of Human Rights recently concluded that there had been no violation of Article 8 of the Convention (right to respect for one's home) or of Article 1 of Protocol No. 1 (protection of property) to the Convention², but other cases involving different circumstances are still pending before domestic instances.

Recommendations

53. The authorities should give a high priority to the provision of adequate housing for former occupancy/tenancy right holders, and make sure that the application of deadlines are not unreasonable in the light of the recent launching of the information campaign on this matter.

54. As regards cases concerning the legality of the termination of occupancy/tenancy rights, particular care should be taken to ensure that each case is examined carefully and in a non-discriminatory manner by the relevant domestic instances.

Office of the Ombudsman

Findings of the first cycle

55. In its first Opinion, the Advisory Committee concluded that the work of the Office of the Ombudsman in tackling discrimination merits increasing support.

Present situation

a) Positive developments

56. Issues pertaining to national minorities continue to be an important element of the work of the Office of the Ombudsman, and the office reports that its relations with relevant governmental instances have somewhat improved.

b) Outstanding issues

57. Limited resources continue to be a problem for the Office of the Ombudsman. With funds from international sources, the Office has been able to conduct visits to certain regions where

² *Blečić v. Croatia*, Judgment by the First Section of 29 July 2004, Application No. 59532/2000.

minorities reside compactly, including in the areas of special state concern, but it has no permanent presence outside Zagreb.

Recommendations

58. Bearing in mind that many key human rights problems facing national minorities often pertain to regions outside Zagreb, Croatia should enable the Office of the Ombudsman to consolidate its regional presence, for example, through regional offices.

Special measures

Findings of the first cycle

59. In its first Opinion, the Advisory Committee urged the authorities to launch additional positive measures in the field of employment with a view to ensuring full and effective equality for persons belonging to national minorities. The issue of employment was also raised in the Committee of Ministers' first Resolution on the implementation of the Framework Convention in Croatia.

Present situation

Outstanding issues

60. Persons belonging to national minorities continue to face serious problems in the field of employment, which is partially due to the fact that certain areas of their compact residence face particularly serious economic difficulties. The Advisory Committee has not been informed of any positive, targeted Government programmes launched to counter the impact of the past discriminatory measures that Serbs in particular experienced in various fields of employment (see also related comments under Article 15 below).

61. In a number of villages and hamlets inhabited by returning Serbs, the situation has been aggravated by the fact that the authorities have not ensured the provision of electricity and other essential infrastructure. This has made it very difficult to launch economic activities and hurt sustainable return in these areas. Therefore, the authorities' announcement, in September 2004, that a new electrification project will be launched to address this problem is to be welcomed.

Recommendations

62. Croatia should introduce special measures aimed at guaranteeing persons belonging to national minorities full and effective equality in the field of employment, and it should seek financing for such initiatives. It should also ensure that basic infrastructure is provided to communities throughout Croatia in a non-discriminatory manner.

Citizenship

Findings of the first cycle

63. In its first Opinion, the Advisory Committee urged the authorities to address the problems that persons belonging to national minorities face in their attempts to invoke citizenship legislation.

Present situation

a) Positive developments

64. There is reported progress in administrative procedures pertaining to citizenship. Also, the National Programme for the Roma makes reference to some of the problems concerning the citizenship status of Roma and envisages important measures to address them, including improved awareness-raising efforts on the applicable rules and procedures and employment of persons with Roma language skills in the relevant administrative structures.

b) Outstanding issues

65. Despite progress, the requirements under the Law on Citizenship and the application in practice continue to pose problems for persons belonging to national minorities. Many Roma in particular encounter difficulties in providing necessary documents to prove they meet the residency requirement and, due to the problem of illiteracy, especially amongst Roma women, in meeting the “proficiency in the Croatian language and Latin script” requirement under the said law. The application of the said Law’s residency and other criteria also pose problems for persons belonging to other national minorities, including Bosniacs. In this connection the Advisory Committee recalls that the Law on Citizenship contains a simplified citizenship procedure reserved for ethnic Croats only, which has been criticised, *inter alia*, by the UN Committee on the Elimination of Racial Discrimination³.

66. Lack of confirmed citizenship makes persons concerned particularly vulnerable to discrimination and could constitute an obstacle in the realisation of their rights, including economic, social and cultural ones⁴.

67. The implementation of the relevant parts of the National Programme for the Roma has only begun and more targeted efforts are needed to tackle some pertinent problems such as the obstacles linked to the Croatian language and Latin script proficiency requirement.

Recommendations

68. Croatia should take further measures – including training, improvements in administrative procedure as well as legislative amendments, as necessary – to ensure that a lack of confirmed citizenship does not constitute an obstacle in the enjoyment of basic rights and that the citizenship process is fully accessible to persons belonging to national minorities.

National Programme for the Roma*Findings of the first cycle*

69. In its first Opinion, the Advisory Committee concluded that Croatia has not been able to secure full and effective equality between the majority population and Roma and it urged the authorities to develop more comprehensive programmes and strategies to address concerns of this national minority.

³ See Concluding observations of the UN Committee on the Elimination of Racial Discrimination in respect of Croatia, 21 May 2002, CERD/C/60/CO/4.

⁴ See e.g. National Programme for the Roma, which states that “status as a citizen is an important condition for the realization of many rights (political, civil, economic, social, cultural and other)”.

