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

**COMMENTS OF THE GOVERNMENT OF SWITZERLAND
ON THE SECOND OPINION OF THE ADVISORY COMMITTEE ON THE
IMPLEMENTATION OF THE FRAMEWORK CONVENTION FOR THE
PROTECTION OF NATIONAL MINORITIES
BY SWITZERLAND
(received on 28 August 2008)**

INTRODUCTORY REMARKS

The Advisory Committee on the Framework Convention for the Protection of National Minorities adopted its second opinion on Switzerland at its 31st meeting on 29 February 2008. The opinion was transmitted to the Permanent Representative of Switzerland to the Council of Europe on 25 April 2008. Switzerland was then invited to submit its comments up to 25 August 2008.

Switzerland is pleased that the Advisory Committee's delegation, on its official visit to the country from 19 to 21 November 2007, was able to meet numerous representatives of the Federal administration, the cantonal authorities, the minorities themselves and NGOs. It welcomes the fact that during the visit the Advisory Committee was able to obtain, to its satisfaction, all the information needed to assess the situation of the national minorities in the country. In that regard, Switzerland wishes to stress the importance it attaches to the constructive dialogue which has grown up between the Advisory Committee and the Swiss authorities.

Switzerland received with great interest the Advisory Committee's second opinion on Switzerland. The detailed and perceptive findings of the Advisory Committee bear witness to its conscientious scrutiny of the situation of the minorities in Switzerland and its attention to the important issues and difficulties. Switzerland appreciates the opportunity given to it to make comments.

These comments are addressed to the authorities of the Council of Europe on behalf of the Swiss Federal Council, which answers for Switzerland's fulfilment of its international obligations under the Framework Convention for the Protection of National Minorities. However, several pronouncements appearing in these comments originate from the cantons, when the application of the Framework Convention is in their purview.

The drafting of these comments was co-ordinated by the Directorate of Public International Law of the Federal Department of Foreign Affairs, in close collaboration with all interested departments of the Federal administration, namely:

- Political Directorate of the Department of Foreign Affairs
- Federal Office of Culture
- General Secretariat of the Department of Home Affairs
- Service for Combating Racism
- Federal Office of Statistics
- Federal Office of Justice
- Federal Office of Migration
- State Secretariat for the Economy
- Federal Office for Staff Matters
- Federal Office of Communication
- Federal Office of Territorial Development
- Armasuisse
- the central language services of the Federal Chancellery.

The Federal Commission against Racism, an extra-parliamentary commission answerable to the Department of Home Affairs, also helped with the drafting of these comments.

As mentioned above, all cantons together with the Conference of Cantonal Governments, the Swiss Conference of Cantonal Directors of State Education and the Swiss Conference of Directors of Public Works, Land-use Planning and Environmental Protection were invited to state their positions.

These comments, like the Swiss Government's second report on the implementation of the Framework Convention, were drawn up in the three principal official languages of the Swiss Confederation (French, German and Italian). The second opinion of the Advisory Committee, issued in French and English, was also translated into German and Italian at the behest of the Confederation. All these documents will be published in the three principal official languages on the official website of the Federal Department of Foreign Affairs and will thus be available for consultation by a broad public.

Before commenting on the Advisory Committee's findings and recommendations, Switzerland wishes to reiterate its position regarding the personal scope of the Framework Convention for the Protection of National Minorities. According to the interpretative declaration that Switzerland duly made on ratifying the Framework Convention, its international obligations under the terms of this instrument formally cover only persons who are Swiss nationals and moreover have long-standing, firm and lasting ties with Switzerland and are guided by the will to safeguard together what constitutes their common identity.

Today, only the national linguistic minorities, Travellers and members of the Jewish community meet these combined criteria. Since the Framework Convention does not include the nationals of third countries in the ambit of its protection, Switzerland receives with restraint the Advisory Committee's findings on acquisition of Swiss nationality and treatment of persons with a migrant background and of certain groups of foreigners. Without wishing to negate the problems that underlie these findings, Switzerland is of the view that they should not raise an issue of protection of national minorities and could be more fittingly monitored by agencies specialising in the combating of racism, xenophobia and intolerance, and likewise by bodies dealing with migrants' rights if apprehended in a general way.

For practical reasons, the comments of the Swiss authorities have been directly incorporated into the document setting out the second opinion on Switzerland. They appear in boxes in the text below. Considering that the Advisory Committee's main findings (Chapter I) reiterate the more detailed article by article findings in Chapter II, normally only the latter are the subject of comments. References to these comments are nevertheless made where appropriate in Chapter I.

ADVISORY COMMITTEE ON THE FRAMEWORK CONVENTION FOR THE PROTECTION OF NATIONAL MINORITIES – SECOND OPINION ON SWITZERLAND

EXECUTIVE SUMMARY

The protection of persons belonging to linguistic minorities in Switzerland is highly developed due to the institutional arrangements and the Federal system, which allow for an

effective participation of these persons at all levels. Major constitutional reforms in several cantons and important new laws, both at the Federal and cantonal levels, have been adopted in recent years. As a result, legal certainty has been strengthened as concerns the use of languages in official contexts. Italian and Romanche languages have in particular gained increased protection due to the enactment of comprehensive legislation at the Federal level and in the canton of Graubünden. The emphasis must now be placed on the implementation of these new guarantees.

General budgetary savings in the public sector have adversely affected institutions promoting human and minority rights and ongoing discussions on the possible introduction of an Ombudsman Office or an independent human rights institution have not yet yielded concrete results.

Although the language of instruction and the teaching of national languages are closely linked to the traditional territorial distribution of languages, there have been commendable efforts to move towards a coordinated inter-cantonal development of language teaching in compulsory education. This should foster language proficiency at an earlier age in all cantons, while ensuring that the development of English teaching does not take place to the detriment of national languages. However the overall situation of Italian and Romanche-speakers who live outside their traditional areas of settlement has not significantly improved with regard to access to language teaching and opportunities to enjoy cultural and linguistic support.

The development of the daily use of Italian and Romanche in official contexts is essential to preserve the identity of the canton of Graubünden and this remains a challenge. In this context, the new law on languages should help the authorities and the linguistic minorities concerned to find ways and means to ensure that these languages effectively enjoy equal status with German, as prescribed by the cantonal Constitution.

Significant efforts to address the situation of Travellers in a comprehensive way were for the first time made in the aftermath of the 2006 report of the Government on the situation of Travellers in Switzerland. However Travellers continue to face significant problems in Switzerland and the preservation of their identity is at stake since many of them experience increasingly greater difficulties to practice their itinerant or semi-itinerant way of life. Efforts must therefore be intensified to make sure that the cantons will create further stopping places and transit sites as a matter of priority. There is also scope for improvement in Travellers' participation in decision-making, especially at the cantonal and local levels.

SECOND OPINION ON SWITZERLAND

1. The Advisory Committee adopted the present Opinion on 29 February 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 State Report (hereinafter the State Report), received on 31 January 2008, and other written sources and on information obtained by the Advisory Committee from governmental and non-governmental contacts during its visit to Bern and Fribourg from 19 to 21 November 2007.

The second report of the Swiss Government on the implementation of the Framework Convention was submitted on 31 January **2007**, not 2008.

2. Section I below contains the Advisory Committee's main findings on key issues pertaining to the implementation of the Framework Convention in Switzerland. 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 Switzerland adopted on 20 February 2003, and in the Committee of Ministers' corresponding Resolution, adopted on 10 December 2003.

4. The concluding remarks, contained in Section III, could serve as the basis for the Committee of Ministers' forthcoming conclusions and recommendations on Switzerland.

5. The Advisory Committee looks forward to continuing its dialogue with the authorities of Switzerland 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. Switzerland has pursued a constructive approach to the monitoring process of the Framework Convention. At the initiative of the Government, the first Opinion of the Advisory Committee was made public before the adoption of the corresponding Resolution by the Committee of Ministers. The monitoring results were subsequently circulated to minority representatives, cantonal authorities and civil society actors, including through the Internet. The Federal authorities translated the text of the first Opinion into German and Italian. Although the State Report was submitted with a regrettable two-year delay, its preparation was carried out with the careful involvement of a range of actors, including representatives of minorities and NGOs.

7. The Framework Convention's monitoring findings were also referred to in the report on the situation of Travellers in Switzerland, which was adopted by the Government in October 2006. The said report contains significant self-critical comments and proposals aimed at improving the situation of Travellers in Switzerland, including as regards transit sites and stopping places. Although the measures proposed by this report might not always be sufficient to redress the situation of Travellers, the report itself and the follow-up it has been given constitute a significant step forward in that they acknowledge the gravity of the problems faced by Travellers and express a strong commitment to resolve them.

8. There have been shortcomings in the authorities' efforts to raise awareness about the Framework Convention, including the absence of a follow-up seminar. Also, with the exception of Travellers, the authorities seem to have made little use of the Framework

Convention and its monitoring results to address issues faced by persons belonging to minorities.

Switzerland's federal structure complicates dissemination of the results of monitoring of the implementation of international conventions. The Federal Department of Foreign Affairs, in charge of co-ordinating the reporting procedure, duly communicated and released the first Opinion and the Resolution of the Committee of Ministers to all interested departments of the Federal administration, to the cantonal authorities, to the representatives of minorities and to the NGOs. In particular, the cantons were asked to circulate the results to the municipalities, the minorities present within their boundaries, and regional bodies working for the advancement of the rights of minorities. The Swiss Government lacks the powers to monitor the action taken on these measures. Further, it should be recalled that in Switzerland, in contrast to other States, there is no ministry or office for national minorities which could carry out "monitoring" of the position regarding the rights of minorities. This is due in particular to the fact that the fields of application of the rights of national minorities come under the authority of the cantons to a great extent.

2. Institutional and legislative framework

9. Major constitutional reforms in several cantons and important new laws, both at the Federal and cantonal levels, have been adopted in recent years. As a result, the institutional and legislative framework protecting persons belonging to minorities has been consolidated and legal certainty has been strengthened as concerns the use of languages. Italian and Romanche languages have, in particular, gained increased protection due to the enactment of comprehensive legislation at the Federal level and in the canton of Graubünden. Even though Switzerland continues to attach great importance to the traditional distribution of languages, the principle of territoriality is being applied somewhat more pragmatically, at least on the language border in the cantons of Fribourg, Bern and Valais.

10. Important efforts must be made to ensure the successful implementation of these new legislative guarantees, especially the Federal Law on National Languages and Mutual Understanding between Linguistic Communities, which should make it possible to develop new forms of support for cultural and linguistic initiatives, especially as regards research into and promotion of multilingualism beyond existing language boundaries. The overall situation of Italian and Romanche-speakers who live outside their traditional areas of settlement has indeed not significantly improved as regards their opportunities to enjoy cultural and linguistic support, particularly in terms of access to language teaching.

Concerning the implementation of the new Federal legislation on languages, see comment on para. 58.

Concerning the situation of Italian and Romansh speakers vivant living outside their traditional settlement areas, see comments on paras. 151 ff.

11. Despite these significant achievements, no such legislative improvements have been noted as regards Travellers. There have been ongoing discussions to include a provision in the Bill on the Promotion of Culture to help Travellers live in accordance with their culture, but to date these attempts have not materialised. Despite repeated demands from those concerned, there are no plans to consider the introduction of additional

legislative guarantees - including in the field of land-use planning - to develop new transit sites and facilitate the stopping of Travellers for short stays.

Concerning additional legislative guarantees of land-use planning to develop new transit sites and stopping places, see comments on paras. 78 and 80.