Present situation

a) Positive developments

70. Following extensive consultation with Roma and other relevant partners, the Croatian Government adopted a National Programme for the Roma in October 2003. The programme contains a range of commendable initiatives aimed at preventing ethnically motivated hostility and discrimination towards Roma, including by improving the performance of the law-enforcement bodies, and at improving the protection of Roma in education, employment, health and other key sectors where Roma face considerable problems.

71. There is a clear commitment to the implementation of the Programme in certain parts of the administration, including in the Government Office for National Minorities, and some important activities envisaged in the programme have been launched, such as training initiatives for young Roma.

b) Outstanding issues

72. The overall implementation of the programme has to date been disappointing. The programme was not given the necessary priority in the 2004 budget and in many sectors the envisaged projects have not started in line with the agreed schedule. The Commission, established in April 2004, to monitor the implementation of the programme will hopefully help to accelerate the process.

73. For many Roma, the increased commitment of the central government to Roma has not yet brought about local improvements, including in terms of their access to key public services, many of which are the responsibility of local authorities. For example, in the informal Roma settlement of Struge in the city of Zagreb, Roma families have lived since 1960s in sub-standard housing conditions, without basic sanitary facilities, heating, running water and electricity.

Recommendations

74. Stronger support, financial and other, both at the central and local level is required for the overall implementation of the National Programme for the Roma in order to achieve tangible improvements in the protection of Roma, including in terms of addressing the status of informal settlements and providing them with basic infrastructure on a non-discriminatory basis. This should be facilitated through evaluation and monitoring of the implementation of the Programme, in accordance with set targets.

ARTICLE 5 OF THE FRAMEWORK CONVENTION

Support for minority cultures

Findings of the first cycle

75. In its first Opinion, the Advisory Committee urged the authorities to maintain support for projects to develop minority cultures and to involve representatives of national minorities in the allocation of such support.

Present situation

Positive developments

76. Croatia has increased the level of budgetary support provided for cultural initiatives of national minorities and their associations, and it has significantly improved the participation of persons belonging to national minorities in the process by making the allocation of such support the responsibility of the Council for National Minorities (see also related comments under Article 15 below).

Recommendations

77. Croatia should pursue its current approach and also continue to support joint initiatives launched by several national minorities.

ARTICLE 6 OF THE FRAMEWORK CONVENTION**Promotion of tolerance***Findings of the first cycle*

78. In its first Opinion, the Advisory Committee concluded that statements and acts of certain authorities, in particular at the local level, do not consistently reflect the need for tolerance and intercultural dialogue.

Present situation

a) Positive developments

79. At the national level, many senior public officials have, including through public statements and visits, taken laudable steps to encourage persons belonging to national minorities to return to Croatia and to stress the importance of good inter-ethnic relations in the country.

b) Outstanding issues

80. The progress appears to be less satisfactory at the local level. While certain progress has been noted in a number of areas, incidents of anti-minority rhetoric by local politicians are still reported.

81. As regards the general public, recent poll results suggest there are still serious problems in terms of inter-ethnic relations and acceptance of the return process in particular in the war affected areas. For example, the results of a recent research project suggest that a clear majority of the domicile Croat population in the areas of Serb minority return do not consider the return of Serb refugees a good thing for Croatia⁵.

⁵ See Croatia's Refugee Challenge, Motivational and emotional factors for the return of refugees to their homes and the acceptance of their return by the local population - empirical research conducted by the Puls Agency in co-operation with the OSCE Mission to Croatia, Zagreb, 2004.

Recommendations

82. The authorities should pursue further their efforts to promote tolerance and intercultural dialogue in the education, media and other fields, including in connection with the return process (see also related comments under Article 12 below). Progress reported should be consolidated and expanded further at the regional and local level. In this process, the regional and local councils of national minorities and their coordination bodies could also play an important role.

Stereotyping in the media

Findings of the first cycle

83. In its first Opinion, the Advisory Committee concluded that many media still report in a manner that strengthens negative stereotypes of certain national minorities and the portrayal of minorities in the media was also raised in the Committee of Ministers' first Resolution on the implementation of the Framework Convention in Croatia.

Present situation

a) Positive developments

84. Many commentators agree that the media report on minority-related issues in an increasingly balanced and professional manner.

b) Outstanding issues

85. Some local media still resort to unduly negative reporting, reflecting prejudices. The Croatian media has not yet set up a self-regulatory body to which complaints concerning media content could be brought.

Recommendations

86. Proposals to create a self-regulatory scheme, dealing also with complaints regarding reporting on minority issues, should be supported. Independent monitoring of media's portrayal of minority issues also merit further support.

Judiciary and war crimes trials

Findings of the first cycle

87. In its first Opinion, the Advisory Committee underlined the importance of efforts to ensure that war crime trials are treated without any ethnic bias.

Present situation

a) Positive developments

88. There is an increasing awareness by authorities in Croatia of the need to ensure that domestic war crime trials are carried out without ethnic bias. Croatia's increased co-operation with the International Tribunal for the former Yugoslavia is also to be welcomed.

b) Outstanding issues

89. Recent studies, however, indicate that the ethnic origin of defendants and of victims continue to affect domestic war crime proceedings, despite important efforts, including by the Supreme Court, to address the procedural and other problems detected in these cases⁶. Croatia has also introduced certain new initiatives, such as the concentration of war crime cases in selected courts and providing them with focussed training initiatives, aimed to improve the situation.

90. In addition to war crime cases, the more general problems pertaining to the judiciary in Croatia, including persistent delays, shortcomings in the provision of free legal aid and limited participation of national minorities in the courts and prosecutorial bodies (see also relevant comments under Article 15 below), continue to harm the implementation of the rights contained in the Framework Convention and erode the confidence persons belonging to national minorities have in these bodies.

Recommendations

91. The authorities should redouble their efforts to prevent and eliminate any ethnic bias in the judiciary, including through comprehensive training, and improve in general the effectiveness and the capacity of the judicial system to protect the rights contained in the Framework Convention.

Police and ethnically motivated incidents*Findings of the first cycle*

92. In its first Opinion, the Advisory Committee called for further efforts to combat attacks on religious buildings and cemeteries and to combat, generally, ethnically motivated crime, including by the police.

Present situation

a) Positive developments

93. Ethnically motivated incidents appear to be increasingly isolated and police have in certain cases reacted to them quickly.

b) Outstanding issues

94. The real number of ethnically motivated incidents is difficult to determine due to the lack of reliable statistics (see also related comments under Article 4 above). The reported incidents concern mainly Serbs in the war-affected areas and Roma, but alleged incidents affecting other minorities have also been brought to the attention of the Advisory Committee. Despite progress, there have also been allegations of the failure of the law-enforcement authorities to prevent and promptly investigate attacks against persons belonging to national minorities⁷.

⁶ See Supplementary Report, War Crime Proceeding in Croatia and Findings from Trial Monitoring, OSCE Mission to Croatia, 22 June 2004.

⁷ See e.g. Conclusions and recommendations of the UN Committee against Torture, 11 June 2004, CAT/C/CR/32/3.

Recommendations

95. Croatia should pursue and expand its efforts to ensure that ethnically motivated crime is consistently categorised as such and prosecuted vigorously by law-enforcement bodies.

ARTICLE 7 OF THE FRAMEWORK CONVENTION

Regulatory framework concerning minority associations

Findings of the first cycle

96. In its first Opinion, the Advisory Committee stressed that the right of persons belonging to national minorities to establish and operate associations should be fully secured in a new law on associations.

Present situation

a) Positive developments

97. The new Law on Associations, adopted in 2001, provides an improved legal framework for associations, including those representing national minorities.

b) Outstanding issues

98. In the activities of such associations, a main issue is currently how the new tax regime introduced by the Government in 2004 will affect their functioning.

Recommendations

99. The authorities should monitor how the new tax regime affects the operation of associations, including those dealing with the protection of national minorities, and introduce changes if necessary.

ARTICLE 8 OF THE FRAMEWORK CONVENTION

Religious communities

Findings of the first cycle

100. In its first Opinion, the Advisory Committee emphasised the need to protect the rights contained in Article 8 of the Framework Convention in the light of the reported differences in the treatment of religious communities, including in the army.

Present situation

a) Positive developments

101. The adoption of the Law on the Legal Status of Religious Communities and the conclusion of agreements between the Government and the Serbian Orthodox Church and the Islamic Community in 2002 (the Government had concluded concordats with the Holy See already in 1997 and 1998) led to progress in the equal access of these religious communities to various institutions, including in terms of the possibility to offer religious services in the army.

b) Outstanding issues

102. A separate agreement with the Jewish Community is still pending due to unsolved property restitution issues. There are also reported delays in the restitution cases concerning the property of other religious communities.

Recommendations

103. Croatia should take further steps to conclude an agreement with the Jewish Community, similar to the ones concluded with other religious communities. Croatia should also complete the process of restitution of property of religious communities.

ARTICLE 9 OF THE FRAMEWORK CONVENTION

Broadcasting for minorities in the electronic media

Findings of the first cycle

104. In its first Opinion, the Advisory Committee concluded that the legal provisions on the broadcasting for persons belonging to national minorities were positive but very general. The Advisory Committee also concluded that the volume of broadcasting in minority languages and on minorities was too limited in the public service television and in the radio at the national level and the access of persons belonging to national minorities to various media was also raised in the Committee of Ministers' first Resolution on the implementation of the Framework Convention in Croatia.

Present situation

a) Positive developments

105. While the relevant provisions in the Law on Croatian Radio-Television have remained unchanged, new legal obligations to introduce programming for national minorities have been included in Article 18 of the Constitutional Law on the Rights of National Minorities, which contains, *inter alia*, the obligation to produce broadcasting on the work of the council of national minorities. It also contains an obligation to involve representatives of national minorities in programmes aimed at them.

106. At the regional and local level, there are a number of commendable initiatives, including multi-ethnic radio stations, which have been supported through the public funds allocated by the Council for National Minorities.

b) Outstanding issues

107. At the national level, the situation in public service broadcasting appears to be largely similar to the one prevailing during the first cycle, with the 55-minute weekly programme Prizma as the only regular TV programme devoted to minority issues and with there being only a limited amount of minority radio broadcasting. Proposals have however been floated to expand the scope of such broadcasting, bearing in mind that many national minorities consider this to be a key issue of concern.

108. There are well-justified calls for additional measures also at the local and regional level, for example, the introduction of Ruthenian and Ukrainian language radio programmes in Vukovar.

Recommendations

109. Further measures are required to expand the scope of public service broadcasting for national minorities, in line with the relevant provisions contained in the Constitutional Law on the Rights of National Minorities (see paragraph 105 above) and taking into account the expressed demands.