3. Discrimination

12. Switzerland has continued to complement sectoral legislation with non-discrimination clauses where this was deemed appropriate. The authorities do not intend, however, to develop a comprehensive anti-discrimination legislation and a lack of specific provisions prohibiting discrimination persists in certain key fields, such as housing, employment, access to public places and the provision of services. Official statistics and research on the frequency of discriminatory acts in practice remain scarce, especially in those fields which are currently not covered by sectoral anti-discrimination legislation.

See comments on paras. 35 and 38.

13. As regards the institutional framework to combat discrimination, recent developments suggest that the situation has worsened. For example, despite its unique role and achievements in the fight against xenophobia, intolerance and racial discrimination, the Federal Commission against Racism saw severe reductions in its yearly budgetary appropriations and in its composition, a state of affairs which is likely to impede its operational activities and reduce NGO representation and religious diversity in its membership. More generally, linear budgetary savings in the public sector seem to indistinctively hit institutions promoting human and minority rights - especially Travellers institutions – despite existing international commitments undertaken by Switzerland in this field. In the same vein, ongoing discussion on the possible introduction of an Ombudsman Office and/or an independent human rights institution have not yet yielded concrete results, especially in view of the financial implications of such projects.

Concerning the Federal Commission against Racism, see comments on para. 42.

Concerning the possible creation of an independent human rights institution, see comment on para. 44.

4. Inter-ethnic relations

14. Relations between German-, French-, Italian- and Romanche-speakers remain characterised by a remarkable level of tolerance. Efforts to strengthen tolerance between the settled population and Travellers have been pursued and the need to promote mutual understanding was particularly highlighted in the commendable report on the situation of Travellers adopted by the Government in 2006. Despite these achievements and efforts, Travellers are still the subject of negative stereotypes, including in the media. Although the overall situation of persons belonging to the Jewish community is widely seen as positive, in particular in terms of integration, these persons are reportedly the most frequent victims of racial discrimination.

15. Racist, xenophobic and intolerant attitudes against asylum seekers, refugees, certain groups of foreigners as well as Muslims have continued to be reported, including by

Council of Europe bodies. These groups have in some instances been stigmatised in the political discourse, including during the 2007 electoral campaign. Pending the entry into force of a recently adopted amendment to the Federal Law on Acquisition and Loss of Nationality, occasional instances of discriminatory and/or unreasoned refusals of naturalisation, mainly at the expense of persons originating from the Balkans and/or Muslims, have continued to be reported.

Concerning cantonal naturalisation procedures and the amendment of the Federal Law on Acquisition and Loss of Nationality, see comments on paras. 95, 98, 99 and 101.

5. Education

16. Significant improvements have been made towards a coordinated development of language teaching in compulsory education. This should foster language proficiency at an earlier age in all cantons, while ensuring that the development of English teaching does not take place to the detriment of the learning of national languages. Bearing in mind that the language of instruction and the teaching of national languages are linked to the traditional territorial distribution of languages, there are reportedly six cantons which do not offer optional Italian language courses before the end of the compulsory education. Consideration should therefore be given to extending the existing offer of optional Italian courses, which could help better cater for the needs of the Italian-speaking minority, particularly in large cities with a sizeable number of Italian-speakers. In this context, there remains a need for more accurate and comparable statistical data, including on the availability and practical use of language courses, such as Italian courses outside Ticino and Graubünden.

Concerning the possibilities for learning Italian, see comments on paras. 151-152.

17. The new Law on Languages of the canton of Graubünden significantly strengthens the position of Romanche and Italian in the field of education, especially in municipalities where these languages are under threat. Efforts should be continued to ensure that the said legislative guarantees will be implemented through a regular dialogue between cantonal and municipal authorities, with due regard to the overall situation of languages in Graubünden.

18. Bearing in mind the difficulty to reconcile the interests of the Yenish who wish to use their language only for the purpose of communication between members of the community and the Yenish who advocate a broader cultural policy for their language in the field of education, efforts by the Confederation to promote the Yenish language in close co-operation with the various representatives of this community should be pursued.

6. Preservation of the identity of Travellers

19. The Advisory Committee welcomes the fact that certain positive developments have taken place since the first monitoring cycle. For example, significant efforts to address the situation of Travellers in a comprehensive way were for the first time made in the aftermath of the 2006 report of the Government on the situation of Travellers in Switzerland. Also, an important judgment by the Federal Tribunal for the first time recognised that life in a mobile home was an essential part of the identity of Travellers, whose needs were different from those of the settled population. Concrete progress has

been noted since the entry into force of the Federal Law on itinerant trade in 2003, which greatly facilitates the exercise of traditional activities associated with their nomadic way of life.

20. Despite these achievements, the Advisory Committee considers that the overall situation of Travellers in Switzerland remains a matter of deep concern. The preservation of their identity is at stake since many of them experience increasingly greater difficulties to practice their itinerant or semi-itinerant way of life. The shortage of stopping places and transit sites remains acute in Switzerland and their number has even been reduced since the first monitoring cycle despite recognised needs in this field. No significant follow-up has so far been given by the cantons to the aforementioned important Federal Tribunal's ruling. Proposals to create further sites have in several cantons been frozen or even withdrawn following adverse reactions by the municipalities concerned, part of the local population and/or various lobbying groups. Federal measures, such as the envisaged reassignment of military sites belonging to the Confederation, have so far not yielded tangible results either in the absence of stronger legal and financial incentives. A real inter-cantonal coordination of efforts remains to be developed in this field, with the active support from the Confederation.

Concerning the lack of stopping places and transit sites for Travellers and the Federal measures, see comments on paras. 77 and 78. Concerning the cantonal measures, see comments on paras. 74, 75 and 79.

Concerning the freezing or withdrawal of schemes to create new sites in some cantons, see comments on paras. 74 and 76.

7. Participation

21. There is a need to pay continuous attention to the necessity to ensure greater Latin¹ representation within the Federal administration. This is particularly important for the recruitment at all levels of French-, Italian- and Romanche-speakers since a fair representation of linguistic minorities in Federal Offices is needed both at the managerial level and among employees as a whole. In this context, there is a lack of reliable qualitative data to shed light on the actual representation of Latin minorities in managerial positions in the various Federal Departments and Offices which needs to be addressed.

Concerning Latin representation within the Federal civil service and the relevant data, see comments on paras. 169 and 171.

22. Participation mechanisms for Travellers should be improved. Although the Foundation "A Future for Swiss Travellers" and the Association of Travellers have proved useful as regular avenues of dialogue with the Federal authorities, there remains scope for strengthening these institutions and contemplating the creation of others at the cantonal level. For example, the authorities are invited to widen the competences of the Foundation and to reinforce the position of Travellers in its Board, who are currently in a minority. Also, there is a growing need to consolidate the financial structure of the Foundation and the Association of Travellers, both of which suffered budgetary cuts in past years. Despite laudable efforts by the Foundation to try and coordinate efforts to meet Travellers' needs in

¹ This expression includes persons belonging to the French-, Italian- and Romanche-speaking minorities.

terms of stopping places and transit sites, there remains an obvious lack of coordination between cantons, as well as an absence of institutionalised, decision-making forum to discuss these issues on a regular basis. At the cantonal and municipal levels, there are no special mechanisms for consulting Travellers in a systematic way, for example with regard to land-use planning or education.

It is inappropriate to speak of “budgetary cuts” made over the last few years to the detriment of the Foundation “A Future for Swiss Travellers”. As the Advisory Committee in fact observed further on, in para. 65, in 2006 Parliament rejected a proposal to double the size of the operating contribution granted to the Foundation. Nevertheless, for the years 2007-2011, the same block grant (750 000 SF) as in previous periods was maintained.

Concerning examples of cantonal mechanisms to meet the needs of Travellers, see para. 183.

II. ARTICLE-BY-ARTICLE FINDINGS

8. Article 3 of the Framework Convention

8.1 Definition of the term “national minorities”

8.1.1. Findings of the first cycle

23. In its first Opinion, the Advisory Committee noted that the authorities had made a declaration² upon ratification of the Framework Convention and welcomed that the principle of territoriality did not result in denying individuals living outside their traditional area of settlement their status of persons belonging to a minority.³ At the same time it encouraged the authorities not to interpret their declaration in too rigid a manner so as to better cater for the needs of *inter alia* Italian- and Romanche speakers who have left their areas of traditional settlement.

² “Switzerland declares that in Switzerland national minorities in the sense of the Framework Convention are groups of individuals numerically inferior to the rest of the population of the country or of a canton, whose members are Swiss nationals, have long-standing, firm and lasting ties with Switzerland and are guided by the will to safeguard together what constitutes their common identity, in particular their culture, their traditions, their religion or their language. Switzerland declares that the provisions of the Framework Convention governing the use of the language in relations between individuals and administrative authorities are applicable without prejudice to the principles observed by the Confederation and the cantons in the determination of official languages”.

³ The Swiss authorities consider that persons belonging to national linguistic minorities, that is to say, the French-, Italian- and Romanche-speaking minorities, are protected by the Framework Convention and that persons belonging to the German-speaking minority residing in certain cantons, such as Fribourg or Valais, may also be protected by the Framework Convention as they are in a numerical minority. The authorities further consider that such protection is open to persons belonging to the Jewish community and to Travellers. According to the 2000 census, 63.7% of the persons stated that German was their main language, 20.4% French, 6.5% Italian, 0.5 Romanche and 9% stated they had another language. In contrast, there are no official statistics for persons belonging to the community of Travellers, but the authorities estimate them to amount to between 25,000 and 30,000 persons, including 45,000 who have kept to a nomadic or semi-nomadic way of life. The estimates of Travellers themselves are only very slightly in excess of these figures.

8.1.2. Present situation

8.1.2.1. a) *Positive developments*

24. As the Government pointed out in the State Report, the declaration includes an open-ended definition. This renders a dynamic process possible, which could include the protection of persons belonging to other groups provided they satisfy the criteria set out in the declaration. According to the authorities, this might be the case in the future for Swiss citizens belonging to certain religious communities.⁴

It should be pointed out that while in fact the construction placed by Switzerland on the concept of “national minorities” is open-ended and its requirements may conceivably be fulfilled by other groups at some stage, if they meet the criteria stated in the declaration, recognition of religious communities as national minorities is not contemplated at present by the Swiss authorities. These communities would in fact need to fulfil the conditions laid down in the Swiss declaration, particularly by having a greater sense of common identity.

25. Domestic case-law and reported practice suggest that permissions to receive primary education in a minority language, which is not the official language of the municipality where the pupil resides, have been granted more easily in recent years. This indicates that even though Switzerland continues to attach great importance to the traditional territorial distribution of languages, the principle of territoriality is being applied somewhat more pragmatically, at least on the language border in the cantons of Fribourg, Bern and Valais (see related comments under Articles 5 and 14, below).

8.1.2.2. b) *Outstanding issues*

26. Whilst the situation has improved on the language border for German- and French-speakers, the situation has largely remained unchanged for persons belonging to the Italian- and Romanche-speaking minorities who have left their traditional areas of settlement in the cantons of Ticino and Graubünden in order to take up opportunities for training or employment in large cities located in the North of the Alps, such as Zurich, Bern or Geneva. Possibilities to have teaching of Italian and Romanche in the public education system are still limited, even in large cities with a more significant Italian and/or Romanche-speaking population (see related comments under Article 14 below).

8.1.3. Recommendation

27. The authorities should pursue their efforts to meet the needs of persons belonging to linguistic minorities even outside their traditional areas of settlement. In this context, they are invited to pay increased attention to the situation of Italian- and Romanche-speakers who live in large cities, especially in the field of education.