ARTICLE 10 OF THE FRAMEWORK CONVENTION

Use of minority languages in relations with authorities

Findings of the first cycle

110. In its first Opinion, the Advisory Committee concluded that the numerical threshold for the right to use a minority language in relations with authorities, contained in the Law on the Use of Language and Script of National Minorities, was high from the point of view of Article 10 of the Framework Convention and that it lacks clarity.

Present situation

a) Positive developments

111. The Constitutional Law on the Rights of National Minorities improved the legislative framework for the implementation of Article 10 of the Framework Convention. In its Article 12(1), the Constitutional Law provides that the units of local self-government must guarantee the “equal official use” of a minority language (implying also the right of persons to use this language in relations with the authorities) if persons belonging to the national minority at issue account for at least one third of the unit’s population, whereas before a majority was required.

b) Outstanding issues

112. The resulting lower threshold is a clear improvement, but it still excludes a number of municipalities with a substantial number of persons belonging to national minorities. For example, according to the 2001 census results, the Serbs in Vukovar are slightly under the threshold as they constitute 32.88% of the population and in Knin their share of the population is 20.83%. Even in those municipalities where the threshold is met, the implementation of the new guarantees has not been consistent. According to information received by the Advisory Committee from the central authorities, eight units of local self-government have failed to meet their legal obligation to

introduce the official use of a minority language by September 2004, i.e. almost two years after the entry into force of the Constitutional Law on 23 December 2002.

113. The Constitutional Law maintains the possibility of the local self-government units and regional units introducing equal official use of a minority language even when the above-mentioned obligation does not apply. This option has not, however, been widely invoked despite the positive examples set in Istria with regard to the Italian language.

Recommendations

114. The Croatian authorities should take more proactive measures to ensure that the provisions of the Constitutional Law pertaining to the implementation of Article 10 of the Framework Convention are implemented in all units of local self-government where a national minority constitutes at least one-third of the population. Furthermore, the authorities in other areas where minorities reside in substantial number should be encouraged to use their discretionary power to introduce possibilities to use a minority language in relations with administrative authorities.

ARTICLE 11 OF THE FRAMEWORK CONVENTION

Topographical indications

Findings of the first cycle

115. In its first Opinion, the Advisory Committee concluded that the legislative provisions on the display of minority language topographical signs suffer from the same lack of clarity noted in connection with the implementation of Article 10 of the Framework Convention.

Present situation

a) Positive developments

116. The amendments brought about by the Constitutional Law on the Rights of National Minorities outlined above in connection with Article 10 of the Framework Convention improved the legislative framework on topographical indications, as the concept of the “equal official use” of minority language also encompasses the obligation to provide bilingual or multilingual topographical indications pursuant to Article 10 of the Law on the Use of Language and Script of National Minorities.

b) Outstanding issues

117. The comments under Article 10 of the Framework Convention as regards the lack of implementation by several units of self-government of their legal obligations under Article 10 of the Law on the Use of Language and Script of National Minorities, apply, *mutatis mutandis*, also to the display of topographical indications.

Recommendations

118. The Croatian authorities should take more proactive measures to ensure that the provisions of the Constitutional Law pertaining to the implementation of Article 11 of the Framework Convention are implemented.

ARTICLE 12 OF THE FRAMEWORK CONVENTION

Content of history textbooks

Findings of the first cycle

119. In its first Opinion, the Advisory Committee underlined the importance of the pending projects launched to ensure that history textbooks do not foster negative stereotypes.

Present situation

a) Positive developments

120. Following the expiry of the agreed moratorium on the teaching of recent history (1989-1995) in the Danube region in 2003, the authorities set up a commission to prepare a supplement to history textbooks, containing objective coverage of that period.

b) Outstanding issues

121. Pending the completion of the work of the above-mentioned commission, the pupils are using the old history textbooks, the content of which has prompted some criticism amongst persons belonging to the Serbian national minority.

122. At the same time, it has been stressed that efforts to ensure that history textbooks cover war-related and other events in a balanced manner should not be restricted to the books made available for the Serb pupils but should cover history textbooks more generally.

Recommendations

123. The authorities should continue to assist the work of the commission working on the history supplement so that the new texts can be made rapidly available to pupils. They should also ensure that all history textbooks used in Croatian schools offer an equally balanced picture of the past events.

Availability of textbooks in minority languages

Findings of the first cycle

124. In its first Opinion, the Advisory Committee urged the authorities to address the problem of securing textbooks for persons belonging to national minorities.

Present situation

Outstanding issues

125. A lack of up-to-date textbooks continues to be a serious problem for persons belonging to certain national minorities, in particular in secondary schools, to the extent that it may be a factor in the decisions of some pupils not to opt for minority language teaching.

Recommendations

126. The Croatian authorities should address the problem of textbooks as a matter of priority in order to ensure equal treatment of persons belonging to national minorities in the educational system. In addition to ensuring adequate domestic production of textbooks, the authorities should also consider approving to a greater extent, where appropriate, the use of books produced in the kin State of the minority concerned in accordance with Article 15 of the Law on Education and Schooling in a National Minority Language and Script.

**Education of Roma children and
contacts amongst pupils from different communities**

Findings of the first cycle

127. In its first Opinion, the Advisory Committee expressed concern over the placing of Roma children in separate classes and their stigmatisation in certain schools and called on the authorities to take further measures to improve the status of Roma in schools.

Present situation

a) Positive developments

128. The authorities seem to be increasingly sensitive to the problems of Roma children in education and have launched new initiatives, including at the pre-school level, which are aimed at improving the situation and attendance of Roma children in schools. The National Programme for the Roma details a number of laudable measures that could help to further the protection of the Roma in the educational system, such as the employment of Roma assistant teachers in regular classes and provision of free meals for children.

b) Outstanding issues

129. The placing of Roma children in separate classes appears to be increasingly rare in Croatia, but this practice, which has been challenged in pending legal cases, continues in some schools in Medjmurje county. The National Programme for the Roma also endorses the idea of separate first grade, Roma-only classes for those who have not attended pre-school and are not proficient in the Croatian language. Such classes do not appear to be set up to foster teaching in or of Roma language or other elements of Roma culture, but rather to assist the children to obtain basic Croatian language and other skills so that they can meet the demands of the educational system. While recognising that these are valuable aims, the Advisory Committee considers that pupils should not be placed in such remedial, separate classes on the basis of their affiliation with a national minority but rather on the basis of the skills and needs of the individuals concerned, and where such placing is found necessary, it should be for a limited period only.

130. In addition to the above-mentioned Roma issues, there are also problems in respect of ensuring contacts between pupils of other communities in accordance with Article 12 of the Framework Convention. In Vukovar, the students with instruction, respectively, in Serbian and Croat, while formally attending the same school, are in some instances educated in separate facilities. The Advisory Committee acknowledges that separate classrooms are often required to introduce instruction in minority languages, but it stresses that this does not necessitate altogether divided facilities within the same school.

Recommendations

131. Croatia should fully implement the valuable educational initiatives contained in the National Programme for the Roma, including those promoting increased attendance of Roma children in pre-schools. The envisaged remedial first-grade classes should, however, not be conceived *a priori* as Roma classes, but as classes to which individuals are placed on the basis of their skills and needs, regardless of their ethnicity.

132. The authorities should encourage improved contacts between pupils of different communities, including through co-operation with non-governmental organisations and by addressing the cases where pupils attending the same school are placed in altogether divided facilities, according to their choice of language.

ARTICLE 14 OF THE FRAMEWORK CONVENTION

Legal framework concerning minority language education

Findings of the first cycle

133. In its first Opinion, the Advisory Committee concluded that the Law on Education in Languages and Scripts of National Minorities contains positive general provisions but regrettably it does not contain clear criteria.

Present situation

a) Positive developments

134. The Constitutional Law on the Rights of National Minorities addresses the issue of minority language education in its Article 11 in general terms, reflecting the provisions contained in the Law on Education in Languages and Scripts of National Minorities.

b) Outstanding issues

135. However, no clear criteria that would trigger the introduction of instruction in minority languages have been introduced in the Croatian legislation. The prevailing legal uncertainty has been compounded by the fact that the de-centralisation process has resulted in disagreements over respective responsibilities of local, regional and central authorities for the school institutions using minority language and script pursuant to Article 3 of the Law on Education in Languages and Scripts of National Minorities.

136. The lack of a clear normative framework may in some cases intensify the over politicisation of the question of minority language education, which appears to be the case in Vukovar, where strong disagreements over the registration of a Serbian school have negatively affected inter-ethnic relations. In this connection, a key issue of debate is whether the national minority in question should be educated in their own institutions or whether they should receive instruction in their minority language in schools using Croatian language. The Advisory Committee acknowledges that the legitimate concern for inter-ethnic dialogue is essential in the war-affected areas and necessitates concerted efforts which could ultimately facilitate integration (see also comments under Article 12 above). At the same time, it needs to be ensured that minority language education is organised in accordance with the law and that no undue differences are made in this respect

between various national minorities. In order to achieve this aim, the clarification of the applicable norms and responsibilities is essential.

Recommendations

137. The authorities should, as a matter of priority, take steps to clarify the rules and responsibilities that apply to the introduction of instruction in minority languages, including as regards the setting up of school institutions pursuant to Article 3 of the Law on Education in Languages and Scripts of National Minorities.

Availability of minority language education

Findings of the first cycle

138. In its first Opinion, the Advisory Committee welcomed the efforts made in the field of minority language education and encouraged the authorities to consider further measures to expand these efforts including to cover the Roma language.

Present situation

a) Positive developments

139. Croatia continues to provide significant opportunities for minority language education for a number of national minorities. Valuable efforts have been made, for example, in respect of the Italian, Czech, Hungarian and Slovak minorities.

b) Outstanding issues

140. The situation is however less developed in respect of national minorities that have only relatively recently been recognised as such. As regards Roma, the National Programme recognises their right to minority language education, but it goes on to state that it is not currently provided because there is no demand amongst this minority for education in their own language.

Recommendations

141. Croatia should continue to analyse the demand that exists amongst national minorities to receive instruction in or of their languages and take appropriate follow-up measures, ensuring that the Law on Education in Languages and Scripts of National Minorities is implemented in respect of all national minorities without any discrimination.

Teacher training

Findings of the first cycle

142. In its first Opinion, the Advisory Committee concluded that the question of teacher training required increased attention.