⁴ According to the 2000 census, Roman Catholics amounted to 41.8% of the population, Protestants 35.3%, Muslims 4.3%, Christian Orthodox 1.8%, Jews 0.2%, Christian Catholics 0.2% and others including undeclared 16.4%.

As the Advisory Committee noted, the Swiss authorities apply the principle of territoriality in a pragmatic way, so as not to withhold the status of a person belonging to a national minority from individuals living outside their traditional settlement area. Nonetheless, under the terms of the Framework Convention, the services which the Swiss authorities must endeavour to provide within their capabilities presuppose that persons belonging to national minorities are settled “in substantial numbers” in the regions to which they have moved for purposes of training or employment. In addition, while the right to learn one’s minority language is central to freedom of language, it does not formally raise any positive obligation on the part of the State. Reference is made in this connection to the comments on para. 152.

8.2. Citizenship criterion

8.2.1 Findings of the first cycle

28. In its first Opinion, the Advisory Committee encouraged the authorities to consider the inclusion of persons belonging to other groups, including non-citizens as appropriate, in the application of the Framework Convention on an article-by-article basis.

8.2.2. Present situation

29. As the Government pointed out in the State Report, this has in fact been partially achieved in Switzerland. Mindful that the declaration remains very strict in that it literally excludes all foreigners from any protection, the Advisory Committee notes with satisfaction that the authorities accept that certain rights, such as those enshrined in Articles 8, 9(1) and 10(1) of the Framework Convention, are guaranteed as a minimum to non-citizens who are not regarded as belonging to national minorities within the meaning of the Swiss declaration.

30. The Advisory Committee welcomes the fact that, despite the explicit entrenchment of the citizenship criterion in the Swiss declaration, the competent Federal and cantonal authorities follow an inclusive approach in practice regarding efforts made to make an increasing number of stopping places and transit sites available to Travellers. It appears that a number of foreign Roma actually enjoy the use of these facilities and that the authorities do take into account their specific needs in this respect, which differ to a large extent from those of the Swiss Travellers (see related comments under Article 5, below).

8.2.3. Recommendations

31. The authorities could intensify their dialogue with persons belonging to groups which are not covered by the Swiss declaration. 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.

32. The authorities should continue to pursue an increasingly inclusive approach in legislation, policies and practices regarding the citizenship criterion, in particular when issues affecting Travellers are being addressed.

9. Article 4 of the Framework Convention

9.1. Legislative developments in the field of discrimination

9.1.1. Findings of the first cycle

33. In its first Opinion, the Advisory Committee encouraged the Swiss authorities to adopt a fuller legislation covering discrimination and to collect statistical data on discrimination more systematically.

9.1.2. Present situation

9.1.2.1. *a) Positive developments*

34. The Federal authorities have continued to complement sectoral legislation with non-discrimination clauses where they deemed it appropriate. The monitoring of the implementation of Article 261bis of the Criminal Code, which prohibits “racial discrimination”, has been pursued. Detailed and public statistics are easily available through a database which is regularly updated by the Federal Commission against Racism.

9.1.2.2. *b) Outstanding issues*

35. Bearing in mind that the authorities do not intend to develop a comprehensive anti-discrimination law and although there are isolated anti-discrimination provisions, the Advisory Committee regrets that a lack of specific provisions against discrimination persists in certain key fields, such as housing, employment, access to public places and the provision of services.⁵

Article 261bis of the Swiss Penal Code (CP, RS 311), last paragraph, provides that anyone who, on the ground of racial, ethnic or religious affiliation, denies a person or a group of persons a service intended for public use shall be punished by a custodial sentence of three years maximum or a monetary penalty. A service intended for public use is deemed to be any service publicly offered and not ostensibly intended just for a specific person or group of persons (cf. NIGGLI MARCEL ALEXANDER, *Rassendiskriminierung*, 2nd ed., Zurich/Basel/Geneva 2007 [hereinafter referred to as “NIGGLI”], para. 1635). This definition covers not only services in the catering sector (restaurants, bars, cafes, hotels, etc.), in leisure and entertainment (cinemas, theatres, discothèques, theme parks, swimming baths, etc.), transport (all kinds of public transport facilities), commercial services and services accessible to the public (superstores, retail shops, banks, estate agencies, placement agencies, etc.), services relating to culture and training (exhibitions, museums, libraries, schools, kindergartens, offers of specialist training or ongoing training such as language courses), as well as certain services in the field of employment and housing (NIGGLI, paras.1524 et seq. and 1636). Consequently, discrimination in the key areas specified by the Advisory Committee, arising from a refusal of services within the meaning of Art. 261bis CP (Penal Code), is at present liable to criminal sanction.

As to the contractual right to work, it should be recalled that a dismissal is considered wrongful and therefore carries the obligation to compensate when it is ordered for a reason connected with the employee’s character (Art. 336 CO (Labour Code)). Likewise, freedom

⁵ See third report of the European Commission against Racism on Switzerland of 27 June 2003, ad §§ 13-15.

of contract does not allow a lessor to refuse a suitable tenant proposed by the tenant who terminates the lease before the due date on the ground of unsubstantiated fears, dislike, or an attitude fundamentally hostile to certain categories of persons (ATF 119 II 36 et seq., 38 et seq.; 117 II 156 et seq., 159).

36. With the exception of criminal provisions, official statistics and research on the frequency of discriminatory acts in practice remain scarce. Additional data, broken down by age and sex is needed in this field, as well as in the field of education and representation in the civil service, to help the authorities design positive measures for persons belonging to minorities (see related comments under Article 14 and 15, below).

37. There is sufficient reason for expressing concern about ongoing discussion to consider abolishing Article 261bis of the Criminal Code or amending this provision with a view to weakening it on the alleged grounds that its application raises practical problems and may sometimes be difficult to reconcile with freedom of expression.

On 21 December 2007 the Federal Council took note of a working document drawn up by the Federal Office of Justice concerning the expediency of revising the criminal law provision against racism (Art. 261bis CP). For the time being, it sees no need to intervene in respect of this provision.

With regard to extension of the measures to combat racism, it should be noted that Parliament in 2005 accepted motion 04.3224 by the legal affairs committee of the National Council (CAJ-N) of 29 April 2004 asking the Federal Council to submit to Parliament a bill to make a punishable offence of the public use of symbols condoning extremist movements which incite violence and racial discrimination. Work on this motion is still in progress.

9.1.3. Recommendation

38. The authorities should continue to combat racial discrimination firmly through adequate criminal provisions and develop further anti-discrimination legislation in key fields such as housing, employment, access to public places and the provision of services. Switzerland should also introduce enhanced methods of monitoring developments in these fields.

On this subject, see above comment on para. 35.

9.2. Institutional framework to combat discrimination

9.2.1. Findings of the first cycle

39. In its first Opinion, the Advisory Committee noted with satisfaction the positive role played by the Federal Commission against Racism and the creation of a Service for Combating Racism. It urged the authorities to give all necessary support to those bodies and to consider with due attention their proposals in order to step up efforts to fight against racism and intolerance.

9.2.2. Present situation

9.2.2.1. a) *Positive developments*

40. The Federal Commission against Racism has continued to publish and support valuable research, studies and written submissions on a variety of topics. These include the planned reform of the naturalisation process, amendments to asylum legislation, the ongoing debate on Article 261*bis* of the Criminal Code, media coverage of foreigners and ethnic minorities during the 2007 electoral campaign, and the situation of Travellers. A Travellers' representative has been appointed as a member of the Federal Commission against Racism.

Note that Travellers have been represented on the Federal Commission against Racism since it was set up in 1995.

Concerning the role of the Service for Combating Racism (SLR), it co-ordinates the manifold activities at the Federal, cantonal and municipal level aimed at preventing racism, anti-semitism and xenophobia. It gives financial backing to practical projects for fighting racism and promoting human rights, supplies a great deal of practical information on racism, and provides links with bodies committed to fighting racism in Switzerland.

41. Parliamentary proposals have been made since 2004 to consider the setting up of an independent human rights institution at the Federal level and the Government is currently exploring ways and means to develop this proposal.

9.2.2.2. b) *Outstanding issues*

42. Despite its unique role and important contribution to the fight against racial discrimination and various forms of intolerance, the maintenance of the Federal Commission against Racism is regularly questioned, including in Parliament. As from January 2008, the Government reformed the Federal Commission against Racism and its membership has been reduced from 19 to 15 members. This reduction has been criticised in that it is likely to reduce significantly NGO representation and religious diversity within the Commission. Furthermore, the overall budget of the Commission has been reduced from CHF 176,000.- in 2007 to CHF 155,000.- in 2008, a regrettable development which is likely to result in the weakening of the operational capacity of this institution.

The changes made regarding the Federal Commission against Racism are part of the general reform of all the Confederation's extra-parliamentary commissions. On 7 September 2005, in the context of the reform to the Federal administration, the Federal Council assigned to the Federal Chancellery the task of reviewing the extra-parliamentary commissions, with the object of dissolving one-third of them. A consultation procedure on the new statutory provisions on extra-parliamentary commissions took place between November 2006 and March 2007. A substantial majority of those consulted approved of the project's thrust. In 2008, 54 of the 199 established commissions were abolished. The general conditions governing the commissions kept in existence were unified, particularly with regard to membership, fixed at 15, as well as payment of members' expenses.

Reductions in the budget of the commissions affect not only certain specific functions, but the Federal administration's fields of activity in their entirety.

It should be noted that since it was set up in 2001, the Service for Combating Racism has taken over part of the functions previously performed by the Secretariat of the Federal Commission against Racism.

43. In February 2004 the Parliament decided to discontinue plans for a Federal Bill on the introduction of an Ombudsman Office, especially in view of the financial implications of such an institution.

9.2.3. Recommendation

44. Switzerland should reconsider the trend to weaken existing institutions and instruments promoting human rights and the fight against racial discrimination. Resolute efforts should rather be made to strengthen them, which may include the creation of an independent human rights institution.

In January 2007 the Federal Council mandated a Confederation-cantons joint working group to consider the possible creation of a national human rights institution (expediency, requirements, models, funding). A report is in preparation and undergoing a consultation process; it is expected by the summer of 2008. Note that as part of the United Nations Human Rights Council's Universal Periodic Review concerning Switzerland, a recommendation was addressed to it on the subject of setting up such a body. Switzerland has turned the recommendation into a voluntary undertaking to the effect that Switzerland is considering the possibility of establishing a national human rights institution in accordance with the Paris Principles.

Concerning the "trend to weaken existing institutions and instruments promoting human rights and the fight against racial discrimination" as claimed by the Advisory Committee, it should be noted that some cantons have a commitment in these areas, as for example the canton of Fribourg which has instituted a guiding concept "Mieux vivre ensemble" (for better community living). The guidelines on integration and combating racism to be adopted will foreshadow the drafting of a cantonal law on the subject. Also to be mentioned is the example of the canton of Geneva, which has set up with effect from 1 April 2008 an "Office for Human Rights" whose assignment is to raise the awareness of the cantonal administration and the Genevan public concerning issues relating to non-observance of human rights.

9.3. Situation in terms of discrimination and equality

9.3.1. Findings of the first cycle

45. In its first Opinion, the Advisory Committee noted with satisfaction the existence of a range of positive measures which aimed to promote full and effective equality, especially in favour of Italian- and Romanche-speakers in fields such as language, culture and media. It expressed deep concern about the indirect discrimination affecting Travellers in land-use planning, regulation of constructions and regulation of trade and called for additional measures in these fields.