Present situation

a) Positive developments

143. There have been certain new developments pertaining to teacher training, including promising new cross-border initiatives involving training of teachers in Vojvodina (Serbia and Montenegro), supplementing co-operation programmes that are already in place with other countries, including Hungary, Slovakia and the Czech Republic.

b) Outstanding issues

144. Shortcomings in the field of teacher training are, however, still reported by national minorities and in this respect the situation of Ruthenians and other national minorities without a kin State deserve particular attention.

Recommendations

145. Croatia should take further steps to ensure an adequate level of teacher training and pay specific attention to those national minorities that have no access to support by a kin State in this sphere.

ARTICLE 15 OF THE FRAMEWORK CONVENTION

Participation in economic life

Findings of the first cycle

146. In its first Opinion, the Advisory Committee noted various shortcomings pertaining to the effective participation of national minorities in economic life. While recognising that economic difficulties also affect persons belonging to the majority, the Advisory Committee considered that persons belonging to national minorities are often in a particularly difficult situation as they are also affected by discrimination in this field.

147. The Advisory Committee also called on the authorities to improve through a national strategy the participation of Roma, in particular women, in social and economic life.

Present situation

a) Positive developments

148. The new legal provisions against discrimination in employment, if fully implemented, are a useful tool in combating discrimination in the field of employment (see under Article 4 above).

149. The National Programme for the Roma also contains a number of commendable initiatives in this sphere, including training projects and employment of Roma counsellors in the employment bureau, and it also has certain elements designed specifically to improve participation of Roma women in decision-making.

b) Outstanding issues

150. The serious difficulties in the effective participation of persons belonging to national minorities in economic life persist. They are partially caused by the fact that many areas of compact residence of national minorities are war-affected areas with particularly serious economic problems and high unemployment, but the problems are compounded by the past discriminatory employment

practices affecting Serbs in particular (see also related comments under Article 4 above). There are concerns that economically disadvantaged war-affected areas have to date not received adequate attention in the preparation, implementation and assessment of various development programmes.

151. As regards the National Programme for the Roma, there have been problems and delays also in the implementation of those elements of the programme that pertain to employment (see also related comments under Article 4 above).

Recommendations

152. The economically disadvantaged war-affected areas merit more attention by both domestic and international actors responsible for the preparation, implementation and assessment of various development programmes, in which persons belonging to national minorities should be involved.

153. The above-mentioned elements of the National Programme for the Roma should be implemented as a matter of priority.

Participation within the administration and the judiciary

Findings of the first cycle

154. In its first Opinion, the Advisory Committee concluded that the situation as regards participation of persons belonging to national minorities in the executive branch and in the judiciary is so problematic that it is not compatible with Article 15 of the Framework Convention and called for additional positive measures to be taken in this area.

Present situation

a) Positive developments

155. The legal framework in this sphere improved significantly with the adoption of the Constitutional Law on the Rights of National Minorities, which stipulates in its Article 22 that persons belonging to national minorities shall be ensured representation in the state administration and judicial bodies in compliance with the provisions of a special law. It further provides general guarantees for the representation of national minorities in the administrative bodies of self-government units as well as in the executive bodies of those local and regional units of self-government where persons belonging to a national minority amount, respectively, to at least 15 percent or 5 percent of the population.

b) Outstanding issues

156. Although the above-mentioned guarantees are to be welcomed, they do not seem to cover certain important areas of public sector employment, that also merit close attention in accordance with Article 15 of the Framework Convention. Furthermore, the new guarantees have not prompted the required level of follow-up in terms of the envisaged implementing legislation or practical implementation measures. As regards state administrative bodies, the authorities were not in position to provide the Advisory Committee with any comprehensive statistics on the representation of national minorities in these bodies, although such information is clearly indispensable to ensure proper implementation of Article 22 of the Constitutional Law. According to the central authorities, detailed information on the level of participation of national minorities will be available once a new

central register of civil servants has been compiled and new legislation on the civil service has been adopted. A lack of appropriate statistics is reported also at the local level. In this connection, the Advisory Committee recalls that the statistics received from the authorities during the first cycle of monitoring showed that the representation of national minorities in state administration was at that stage disconcertingly low. The Advisory Committee has not been informed of any concrete positive measures, pertaining to the hiring processes or other relevant factors, that have been envisaged to address any shortcomings identified in the representation in state administrative bodies and such measures appear to be too limited also in the units of local and regional administration.

157. As regards the judiciary – an area where participation of national minorities is a key concern (see also related comments under Article 6 above) – the State Report contains general statistics on the percentage of persons belonging to the Serbian national minority and on the combined share of other national minorities in courts and prosecutorial bodies. These statistics demonstrate that, generally, national minorities' representation in these bodies is markedly lower than their share of the population and that, for example, there are no Serb judges in 12 commercial courts of Croatia. However, more detailed data, including geographic and other break-down of the figures, would be required to make a thorough examination and to reach conclusive findings on the level of national minorities' participation in all relevant areas of the judiciary.

158. Despite the availability of statistics suggesting that the level of participation of national minorities is low, no concrete legislative or other measures have been taken to address the shortcomings in the implementation of Article 22 of the Constitutional Law on the Rights of National Minorities in the judiciary. The representatives of the State Judicial Council, the body responsible for the appointment of judges, informed the Advisory Committee that they do not in any way take into account whether a person belongs to a national minority (with the exception that this may be a factor in making sure that there is an adequate number of Italian speaking judges in Istria) and that they are not aware of any statistics on this issue. The same approach seems to prevail in the State Attorney Council, responsible for the appointment of prosecutors. The central authorities are currently considering various measures, including amendments to the Law on Courts that could be taken to improve the implementation of Article 22 in the judiciary, while respecting the independence of the judiciary.

Recommendations

159. Croatia should, as a matter of high priority, take measures to implement Article 22 of the Constitutional Law on the Rights of National Minorities in administration and in the judiciary. These should include rapid completion of the central registry and other tools required to analyse the existing situation at various levels and sectors of administration, as well as legislative and other measures ensuring that the Constitutional Law is fully taken into account in the judicial and other appointments and in the design and implementation of related policies and practices. Attention should also be paid to the participation of national minorities in those areas of public service that are not covered by the said guarantees.

Participation of persons belonging to national minorities in elected bodies

Findings of the first cycle

160. In its first Opinion, the Advisory Committee called for improvements in the legislation and practice concerning the parliamentary representation of persons belonging to national minorities and in their participation in decision-making at the local and regional level.

Present situation

Positive developments

161. The adoption of the Constitutional Law on the Rights of National Minorities significantly improved the representation of persons belonging to national minorities in Parliament, by increasing the number of guaranteed seats and by including also national minorities not mentioned in the Constitution in the coverage of the scheme designed for guaranteed representation. The impact of parliamentarians representing national minorities in national decision-making processes has been further augmented by their co-operation with the Government appointed in December 2003. While some minorities criticise the system of guaranteed seats “shared” by national minorities, this can be a satisfactory arrangement provided that respective members of parliament ensure access by, and contacts with, all national minorities they represent.

162. Similarly, important guarantees were introduced in the Constitutional Law on the Rights of National Minorities for participation of persons belonging to national minorities in elected bodies at the local and regional level. Despite certain procedural shortcomings and delays in the organisations of by-elections, the scheme has resulted in improved representation of persons belonging to national minorities in a number of municipalities and counties.

Recommendations

163. Croatia should maintain its system guaranteeing the representation of persons belonging to national minorities in Parliament and in local and regional self-government, reviewing the schemes periodically in order to ensure that they adequately reflect the developments in the country and the needs of the national minorities concerned. Shortcomings in the election process should also be addressed in the run-up to the forthcoming elections.

Minority Councils*Findings of the first cycle*

164. In its first Opinion, the Advisory Committee urged Croatia to review the appointment procedures, structures and working methods of the bodies dealing specifically with national minorities and to ensure that persons belonging to national minorities have a central standing therein.

Present situation

a) Positive developments

165. The Constitutional Law on the Rights of National Minorities fundamentally changed the organisational structure in this sphere, resulting in important new bodies at the local, regional and central level and increasing the voice of representatives of national minorities.

166. At the central level, a new Council for National Minorities, set up in accordance with Articles 35 and 36 of the Constitutional Law on the Protection of Rights of National Minorities, has already provided constructive input to a number of developments pertaining to minority protection. One important aspect of the Council’s work is the allocation of funds for cultural initiatives of minority associations, which was previously the task of the Government Office for National Minorities (see also related comments under Article 5 above). This important shift has improved the

role of minorities in the decision-making process and enabled the Government Office for National Minorities to concentrate its important efforts on other priority activities. At the same time, the Council is still at the beginning of its mandate, with two of its members yet to be appointed and some initial status questions to be addressed, including those stemming from its current lack of legal personality.

167. Another central element in the new structure are the elected councils of national minorities at the regional and local level. They are potentially an important additional channel for the participation of national minorities in decision-making. For these councils to succeed, it will be necessary that the respective authorities fully support and consult the councils, and that the councils and other relevant bodies dealing with minority protection (including minority associations and such specific bodies as the Joint Council of Municipalities in Eastern Slavonia) establish constructive co-operation. The Advisory Committee also finds it important that the minority-specific councils use fully their legal possibility to establish joint coordination bodies at various levels, bringing together representatives of different national minorities to tackle issues of common concern.

b) Outstanding issues

168. The future effectiveness of the councils depends also on the level of support and interest they generate within the minority communities, many of which showed only limited interest in the first elections of the councils. The limited participation can however be partially explained by the overly short time reserved for the preparation of the elections and related information campaigns as well as other shortcomings reported in the elections procedure, which would need to be addressed in the forthcoming elections, including possibly through more detailed regulations on the issue.

Recommendations

169. The local and regional authorities should consistently involve councils of national minorities in their decision-making processes dealing with minority issues, and the councils should establish strong co-operation with each other and with other relevant bodies. The authorities should consider introducing more detailed norms to guarantee increasingly smooth and inclusive operation of future elections of the councils.

170. At the state level, the composition of the Council for National Minorities should be completed as soon as possible and the Council should be provided the support it needs to fulfil its tasks under the Constitutional Law.

ARTICLE 16 OF THE FRAMEWORK CONVENTION

Sustainable return

Findings of the first cycle

171. In its first Opinion, the Advisory Committee referred to substantial changes in the proportion of the population in areas inhabited by persons belonging to national minorities and stressed the importance of fostering sustainable voluntary return.

Present situation

a) Positive developments

172. Many steps have been taken to foster sustainable return including in terms of improved provision of reconstruction assistance and other measures (see related comments under Article 4 above).

b) Outstanding issues

173. Problems still remain in connection with the return, affecting in particular persons belonging to the Serbian national minority (see also under Article 4 above). While there are differences of view as to the number of potential future returns, it is important that the possibility to return is seen as a permanent entitlement without deadlines.