9.3.2. Present situation

9.3.2.1 a) *Positive developments*

46. The situation in respect of persons belonging to linguistic minorities has remained unchanged and no instances of discrimination have been reported against these persons. A number of positive measures are in place⁶ and could be developed and further supported by the new Federal Law on National Languages and Mutual Understanding between Linguistic Communities.

47. The Advisory Committee welcomes the publication, in October 2006, of a comprehensive report prepared by the Government on the situation of Travellers in Switzerland. This report, which was submitted to Parliament for consideration, consists of a detailed review of the current situation of Travellers in Switzerland and the various forms of discrimination they face and includes national measures to combat discrimination and improve Travellers' living conditions.

9.3.2.2. b) Outstanding issues

48. Travellers continue to face numerous instances of discrimination in practice, especially in relation to the legal and administrative obstacles preventing them from stopping their mobile homes to practice their itinerant way of life. Despite remedial measures proposed in the governmental report of 2006, no significant improvement has been noted yet.

9.3.3. Recommendation

49. More resolute action should be taken to develop positive measures to address persisting problems of discrimination faced by Travellers, especially the housing conditions related to their itinerant way of life.

10. Article 5 of the Framework Convention

10.1 Legal and institutional framework protecting minorities

10.1.1. Findings of the first cycle

50. In its first Opinion, the Advisory Committee noted that the Federal Constitution did not contain any specific provision protecting minorities as such. At the same time it acknowledged that minorities were protected to a large extent by the institutional system and by Federalism, which enables the cantons to cater for the specific needs of their population, notably in the field of culture. Furthermore, the Advisory Committee noted that a range of important constitutional and legal provisions in the linguistic field, both at the Federal and cantonal levels, ensured a strong level of protection for persons belonging to linguistic minorities. It considered, however, that the continuing existence of Romanche and Italian languages in the canton of Graubünden was under threat and that a Federal Law on National Languages and Understanding was still due to be enacted, in order to fully implement Article 70 of the Federal Constitution.

10.1.2. Present situation

⁶ Such measures have been developed mainly in the fields of language and culture, but also in the field of media as evidenced by the financial system of the Swiss Broadcasting Company (SSR) which allocates preferential funding from licence fees for programmes broadcast in French, Italian and Romanche.

10.1.2.1. a) Positive developments

51. The Advisory Committee welcomes the adoption in October 2007 of the Federal Law on National Languages and Mutual Understanding between Linguistic Communities.⁷ Since there was no request for this law to be submitted to a referendum, it should enter into force soon. Although many of the goals and principles now incorporated in the Law have already been implemented by the Confederation in the framework of its general powers, the importance of this new piece of legislation must be underlined. The adoption of this Law, which was a politically difficult process, bears witness to the solid consensus which has eventually been reached on the delicate issue of language teaching, a matter which remains largely in the powers of the cantons (see related comments under Article 14 below). This Law is expected to have positive effects on the situation of persons belonging to minorities, in particular the Italian- and Romanche-speaking minorities.

Note that the Federal Law on National Languages and Mutual Understanding between Linguistic Communities should come into force at the beginning of 2010. In the meantime, the cantons and the Confederation will collaborate in the work of preparing for the implementation of the law.

52. In Graubünden, important progress has been made in terms of legislative guarantees as regards the position of both the Romanche and Italian languages. A new cantonal Constitution was adopted on 18 May 2003 and entered into force on 1 January 2004. Article 3 of the new Constitution⁸ sets out important principles on the status of Romanche and Italian and strengthens co-operation between cantonal and municipal (and district) authorities in the process leading to the determination of the official language at the local level.

53. Following the adoption of this new Constitution, efforts have been made to design a comprehensive cantonal Law on Languages intended to give effect to Article 3 of the Constitution. Although this process has met with some difficulties, a new Law on Languages was adopted in October 2006. Following a successful referendum held in June 2007, it entered into force recently. The Advisory Committee welcomes the new guarantees which are entrenched in the Law to reinforce the position of Romanche and - although to a lesser extent - Italian. They encourage individual and institutional multilingualism and recognise and promote the important role played by the main cultural organisations of the Romanche and Italian-speaking communities (see related comments under Articles 10 and 14, below).

⁷ The Law includes a range of innovative, concrete measures aimed at promoting individual and institutional multilingualism. The Law also encourages the learning of their mother tongue by foreigners. Additional, new financial appropriations from the Confederation should be set aside for the future implementation of the Law, which is likely to stimulate further cantonal initiatives, such as the creation of institutes promoting research on plurilingualism.

⁸ Article 3 of the Constitution of Graubünden reads as follows:

“1. The national and official languages of the canton shall be German, Romansh and Italian in equal measure.
2.[...]

3. The municipalities and districts shall determine their official languages and languages of instruction within the limits of their authority and in co-operation with the canton. They shall have regard to the traditional distribution of languages and take into account indigenous linguistic minorities.”

54. Efforts have been made over the last 20 years to stop the erosion of Romanche, strengthen its legal status and encourage its practical use in different public contexts. This process culminated with the recognition of Romanche as an official language both at the Federal and cantonal levels, with the explicit approval by the voters in referenda despite complications caused by the coexistence of five idioms of Romanche, all of them having a distinct written and spoken form.

55. In order to ensure the long-term survival of the Romanche, the main Romanche association, together with cantonal authorities, have supported the development of “Rumantsch Grischun” as a new lingua franca among all Romanche-speakers, irrespective of their idiom. In view of the sensitivity of this issue for the Romanche speakers – some of whom consider “Rumantsch Grischun” as an artificial creation – particular attention has been paid to encourage wide public acceptance of this new language version and efforts have been made to enable people to continue to use their idioms. As a result, “Rumantsch Grischun” has become the official language used by the authorities both at Federal and cantonal levels, but these authorities are bound to continue to accept communications in any of the five idioms. In the field of education, the introduction of textbooks in “Rumantsch Grischun” is taking place gradually and teaching materials in that language have been made available as from 2007.⁹ In the field of print and electronic media, the five idioms are still being used except for transregional news.

10.1.2.2. b) Outstanding issues

56. Bearing in mind the overall importance of maintaining Italian and Romanche as living languages to preserve the identity of the canton of Graubünden, the development of their daily use including in official contexts is essential. Although German, Romanche and Italian are now recognised as national and official languages in equal measure at the cantonal level, the Advisory Committee was told that the administration works almost exclusively in German. Hence Italian and Romanche are in practice essentially languages of translation and representatives of the Italian-speaking minority take the view that translation services from the cantonal administration are under-resourced. There is also scope for producing more administrative documents intended for the public in Italian¹⁰ and Romanche. In the judicial field, there is a particular need to develop a proper legal terminology in Romanche and related language training for judges and staff members so as to make it possible to use this language in a more significant way.¹¹

57. According to representatives of the minorities concerned, the overall situation of those Italian and Romanche-speakers who live outside their traditional areas of settlement located in the cantons of Graubünden and Ticino has not significantly improved regarding opportunities to enjoy cultural and linguistic support, particularly in terms of access to language teaching. For example, according to estimates, there could be up to 40% of the total Romanche-speaking population living outside the municipalities of Graubünden where Romanche is an official language. Similarly, significant numbers of Italian-speakers

⁹ On the need to proceed gradually with the introduction of “Rumantsch Grischun” in teaching materials, see the third report of the Committee of Experts of the European Charter for Regional or Minority Languages on Switzerland of 19 September 2007, ECRML(2008)2, ad §§ 71-74.

¹⁰ According to a recent study from the University of Zürich, only 58% of the administrative forms posted on the official internet site of the canton Graubünden are also available in Italian.

¹¹ On these questions, see the third report of the Committee of Experts of the European Charter for Regional or Minority Languages on Switzerland of 19 September 2007, ECRML(2008)2, ad §§ 75-78.

can also be found in large cities such as Zurich or Bern and it remains difficult for these persons to preserve and develop their language and culture (see also related comments under Article 14 below). Several provisions in the Federal Law on National Languages and Mutual Understanding between Linguistic Communities and the Law on Languages of Graubünden should make it possible to develop new forms of support for cultural and linguistic initiatives, especially on research into and promotion of multilingualism beyond existing language boundaries.

10.1.3. Recommendations

58. Particular efforts should be made to ensure the full implementation of the new Federal legislation on languages and to take advantage of the new opportunities it offers to promote more decisively multilingualism, mutual understanding and exchanges between linguistic communities.

As mentioned above in connection with para. 51, the cantons are collaborating at present with the Federal administration to implement the various measures prescribed by the new Federal Law on languages. For instance, there are plans in several cantons to set up an institute to promote multilingualism and conduct scientific research into it as prescribed in Art. 17 of the law (Fribourg, Graubünden, Ticino, Basel, Bienne/Bern). Conspicuous among the working instruments used to implement the new legislation are the results of the national research programme PNR 56 “Language diversity and language skills in Switzerland”. PNR 56 is to be considered a substantial adjunct to the new law on languages, which has established the framework for Switzerland’s language policy. It is to add its own building-block to the fabric of this policy, by way of schools and the education system which today, with the reform of language teaching, are faced with new challenges. The work of summing up and concluding PNR 56 is scheduled for mid-2009.

59. The authorities of the canton of Graubünden¹² should continue to encourage a wider written and oral use of Italian and Romanche by the general public and within the administration and the judiciary, to ensure equality between these languages and German as prescribed by law.

10.2. Preservation of the identity of Travellers

10.2.1. Findings of the first cycle

60. In its first Opinion, the Advisory Committee expressed concern that the institutional and legislative framework made it difficult for Travellers to preserve and develop their culture and the essential elements of their identity. It also stressed that administrative obstacles made it difficult to exercise itinerant trade.

¹² When references to cantonal authorities are included in the recommendations contained in the present Opinion, they are by no means to be understood as interfering with the domestic distribution of powers as provided for by the Federal Constitution, but rather as an attempt to bring greater clarity for the readers of this Opinion.

10.2.2. Present situation

10.2.2.1. a) *Positive developments*

61. A significant effort to address the situation of Travellers in a comprehensive way was made by the 2006 report of the Government on the situation of Travellers in Switzerland. It contains numerous proposals to improve their living conditions and devotes particular attention to the Confederation's policy options on the lack of stopping places and transit sites, which is the main problem facing Travellers in Switzerland. In support of its conclusions and proposals, on several occasions the report draws on the Advisory Committee's findings and comments on the situation of Travellers in its first Opinion on Switzerland.

62. An important Federal Tribunal judgment of 28 March 2003¹³ for the first time recognised that life in a mobile home was an essential part of the identity of Travellers, whose needs were different from those of the settled population. The judgment also stressed the corresponding obligation of the authorities to take account of these needs in urban planning procedures.

63. The new Federal Law on itinerant trade came into force in 2003. This Law, which covers all itinerant commercial activities, is consistent with the interests and demands of Travellers, whose traditional activities are still closely associated with their nomadic way of life. The reactions of Travellers to this new legislation have been positive and the cantons have also welcomed the simplification of these new legislative provisions.

10.2.2.2. b) *Outstanding issues*

64. The overall situation of Travellers, of whom the overwhelming majority consider themselves to be of Yenish descent - although some belong to the Sinti or Roma groups – does not seem to have significantly improved since the first monitoring cycle. According to their representatives, it has become increasingly difficult to preserve one of the essential elements of their identity, namely their itinerant or semi-itinerant way of life. Against this background, it remains to be seen which concrete follow-up will be given to the Government's report of 2006. The institutional and legal framework, which is based on Federalism and associates linguistic minorities with a particular territory, has in practice continued to complicate inter-cantonal itinerant trade, which remains an important economic activity for many Travellers. The chronic lack of stopping places and transit sites is still unresolved and the general attitude of the population and the local authorities towards Travellers has remained tainted with negative stereotypes, discrimination and prejudices. Nevertheless smaller Yenish communities – such as those of Buech (Bern) and Châtillon (Fribourg) – travelling for only a few months a year tend to be better integrated.

65. The insufficient public support received by Travellers and the lack of recognition for their contribution to the Swiss society is further evidenced by the limited financial support granted to the Foundation "A Future for Swiss Travellers" (hereinafter: the "Foundation") and the shortcomings in the follow-up given by the authorities to the proposals made by the Foundation. Despite the numerous problems faced by Travellers,

¹³ ATF 129 II 321

the Parliament dismissed in 2006 a proposal to double the amount of the proposed appropriation (CHF 1.5 million instead of CHF 750,000) and decided instead to grant the Foundation the same contribution, i.e. a further general appropriation of CHF 750,000 for the years 2007 to 2011. The Association of Travellers (“Radgenossenschaft der Landstrasse”), which plays a crucial role in enabling Travellers to articulate their needs in front of the authorities, is also facing important budgetary constraints: the yearly contribution by the Confederation, which covers approximately 85% of its total budget, amounted to CHF 300,000 in 2003-2005 but was reduced to CHF 250,000 in 2006 and CHF 245,900 in 2007. The Federal contribution is due to remain stable in the years to come (CHF 251,500 in 2008 and CHF 255,700 in 2009), with no prospect for a real increase.

Note that the budgetary constraints facing the Travellers’ Foundation and Association are connected with the general budget reduction measures taken over the last few years by the Swiss Confederation in many areas.

Concerning public support for Travellers, attention should be drawn to the measures taken in this respect by some cantons. The canton of Fribourg for instance, under an agreement signed in 1997 with the municipality of Posieux, defrays the social assistance granted by this municipality to Travellers encamped on the Châtillon site and the cost of having the files managed by the regional welfare service, and makes suitable premises available for receiving the persons concerned. Over the years, this financial assistance adds up to large figures.

66. There has been a new Federal Bill on the Promotion of Culture under consideration for some time. Although it provides in its Article 14 that the Confederation may take measures to enable Travellers to live in accordance with their culture, it seems that this provision would mainly serve as a legal basis to support the Association of Travellers. Hence it is unlikely that a more resolute Federal policy will be designed to support the identity and culture of Travellers, which, according to their representatives, remains at threat.

Article **15** is where the Federal Bill on the Promotion of Culture makes provision for supporting Travellers.

10.2.3. Recommendations

67. The authorities should strengthen their policy to assist Travellers to preserve and develop the essential elements of their identity and to promote their culture. In this respect, additional and stronger legislative guarantees should be developed to strengthen the existing legal framework.

68. The Advisory Committee calls on the authorities to increase the limited state financial support allocated to the main institutions promoting Travellers’ cultural initiatives.

69. Care should be taken to follow up on the proposals contained in the 2006 Government’s report and to develop an efficient, participatory and transparent monitoring procedure accessible to Travellers themselves.

10.3. Lack of stopping places and transit sites for Travellers

70. In its first Opinion, the Advisory Committee concluded that the main problem faced by Travellers was the lack of stopping places and transit sites.

10.3.1. Present situation

10.3.1.1. a) Positive developments

71. During its visit to Switzerland, the Advisory Committee paid particular attention to the situation of Travellers and especially to their needs for stopping places and transit sites. It visited a stopping place located in Buech, in the municipality of Bern, which was inaugurated in 1998 and today offers quality accommodation for a modest rent to approximately 30 families. The decision to build this stopping place was taken by the local government already in 1992 and confirmed by a popular vote in 1997, following efforts by the local authorities to raise public awareness about the need to support it. The site is now widely accepted by the neighbourhood and close co-operation with Travellers' representatives has helped reduce the need for social assistance and significantly improved school attendance in recent years.

72. Other positive examples are reported in certain cantons, where the creation of stopping places and/or transit sites is in progress. This is notably the case in Geneva, where the cantonal Parliament passed a law in 2003 amending the cantonal land-use plan to include a long-awaited new zone for occupation by fairground people and Travellers. It is now expected that the site will be open in 2008 or 2009. Mention must also be made of the canton of St Gallen, which created two stopping places in 2002 and 2006 and subsequently presented a scheme to create six transit sites with a legal basis in urban planning legislation.

There are the following developments to report with regard to the measures taken by the canton of St-Gallen: firstly, work is in hand to create a fourth stopping place on the land of St-Gallen city (cantonal capital). Furthermore, concerning the six transit sites envisaged in the concept adopted in May 2006, two have been approved for the time being and are now specified in the 2008 adaptation of the cantonal master plan, the draft of which is currently undergoing consultation.

The canton of Geneva provides the following updated information concerning the development of the "Bécassière" stopping place in the municipality of Versoix: the opening of the area has incurred delay owing to the judicial action brought by neighbouring landowners against the cantonal law altering land-use zoning in the Versoix municipality (cf. 2nd report of the Swiss Government, para. 43, p. 33). The petitions have been dismissed and the law has now come into force. The building permits were registered on 18 June 2008. For the planning of works, a bill on investment is to be tabled in the autumn of 2008 in order to fund these projects. If the work is then approved by the cantonal parliament, it will be scheduled for the years 2009-2010.

73. The Advisory Committee welcomes the fact that a number of cantonal authorities, such as in Fribourg, pay particular attention to the specific needs of various categories of

Travellers. It recognises that their needs vary significantly, especially between foreign Roma/Sinti and Swiss Yenish.¹⁴

10.3.1.2. b) *Outstanding issues*

74. Despite certain positive cantonal examples, the shortage of stopping places and transit sites remains acute in Switzerland. In June 2006, the Foundation published an expert report providing a detailed list of existing stopping places and transit sites in Switzerland and assessing additional needs. This survey makes it apparent that very little progress has been made in practice. Since 2001, nine transit sites have been closed while only three new ones have been created across the whole territory of Switzerland. According to the expert report, it is necessary to provide 29 additional stopping places to accommodate approximately 1,500 itinerant Swiss Travellers. It would also be necessary to create 38 additional transit sites for the Swiss Travellers continuing a semi-itinerant way of life, as well as 10 larger transit sites for foreign Travellers. Furthermore, among the existing transit sites, 40 are now substandard and in need of refurbishment.

Significant recent efforts by some cantons to improve the situation of Travellers should be mentioned here. The government of the canton of Aargau in May 2007 adopted a new concept for Travellers (“Konzept Fahrende Kanton Aargau”). The concept pursues the following aims: creating a new official stopping place; permanent status for the provisional stopping place at Spreitenbach (set up in late 2006); creation of two new transit sites; renovating and making safe the existing facilities, including the transit site of Kaiseraugst opened at the end of 2004. In November 2007, an appropriation of 2 052 million SF was approved for the implementation of the concept.

75. No significant follow-up has so far been given by the cantons to the important Federal Tribunal’s ruling, which emphasises that Article 3(3) of the Federal Land-use Planning Act implies that the specific needs of that part of the population consisting of Swiss Travellers must also be satisfied. Hence urban planning instruments, both cantonal and municipal, must allow for the creation of appropriate sites and areas to serve as places of residence for Travellers in accordance with their traditions. Such planning instruments could also be the result of inter-cantonal coordination under the auspices of the Confederation, but to date no such coordination has taken place. Regrettably, efforts by the Confederation have not borne fruit either. The Government decided, in October 2006, to instruct the relevant ministry to give appropriate consideration to the situation of Travellers when approving cantonal structure plans and to draw the cantons’ attention – when the occasion arose – to the opportunities offered by the Land-use Planning Act for creating stopping places and transit sites. The Government is of the opinion that no amendment to the Law on Land-use Planning Act is needed and that measures to be implemented by the Confederation in this field should entail no additional expense.

¹⁴ For example, between 60 and 80 Swiss Travellers live in a small stopping place located in Châtillon (Fribourg), which was created some 12 years ago on the basis of an *ad hoc* convention between the canton and the municipality. The canton is now considering the creation of one or two larger transit sites, which would mainly serve to accommodate those foreign Travellers who cross Switzerland every year between March and October.

In some cantons, efforts have continued in order to cater for the needs of Travellers under land-use planning instruments. Reference should thus be made to the developments which occurred recently in the canton of Jura (see second report of the Swiss Government, para. 44, pp. 34-35 on this subject): after the inclusion of the principle in the cantonal master plan, a further step towards the creation of a transit site intended for Travellers in the canton of is about to be carried through, in so far as the draft special land-use plan “Encampment area for Travellers” should be laid before the public very soon. This draft special plan, authority to approve which is vested in the Government, provides for the creation at Delémont (cantonal capital) of a transit site reserved for Travellers with capacity to accommodate some thirty families. According to the stipulations of the special plan, the transit site will be open from March to the end of October. The permitted length of stay would be limited to ten days. Finally, the facility would be intended without distinction for Travellers of Swiss and foreign nationality.

The canton of Zurich reports that, as part of the overall review of its master plan, it intends to take the requisite measures to make a land-use planning fixture of the existing stopping places and transit sites and those to be created in future,. Questions of funding and operating these facilities, as well as of apportionment of authority, are to be re-examined in this context between the canton, the regions and the municipalities.

The canton of Fribourg mentions that as in the canton of Jura, its law on land-use planning gives the Cantonal Directorate of Land-use Planning, Environment and Construction authority to draw up a cantonal land-use plan if a solution cannot be found by means of the local development plans.

76. In several cantons, proposals to create further sites have been frozen or even withdrawn following adverse reactions by the municipalities concerned, by part of the local population and/or by various lobbying groups. This was recently the case in the canton of Aargau and Schwyz, as well as in the canton Fribourg, where in December 2006 the cantonal Government suspended its decision of November 2005 to create two transit sites, despite the needs highlighted and the proposals submitted by the cantonal commission for Travellers.

Several cantons stress that the hostile reactions of the municipalities and local population to the creation of new areas for Travellers are explained by the lack of consideration for the neighbourhood sometimes displayed by certain persons belonging to this community.

The canton of Aargau points out that the comment concerning it is incorrect. After the scheme for a facility at Spreitenbach was withdrawn having regard to the population’s hostile reaction, a provisional stopping place was finally set up in the same locality at the end of 2006. It has functioned since then free of problems or friction with the local population. Work is in hand to have it made permanent (v. supra re para. 74).

The canton of Schwyz also draws attention to an error: no proposal to create an additional site was halted or withdrawn. On the contrary, the establishment of an additional encampment area is contemplated as part of the revision of the Schwyz municipal land-use plan. Appeals have been lodged in this matter and are still pending. The authorities of the canton and the municipality of Schwyz persevere in their intention to create such a facility.

As to the canton of Fribourg, the formalities have not been completed as things stand regarding the creation of an encampment area on the land of the municipalities of

Corpataux-Magnedens and/or Farvagny, in place of the Granges-Paccot and La Tour-de-Trême sites, whose building was suspended in December 2006. On 7 May 2008, a group of members of parliament tabled a demand for the Council of State (cantonal government) to resume as a matter of priority the negotiations with the municipalities initially concerned and to take all appropriate steps towards a lasting solution. The Council of State is at present making an analysis of this demand and its implications for the suspended procedure. It will reply to it officially during the autumn of 2008. According to public statements by the cantonal Director of Land-use Planning, Environment and Construction, two proposals are taking shape to establish one site at Granges-Paccot and another in the region of Bulle. Moreover, discussions are proceeding with the canton of Vaud for the joint provision and management of a facility in the region of Broye.