Recommendations

174. The authorities should ensure that the return is understood as a permanent option, including at the local level.

ARTICLE 17 OF THE FRAMEWORK CONVENTION**Transfrontier contacts***Findings of the first cycle*

175. In its first Opinion, the Advisory Committee supported on-going efforts to improve the implementation of the right to have contacts across frontiers.

Present situation

Positive developments

176. The cancellation of the visa regime between Croatia and Bosnia and Herzegovina in 2003 and the introduction of temporary visa-free travel between Croatia and Serbia and Montenegro in 2004 significantly improved the implementation of Article 17.

Recommendations

177. Croatia should continue to facilitate cross-border travel between Croatia and its neighbours, including Serbia and Montenegro, for persons belonging to national minorities.

ARTICLE 18 OF THE FRAMEWORK CONVENTION

Bilateral agreements

Findings of the first cycle

178. The Advisory Committee encouraged efforts to sign additional bilateral agreements pertaining to national minorities.

Present situation

a) Outstanding issues

179. The conclusion of a bilateral agreement on the protection of national minorities with Serbia and Montenegro is still pending. Furthermore, no progress has been reported on the Croatian efforts to conclude such an agreement with Slovenia.

Recommendations

180. Croatia should pursue its efforts to conclude further bilateral agreements on the protection of national minorities.

III. CONCLUDING REMARKS

181. The Advisory Committee considers that these concluding remarks could serve as the basis for the conclusions and recommendations to be adopted by the Committee of Ministers in respect of Croatia.

Positive developments

182. Croatia has taken a number of steps to improve the implementation of the Framework Convention following the adoption of the first Opinion of the Advisory Committee in April 2001 and the Committee of Ministers' Resolution in February 2002. This process has included important changes in both legislation and practice, and it has been facilitated by an increased dialogue between the authorities and representatives of national minorities.

183. Since the adoption of the first Opinion of the Advisory Committee, Croatia has improved markedly its legal framework concerning the protection of national minorities. The most significant step was the adoption of the Constitutional Law on the Rights of National Minorities in 2002. The Constitutional Law addresses a number of legal gaps and inadequacies identified in the first cycle of monitoring of the Framework Convention, and it has resulted in clear improvements *inter alia* in the participation of national minorities in elected bodies.

184. Croatia has adopted a comprehensive National Programme for the Roma, which was drafted through an inclusive process. It contains a range of commendable initiatives aimed at preventing ethnically motivated hostility and improving the protection of the rights of Roma in education, employment, health and other key sectors where they face considerable problems.

Issues of concern

185. The implementation of the Constitutional Law on the Rights of National Minorities has been regrettably slow in some key areas. Shortcomings are particularly manifest as regards the participation of persons belonging to national minorities in the state administrative and judicial bodies, where the monitoring of the current situation and the implementation of the legal guarantees are yet to be developed. Also, shortcomings in the effective participation in economic life continue to be a problem for many persons belonging to national minorities.

186. There are still real obstacles hindering sustainable return of persons belonging to the Serbian national minority, such as incidents of hostility in certain localities and remaining housing concerns, including those involving former tenancy rights holders.

187. The reported shortcomings in the judiciary, ranging from serious backlogs to ethnic bias within certain instances, also affect the implementation of the Framework Convention.

188. The requirements under the Croatian Law on Citizenship and their application continue to pose problems for persons belonging to national minorities. Those without confirmed citizenship are particularly vulnerable to discrimination and face obstacles in the realisation of their rights, including in the economic, social and cultural ones.

189. While some elements of the National Programme for the Roma have been launched, stronger support is required for its overall implementation and for the programme to yield tangible improvements in the protection of Roma.

190. There is a degree of legal uncertainty in the Croatian legislation concerning the conditions and procedures for the implementation of educational models envisaged in the Croatian Law on Education in Languages and Scripts of National Minorities, compounded by the disputes as to the respective responsibilities of state, county and municipal authorities for such schools. In the educational system, there are also concerns in some areas as regards limited contacts between different communities as well as shortcomings in terms of textbooks for persons belonging to some national minorities.

Recommendations

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

- Address the remaining shortcomings in the implementation of the Constitutional Law on the Rights of National Minorities, paying particular attention to the guarantees regarding participation of persons belonging to national minorities in the state administrative and judicial bodies.
- Pursue further the commitment to resolve the outstanding return-related issues with vigour and do their utmost to make sure that the authorities' support for the return process is felt also at the local level.
- Redouble efforts to improve the effectiveness and the capacity of the judicial system to protect the rights contained in the Framework Convention.
- Take steps to ensure that the citizenship process does not contain undue obstacles and takes into account the particular challenges faced by persons belonging to national minorities in this context, and address the human rights concerns of those without confirmed citizenship of Croatia.
- Provide stronger support for the implementation of the National Programme for the Roma, in accordance with set time-framed targets.
- Clarify the rules and responsibilities concerning the implementation of educational models envisaged in the Croatian Law on Education in Languages and Scripts of National Minorities.
- Ensure the availability of textbooks for persons belonging to all national minorities.
- Take further steps in the educational system to encourage contacts between pupils of different communities and encourage media engagement in the promotion of inter-cultural dialogue.