77. A more promising Federal solution, namely the reassignment of military sites belonging to the Confederation, was put forward but such a solution would need more decisive accompanying measures to encourage the cantons to take this opportunity. In its decision of October 2006, the Government, however, only resolved to draw the cantons' attention to available land that might be appropriate for stopping places and transit sites and to the possibility to buy such land at a lower price. The Advisory Committee regrets that the cantons have shown little interest in this possibility so far, but have rather requested stronger Federal commitment, such as the adoption of stronger Federal incentives to make such proposals successful.¹⁵

Concerning the reassignment of military sites, it is to be noted that in June 2008 the Federal Council adopted a report containing a scheme of measures to encourage redevelopment of disused industrial and workshop sites. In the report, attention is drawn especially to the fact that former military sites can be used by the cantons and municipalities to provide stopping places and transit areas for Travellers.

Regarding the terms used by the Advisory Committee to the effect that "In its decision of October 2006, the Government, however, only resolved to draw the cantons' attention to available land that might be appropriate [...]": actually, as well as drawing the cantons' attention to appropriate military sites, the Swiss Government has also instructed the Federal Department of Defence, Protection of the Population and Sport (DDPS) to continue its collaboration with a working group of the Foundation "A Future for Swiss Travellers" especially formed to deal with these issues of reassignment of sites. At present, for example where French-speaking Switzerland and Ticino are concerned, ArmaSuisse, which represents the DDPS, is actively seeking two suitable locations per canton in order to propose them to the cantonal bodies in charge of Travellers' affairs. In certain cases, the proposals have already been put to the cantonal authorities.

About "the possibility to buy such land at a lower price": strictly speaking, having regard to the real estate strategy of the DDPS, the owner of the sites, its representative ArmaSuisse cannot sell them at less than their value. Nonetheless, the sale prices will be adapted to the land-use zones where the sites in question are located, so that if a site is, for example, in a public interest zone or an industrial or craft zone, it may be sold at a lower price than if it was in a zone for residential building. Subsequently, discussions are to be

¹⁵ For example, the selling of any military site could be linked to the setting up of - or legal commitment to set up - a transit site by the cantons concerned. The possibility to transfer the relevant military sites free of charge in exchange for the creation of transit sites should also be explored further.

conducted with the cantonal and municipal authorities in order to adopt special allocation plans if required.

78. In November 2006 both the Foundation and the Federal Commission against Racism issued a public statement stressing that the proposals contained in the 2006 Government's report on the situation of Travellers would probably prove insufficient in the mid-term. They asked for a Federal law making it compulsory to introduce the necessary changes within a set time limit. They also called for a Federal Action plan to be prepared with assistance from the Conference of cantonal Governments (CdC) and the Swiss Conference of Public Works, Spatial Planning and Environment Ministers (DTAP). On the basis of this action plan, every canton should commence work on plans for stopping places and transit sites. Stopping for a few days on public land, other than official sites, ought to be statutorily possible in every municipality. Furthermore, the Confederation should make it more attractive for cantons and municipalities to create suitable sites, by using a system of financial incentives. The Association of Travellers, as well as other representatives of Travellers, proposed broadening the scope of Article 24 of the Land-use Planning Act to facilitate the granting of administrative derogations for the creation of stopping places and transit sites.

Concerning the proposal to broaden the scope of Article 24 of the Land-use Planning Act (exceptions prescribed outside the residential building zone), it should be recalled that the Federal Court, in its landmark decision on these questions in March 2003 (ATF 129 II 321), held that places of a certain size intended for Travellers must be specified in the land-use plans and that an exemption from Art. 24 et seq. of the Land-use Planning Act (LAT) cannot then be contemplated.

79. Some Travellers' representatives take the view that even the creation of additional transit sites and stopping places, as requested in the expert report published by the Foundation, would not suffice to enable all Travellers of Yenish origin who so wish to continue to live their itinerant or semi-itinerant way of life. They contend that this would only be possible if further accompanying measures were taken, such as legislative measures by cantons to waive the requirement to obtain authorisation for short-term stopping of Travellers' caravans, or removal of the prohibition to park caravans which is currently enshrined in policing legislation of the overwhelming majority of Swiss municipalities. Such measures could indeed make it easier for private owners to lease smaller plots of lands to Travellers for short periods.

It should be recalled that some cantons have had tolerant policies for several years on impromptu stays. Thus, in the canton of Aargau, stays of caravans shorter than two months do not require a building permit under the cantonal law on building (in force since 1994).

This also applies in the canton of Zurich for spontaneous halts lasting up to three months. This canton observes moreover that the situation described by the Advisory Committee as regards municipal police regulations prohibiting the parking of caravans is unclear and that the extent of the prohibition should be determined.

The canton of Bern points out that an amendment to its legislation on building concerning short stays of nomads' vehicles would be inexpedient as this is already permitted at present under the cantonal decree on the procedure for granting building permits (RSB 725.1; Art. 5 para. 1 (k)).

According to the canton of Geneva, it should be possible for the canton to consider the legality of spontaneous halts, besides the provision of stopping places.

10.3.2. Recommendations

80. The Advisory Committee encourages the authorities to introduce new Federal legislative guarantees to ease and speed up the planning and creation of sites. Stronger financial and other incentives should be developed by the Confederation to promote action by the cantons; these measures may include greater effort to reassign military sites for the creation of stopping places and transit sites, in co-operation with the Foundation.

Concerning the “new Federal legislative guarantees” advocated by the Advisory Committee to facilitate the creation of sites for Travellers, it should be recalled that the Federal Court, in its ruling of March 2003 (ATF 129 II 321), held that the specific needs of Travellers should be met pursuant to Art. 3 (3) LAT providing that “land set aside for housing and pursuit of economic activities shall be improved according to the needs of the population”. The Federal Council’s report of 2006 on the situation of Travellers in Switzerland comes to the conclusion that the present land-use planning legislation suffices for the consideration of Travellers’ needs.

81. Cantonal legislation on land-use planning and building as well as municipal policing legislation should be reviewed to facilitate the stopping of Travellers’ caravans on private and public land for short periods.

See comments made on this subject under para. 79.

82. A more intense inter-cantonal co-operation, possibly through existing inter-cantonal structures, should be developed from planning to operation of stopping places and transit sites. Stronger support from the Confederation for this process is needed.

11. Article 6 of the Framework Convention

11.1. Promotion of tolerance

11.1.1. Findings of the first cycle

83. In its first Opinion, the Advisory Committee found that a large measure of tolerance was characteristic of relations between German -, French-, Italian- and Romanche-speakers, but that Travellers, who were still the subject of negative stereotypes, were not yet regarded by the majority as being an integral part of the Swiss population.

11.1.2. Present situation

11.1.2.1. a) Positive developments

84. The Government, which has tried to strengthen tolerance between the settled population and Travellers, stressed the need to promote mutual understanding in its 2006 report on the situation of Travellers in Switzerland (see related comments under Article 15, below). In this context, the Foundation carried out a series of events to favour a climate of

trust and disseminate information on Travellers to the wider public. In November 2003 a resource centre was opened in Zurich in the offices of the Association of Travellers. This centre is intended to provide information on the history, culture and day-to-day life of Travellers.

85. In the field of education, coordinated efforts are being made under the auspices of the conference of cantonal ministers of education (CDIP) to include more consistently elements of religious culture in the curricula to take into account the increased diversity within Swiss society. Furthermore, a Swiss Council of religions was created in 2005 and is being increasingly consulted by the authorities on various occasions, including by the CDIP.

The Fund for projects against racism and in favour of human rights, valid for five years, paid subsidies from 2001 to 2005 worth 15 million SF to training, awareness-raising and prevention projects. It was possible to support 529 of the 994 projects lodged. Having noted the success of the work done in the context of the Fund, the Federal Council decided on 23 February 2005 to make a sustained effort of prevention and awareness-raising concerning racism and xenophobia. Accordingly, it made available 900 000 SF per year as from 2006 for the financial backing of other agencies' projects. A share of 500 000 SF is devoted to general projects, while the remaining 400 000 SF were earmarked for school-related projects. In 2006-2007, 159 of the 293 projects lodged were accepted. The subsidies total 1 838 500 SF, corresponding to 22% of the aggregate cost of the projects supported (8 284 910 SF). The projects in the sphere of education represent a third of the whole. In second place come projects relating to intercultural communication (20%), followed by demonstrations (15%).

The Council of Europe youth campaign "All different – all equal" (2006-2007) had the aim of promoting diversity and equality, human rights and young people's participation in social and political life. It was supported in Switzerland by the Confederation and organisations working with young people in the community at large, and youth organisations. Of the 140 projects lodged in connection with this campaign, 90 qualified for the financial support of the Service for Combating Racism (the Confederation having made grants to 130 projects in all). The spectrum was broad, the projects creative and highly diversified in that they concerned not only football and other sports events but also theatre, exhibitions, round table discussion, workshops, cultural exchanges, open-air entertainments, video clips and songs in the rap idiom. 42 school-related projects received grants amounting to 532 000 SF.

11.1.2.2. b) Outstanding issues

86. There remains a lack of understanding towards Travellers from the settled population. The persistence of prejudice is often due to the fact that part of the settled population remains ignorant of the long tradition of Travellers' presence in Switzerland, their way of life and their customs. Negative stereotypes on Travellers, Sinti and Roma are still frequent in the media and local authorities have occasionally contributed to reinforcing them in the ongoing discussions to create additional transit sites and stopping places.

87. A number of decisions concerning land-use planning can be taken through local referenda. Consequently, promoting and advancing mutual understanding between Travellers and the population in general is crucial, so that democratic decisions can better

reflect respect for the itinerant way of life practiced by some Travellers. Further confidence-building measures, including public debates, could be helpful in this respect.

Here attention should be drawn to the action of the canton of St Gallen, which commissioned a study to devise a concept for making the population aware of Swiss Travellers' needs in connection with the provision and the popular acceptance of the transit sites resolved in May 2006 (cf. above comment on para. 72).

In the canton of Fribourg, the question of Travellers is also addressed by the cantonal migrant integration officer. The canton will support the "Le Monde en fête" Festival to be held in Fribourg in September 2008 and give Travellers a prominent place. Representatives of the Yenish population will take part in the Festival and present their community by setting up their caravans at the venue. Events will be organised with the settled local population. A debate on the theme "Which places to accommodate which Gypsies?" will then be broadcast on local radio.

88. Racist, xenophobic and intolerant attitudes especially against asylum seekers, refugees, certain groups of foreigners and Muslims have continued to be reported in recent years, including by Council of Europe bodies.¹⁶ According to a comprehensive study commissioned by the Federal Commission against Racism, foreigners and ethnic minorities were negatively stereotyped during the electoral campaign of 2007 and Muslims and young foreign nationals were particularly targeted.¹⁷

Note that the "Forschungsbereich Öffentlichkeit und Gesellschaft" mentioned in the footnote is the name of the Zurich University department which carried out the study on the instructions of the Federal Commission against Racism. The translated title of the actual study is "Foreigners and ethnic minorities in the election campaign. An analysis of the media coverage of the 2007 Federal elections".

89. Negative attitudes towards Muslims have also been stirred following the launching of a popular initiative to ban the building of minarets. In September 2007, the UN Rapporteur against Racism expressed concern at a nation-wide poster campaign showing three white sheep standing on a Swiss flag and kicking out a black sheep with the slogan "create security". He asked for it to be withdrawn, as it could be seen to spread racial and religious hatred. This statement followed earlier reports by the UN Rapporteur against

¹⁶ See in particular the third report of the European Commission against Racism and Intolerance (ECRI) on Switzerland of 27 June 2003, ad §§41-43, 51-62 and 88-93, which highlighted *inter alia* "signs of intolerance and xenophobia [...] in political and public discourse" (ad § 86); see also Report of the Council of Europe Commissioner for Human Rights on Switzerland of 8 June 2005, ad §§ 107-110, which mentioned *inter alia* "a worrying level of xenophobia, intolerance and racism among the Swiss population" (ad § 107).

¹⁷ See *Forschungsbereich Öffentlichkeit und Gesellschaft* of the University of Zurich, report of 9 December 2007, which studied the typecasting of foreign nationals during the electoral campaign. Three quarters of the negative portrayals of foreigners and ethnic minorities identified were undertaken by one political party. Their strategy and the intensive reactions of the media and of other parties ensured that negative stereotypes shaped the 2007 electoral campaign to a large extent – even beyond environmental issues. Criticism of this negative image of the foreign population was significantly greater in French-speaking Switzerland. The Federal Commission against Racism takes the view that the study reveals how the populist right wing makes negative use of the image of foreigners in order to foment existing xenophobic sentiments.

Racism, in which he noted that racism, xenophobia and discrimination were trivialised in political debate. Concerns have also been expressed in the past by the ECRI regarding intolerance and xenophobia in political discourse, notably at the expense of asylum seekers and refugees.¹⁸

On these subjects, Switzerland refers to the reservation which it expressed above in the section "Introductory remarks". For the sake of clarity and updating, it nevertheless considers that the essential developments which have occurred in these fields recently should be reported.

According to the wording of the Swiss Government press communiqué of 8 July 2008, the date of the tabling of the popular initiative against construction of minarets, there is no doubt that the Federal Council will invite the Swiss people and the parliament to reject this initiative.

11.1.3. Recommendations

90. Greater efforts should be made to raise awareness of the population on the history and culture of Travellers so as to counter negative stereotypes. Measures to promote tolerance and mutual understanding, especially in the field of media, should be intensified.

91. The authorities should react more vigorously to counter intolerance and xenophobia in the political discourse and develop additional measures to promote a climate of tolerance towards ethnic minorities, foreigners, asylum seekers and refugees.

11.2. Protection against acts of discrimination and anti-Semitism

11.2.1. First cycle findings

92. In its first Opinion, the Advisory Committee noted isolated manifestations of anti-Semitism and encouraged the authorities to combat these manifestations and remain vigilant in this regard.

93. In its first Opinion, the Advisory Committee noted that generalised refusals to grant naturalisation to applicants from certain countries had been reported in previous years and raised problems from the point of view of the prohibition of discrimination, especially in the absence of a legal remedy.

11.2.2. Present situation

11.2.2.1. a) *Positive developments*

94. The latest opinion polls and surveys show that anti-Semitic feelings have not increased within the population over the last years. Victims of acts of anti-Semitism seem increasingly willing to report such incidents, a state of affairs which testifies to the confidence shown in the existing reporting mechanisms, although the growing number of reported incidents remains worrying (see related comments on paragraphs 96-97, below).

¹⁸ See the third report of the European Commission against Racism and Intolerance (ECRI) on Switzerland of 27 June 2003, ad §§ 83-87.

95. Two landmark decisions of the Federal Tribunal on 9 July 2003¹⁹ laid down important principles on naturalisation procedures. In the first decision, a cantonal decision on naturalisation was for the first time declared null and void on the grounds of discrimination. In the second decision, the practice of submitting naturalisation applications to a ballot of the population (compulsory referendum) was deemed unconstitutional because it did not constitute a reasoned decision. Most of the cantons concerned report that, pending amendments of their legislation to ensure full compliance with this new jurisprudence, they have issued directives to prevent similar cases of unreasoned refusals to grant naturalisation. In many cases, they have also prohibited the holding of ballots on naturalisation and provided for legal remedy against allegedly discriminatory refusals. An amendment to the Federal Law on Acquisition and Loss of Nationality was approved by the Parliament on 21 December 2007 and could enter into force later in 2008. It aims to bring the tradition of naturalisation by referendum, long established in many municipalities of certain cantons, into line with the requirements of the rule of law. Under the new Law, a vote by the people remains possible in all its forms (general ballot, show of hands, or secret vote in municipal assemblies), but only in cases in which there has been a petition to reject an application for naturalisation, and provided that the body delivering the decision is able to supply an adequate statement of reasons as required by law, so that the applicant for naturalisation can ask the courts to determine whether a refusal is fair and not arbitrary.²⁰ Furthermore, the cantons will be obliged to introduce judicial remedies to challenge refusals of naturalisation.²¹

Regarding the questions of naturalisation, Switzerland refers to the reservation which it expressed above in the “Introductory remarks” section. For the sake of clarity and accuracy, it nevertheless considers that the essential developments which have occurred in these fields recently should be reported.

On 1 June 2008, a popular initiative to overturn this precedent of the Federal Court (popular initiative of the UDC party “In favour of democratic naturalisations”) was rejected by the nation. An amendment to the Federal Law on Acquisition and Loss of Nationality may thus take effect not later than 2009. After resolution of the divergences, the bill on which the two houses of the Federal Parliament have agreed precludes the possibility of entrusting naturalisation to the people (votes at the polls, “general ballot” in the terms of the Advisory Committee’s opinion). This was in fact confirmed to be contrary to the principles of rule of law and is untenable vis-à-vis the stipulation of an adequate statement of reasons.

11.2.2.2. b) Outstanding issues

96. As compared to 2004 and 2005, there was a marked increase in 2006 concerning alleged violations of Article 261*bis* of the Criminal Code, which prohibits “racial discrimination”.²² Since the entry into force of Article 261*bis* of the Criminal Code in

¹⁹ ATF 129 I 217 and ATF 129 I 232.

²⁰ See Articles 15a and 15b of the Law.

²¹ See Article 50 of the Law.

²² Out of 49 cases reported to the Federal Commission against Racism for an alleged violation of Article 261*bis* of the Criminal Code, 28 were transmitted to the criminal jurisdictions, with 24 ending up with convictions and 4 with acquittal.

1995, persons of Jewish origin have been the group reported as the most frequently victim of racial discrimination, well before foreigners and visible minorities.

97. At the request of and in co-operation with the Swiss Federation of Jewish Communities (FSCI), two associations record anti-Semitic acts in Switzerland and through the services that they have set up to help, advise and support victims. Details are collected by the FSCI and published in a consolidated report. In 2006, the FSCI recorded 73 incidents reported to its services. This represents more than twice the number of incidents recorded in 2005. The FSCI is of the opinion that the Confederation should introduce a reporting centre for such cases.

98. Despite a recent amendment to the Federal Law on Acquisition and Loss of Nationality and transitional measures adopted by the cantons concerned, occasional instances of discriminatory refusals of naturalisation, mainly at the expense of persons originating from the Balkans and/or Muslims, had been reported until recently, including by the Federal Commission against Racism.²³

Note that the amendment to the Federal Law on Acquisition and Loss of Nationality in question had not yet come into force when the 2nd Opinion on Switzerland was drafted, in particular paragraph 98 thereof (entry into force scheduled for 2009 as mentioned above *re* para. 95). The amendment of this statute will constitute an additional effective safeguard against discriminatory refusals of naturalisation.

99. The Advisory Committee notes that a popular Federal initiative called “For Democratic Naturalisations” is currently pending. It is concerned that this initiative, on which a referendum is due to take place on 1 June 2008, aims to give municipalities full power to determine which authority may grant citizenship. If accepted, it would rule out any possibility of appeal at cantonal level, since it proceeds from the assumption that naturalisation is a purely political act rather than a specific and individual administrative act. Consequently, the aforementioned amendment to the Law on Acquisition and Loss of Nationality approved by the Parliament on 21 December 2007 would not enter into force.

As mentioned above *re* para. 95, the popular initiative “In favour of democratic naturalisations” was rejected by the nation on 1 June 2008. The amendment to the Law on Acquisition and Loss of Swiss Nationality, adopted by the Federal Chambers as an indirect response to the initiative in December 2007, may thus come into force in 2009.

11.2.3. Recommendations

100. Efforts to combat racial discrimination by the enforcement of criminal provisions should be continued. The authorities should closely monitor developments in this field and consider the possibility of developing additional monitoring methods, including with regard to acts of anti-Semitism.

101. Increased attention should be given by the cantons and municipalities concerned in providing reasoned decisions on naturalisation applications to help avoid discriminatory decisions. Efforts to reform the applicable legislation so as ensure its full compliance with

²³ See Federal Commission against Racism, “*Discrimination dans le cadre des naturalisations*”, Bern, September 2007, which also mentions recent decisions from the Federal Tribunal quashing refusals of naturalisation due to an insufficient reasoning by the local body concerned.

the rule of law should be pursued decisively and balanced information should be provided by the authorities in this ongoing debate.

The amendment to the Federal Law on Acquisition and Loss of Swiss Nationality, which will come into force in 2009, lays down an obligation to state reasons for decisions to refuse naturalisation.

Concerning the recommendation to the cantons and municipalities to ensure that reasoned decisions on naturalisation applications are delivered, a positive example to be mentioned is the canton of Fribourg. At the cantonal ballot of 1 June 2008, the people approved the amendment of the cantonal law on citizenship of Fribourg, where the principal innovation is that municipal councils (executives) are given exclusive power to grant or withhold citizenship at municipal level. Hitherto, for first-generation foreigners, the legislative bodies of the municipalities (municipal assemblies or general councils as the case may be) have decided on the grant of municipal citizenship. It was thus difficult, or virtually impossible (municipal assemblies) to meet the requirement of a reasoned refusal. Henceforth the municipal councils, conversant with all documents in the file, will invariably be able to state reasons for their decisions.

The canton of Zurich also reports that the draft of the new cantonal citizenship law, shortly to undergo the consultation procedure, takes account of the requirement that reasons be stated.

12. Article 9 of the Framework Convention

12.1. Radio and television programmes

12.1.1. Findings of the first cycle

102. In its first Opinion, the Advisory Committee noted with satisfaction the existence of a considerable number of radio and television programmes in German, French and Italian as well as regular slots of television programmes and a public service radio in the Romanche language.

12.1.2. Present situation

12.1.2.1. a) Positive developments

103. A new Federal Law on Radio and Television entered into force in April 2007, which confirms the existing terms of reference of the Swiss Broadcasting Company (SSR) and its obligation to broadcast programmes in German, French and Italian of the same quality all over the country. The terms of reference have been consolidated regarding the Romanche language with an explicit obligation to broadcast at least one radio programme schedule for Romanche-speaking Switzerland and a duty for the Government to lay down the principles governing provisions to meet the specific radio and television needs of this linguistic region.

104. The Advisory Committee was given to understand that the radio programme in Romanche should continue to allow the use of the five idioms of the Romanche language where appropriate. The daily duration of the programmes broadcast in Romanche by the public service radio have been significantly extended since the first monitoring cycle due

to the opening of a new media centre in Chur in 2006. Since April 2005 the public service Romanche television has also increased its airtime. This has included a more frequent news bulletin.

12.1.2.2. b) Outstanding issues

105. Ongoing discussions are taking place on the possible creation of a regional TV station in Graubünden to broadcast in Romanche. Despite the interest shown by Romanche speakers, this project has not yet materialised due to a lack of funding.

12.1.3. Recommendation

106. The authorities are invited to continue to monitor the needs of the Romanche speakers in terms of broadcasting time and make sure that the new legal provisions are fully implemented in practice.

12.2. Print media

12.2.1. Findings of the first cycle

107. In its first Opinion, the Advisory Committee welcomed the wide variety of titles existing in the four national languages but noted that the only Romanche daily newspaper was in a difficult situation.

12.2.2. Present situation

12.2.2.1. a) Positive developments

108. The new Languages Act of the canton of Graubünden provides in its Article 12 that the canton may subsidise Romanche newspapers and journals if they have made an important contribution to protecting the language, provided that these services could not have covered their own costs. The newspapers and journals published in Romanche have continued to benefit from indirect support in the form of editorial services and the substantial public funding of the Romanche press agency has been maintained.

12.2.2.1. b) Outstanding issues

109. Although printed media are numerous in the Italian language, representatives of the Italian-speaking community of the canton of Graubünden regret the lack of media coverage in Italian of the political, economic and cultural life of their canton. This is linked to the fact that existing newspapers are essentially based in Ticino, so that they tend to focus almost exclusively on what is happening in canton Ticino as well as on Federal issues. There are continuing discussions, including some with the Swiss Telegraphic Agency, around the possible appointment of an Italian-speaking media correspondent in Chur to fill this gap.

12.2.3. Recommendation

110. The authorities should pursue their laudable efforts to support printed media especially in Romanche and Italian languages in canton Graubünden, as well as make the

best use of the new opportunities opened up by the new legislative provisions on languages.

12.3. Media and Travellers

12.3.1. Findings of the first cycle

111. In its first Opinion, the Advisory Committee noted the existence of limited radio broadcasting in Roma language and the existence of a Yenish title and invited the authorities to examine, with Travellers' representatives, whether this situation corresponded to their needs.

12.3.2. Present situation

112. The Swiss authorities consulted the Association of Travellers on the findings of the first cycle. The Association considers the possible broadcasting on local radio of a programme in Yenish desirable, without however demanding it. Other representatives of the Yenish community have put a stronger emphasis on this issue - including in their exchanges with the Advisory Committee - and call for the development of a proper media policy to assist the Yenish, Sinti and Roma. The Swiss authorities have suggested that the needs of Travellers in the field of media could become a future topic for discussion in the Foundation.

12.3.3. Recommendation

113. Efforts should be made to respond better to the needs of Travellers in the field of media and increased attention could be devoted to this question in the relevant institutions in which the Confederation and the cantons are represented.

13. Article 10 of the Framework Convention

13.1. Use of languages in relations with Federal authorities

13.1.1. Findings of the first cycle

114. In its first Opinion, the Advisory Committee expressed satisfaction at the coexistence of four official languages in Switzerland. At the same time it invited the Federal authorities to further raise the awareness of Federal administration staff to the need to reply systematically in Italian to requests submitted in that language.

13.1.2. Present situation

13.1.2.1. a) Positive developments

115. Italian translation services across the Federal administration have been expanded in the past few years so as to reach 95 posts today. This state of affairs is now considered satisfactory by those concerned. A handbook on the promotion of multilingualism within the Federal civil service, which contains a specific chapter on the use of Italian, is being finalised and is due to be distributed in June 2008.

The handbook on the promotion of multilingualism within the Federal civil service, which contains a specific chapter on the use of Italian, is indeed being finalised and is due to be published by the end of 2008.

13.1.2.2. b) *Outstanding issues*

116. The authorities of the Italian-speaking canton Ticino reported that, for consultation procedures, some Federal Offices occasionally provided texts in French or German only. Representatives of the Italian-speaking minority regretted the absence of information in Italian on several Federal institution websites as well as the limited information available in Italian on several other such websites.

It should be pointed out that the Advisory Committee's second Opinion on Switzerland was in fact translated into Italian at the behest of the Confederation as soon as it was received. The letter from the Federal Department of Foreign Affairs (DDIP) forwarded with the second Opinion and opening the procedure for technical consultation of the cantons was also written in Italian. It has therefore been made possible for the authorities of Ticino to state their position on the basis of texts in the canton's official language.

117. The new Federal Law on National Languages and Mutual Understanding between Linguistic Communities contains laudable guarantees to ensure the equal status of German, French and Italian as official languages, as well as a high level of protection for Romanche as an official language in relations with Romanche-speakers. However, information from various sources suggests that the actual position of Italian tends to loose in importance within Federal authorities, especially within the Federal administration. Although the provisions²⁴ specifying the texts which have to be published in German, French and Italian seem to be well respected in practice, the use of Italian in the decision-making process within the Federal administration and in the actual work of the civil servants concerned appears to be decreasing. As a result, Italian tends to become more and more a language of translation instead of a working language, a development which in the future might negatively affect its consistent use with persons belonging to the Italian-speaking minority.

13.1.3. Recommendation

118. The Federal authorities should continue their efforts to ensure that Italian is consistently used in relations with Italian-speaking persons and institutions. They should continue to encourage a wider written and oral use of Italian within the Federal public service so as to ensure equality with other official languages as prescribed by law.

13.2. Use of languages in relations with authorities of bilingual cantons

13.2.1. Findings of the first cycle

119. In its first Opinion, the Advisory Committee concluded that relations between persons belonging to linguistic minorities and cantonal authorities in cantons Bern, Fribourg and Valais did not in principle raise any problems, but that certain difficulties arose in relations with infra-cantonal administrative authorities (i.e. municipalities and

²⁴ Articles 8 (2) and 10 of the Law.

districts), especially in some municipalities located along the language (German-French) border.

13.2.2. Present situation

13.2.2.1. a) Positive developments

120. A new Constitution of the canton of Fribourg entered into force in January 2005, which lays down key principles on the use of official languages²⁵ and for the first time explicitly protects the freedom of language.²⁶ As one of the main innovations, both French and German can now be declared official languages in municipalities with a “significant indigenous linguistic minority”.

The footnotes concerning the new Constitution require the clarification that the Constitution of the canton of Fribourg is meant, not the Constitution “of Fribourg”. Moreover, Article 17 establishes the freedom of language, not Article 21 as stated in the footnote.

121. The compromise found on the language provisions of the new Constitution of Fribourg confirms the overall importance of the principle of territoriality. At the same time, it could pave the way for a less rigid interpretation of this principle in practice in the weighting of the public and private interests, to take better account of the requirements of international law and the Federal Constitution. Pending the adoption of a cantonal law on languages, which could *inter alia* set criteria to determine the notion of municipalities with a “significant indigenous linguistic minority”, certain positive steps have already been taken. For example, in the municipality of Fribourg (the cantonal capital), the legislative council adopted new rules in March 2006 whereby important documents were in future to be distributed to councillors in both French and German. Previously documents had been drafted in French only.

Concerning current positive measures in the canton of Fribourg, the statutes of the entirely new Conurbation of Fribourg (“AGGLO Fribourg”), a supra-municipal political institution (comprising 10 municipalities) which assumes supra-regional functions of regional importance and was accepted by popular vote in June 2008, make the following provisions on the question of languages in Article 7:

- “1. The members of the conurbation’s bodies and committees shall express themselves in either French or German.
2. Documents intended for the public and the municipalities shall be drawn up in both languages.
3. Relations between citizens and the services of the conurbation shall be carried on in either French or German, depending which language the citizen speaks.”

Furthermore, Article 4 (3) of the statutes provides that “The conurbation shall foster understanding, harmony and exchanges between the canton’s linguistic communities. It shall encourage bilingualism.”

²⁵ See Article 6 of the new Constitution of Fribourg.

²⁶ See Article 21 of the new Constitution of Fribourg.

Also to be mentioned is a motion tabled in July 2008 by some members of the cantonal parliament, asking that the possibility be provided for financial support from the canton to the municipalities on the language boundary declaring themselves bilingual. The members propose that the minimum requirements as regards the practice of bilingualism be laid down by amending the existing laws (e.g. the law on municipalities) rather than by introducing a specific law.

122. In the canton of Bern, the Constitution provides for the possibility to mitigate the principle of territoriality in certain situations, especially with a view to protecting the French-speaking population in municipalities/districts, where this population is in a numerical minority. Article 49 of the law of 13 September 2004 on the special status of the Bernese Jura and the French-speaking minority in the bilingual district of Biel, which entered into force in January 2006, provides that a person may communicate in the official language of his or her choice with the authorities responsible for the bilingual district of Biel. This arrangement seems to work well in practice and reflects the mixed linguistic pattern of the district. Under Article 51, the municipalities of Biel and Leubringen shall make allowance for bilingualism, when discharging their duties, and may take steps to protect and promote it.

13.2.2.2. b) Outstanding issues

123. Progress has been made in recent constitutional and legislative provisions and there is a more flexible interpretation of the principle of territoriality promoted by relevant Federal case-law. However, the possibility to make use of a minority language (German or French) in relations with municipal authorities continues to be marked by a measure of legal uncertainty. This is notably the case in the canton of Fribourg, where the constitutional notion of a municipality with a “significant indigenous linguistic minority” remains undetermined due to the absence of a cantonal law on languages.

13.2.3. Recommendation

124. Efforts should be pursued to implement the new constitutional and legislative guarantees so as to meet better the needs of those concerned in municipalities on the language border. Consideration could be given to adopting a law on languages in the canton of Fribourg.

13.3. Use of languages in relations with the authorities in the canton of Graubünden

13.3.1. Findings of the first cycle

125. In its first Opinion, the Advisory Committee noted with satisfaction the numerous efforts undertaken to reinforce the position of Romanche, but also noted certain difficulties in relations with infra-cantonal administrative authorities. It noted in particular that certain municipalities, which kept the minutes of their municipal assemblies in Romanche and are situated at the language border, were considering switching to German, and the Advisory Committee expressed the hope that the Romanche character of those municipalities be preserved.

13.3.2. Present situation

13.3.2.1. a) Positive developments

126. The adoption of a new Constitution in Graubünden in 2003 and a new Law on Languages in 2006 represents a significant step forward (see related comments under Article 5, above). The new Law, which is based on Article 3 of the new Constitution, intends to strengthen the position of Romanche (and to a lesser extent Italian) through a system ensuring that Romanche can be declared co-official in municipalities with a sizeable proportion of Romanche speakers. According to the new Law, a municipality is now considered monolingual if at least 40% of its population belongs to what is an indigenous linguistic minority in the canton. In such municipalities, the official language is the language of this minority, even if the majority of the population speaks German. A municipality is considered to be multilingual, when this proportion is between 20 and 40%. The new Law should therefore consolidate the status of Romanche and Italian since changes in the official language(s) of a municipality will become more difficult.²⁷

127. Although the Advisory Committee expressed concern that certain Romanche municipalities on the language border might consider switching to German for the holding of their minutes, no such change has been reported.

13.3.2.2. b) Outstanding issues

128. There is a need to ensure that in the municipalities to be considered as multilingual according to the new cantonal Law on Languages, official documents are consistently published also in Romanche (or Italian) and not just in German. This is equally important for the use of Romanche (or Italian) in the assemblies of local authorities.²⁸

13.3.3. Recommendation

129. Efforts to stop the erosion of the official use of the Romanche and Italian languages at the municipal and district levels should be pursued. This includes a full implementation of the new cantonal Law on Languages and systematic action to promote the use of these languages in multilingual municipalities.

²⁷ According to the new Law, a proposal for a change from a monolingual to a multilingual municipality is made if the proportion of the population belonging to the indigenous linguistic minority falls below 40%. Similarly, a proposal is made for a change from a multilingual to a German-speaking municipality if that proportion falls below 20%. A change of official language is deemed to have been approved if it has been sanctioned 1) by a majority, in the case of transition from a monolingual to a multilingual municipality, and 2) by two-thirds of voters in the case of transition from a multilingual to a German-speaking municipality. In addition, any amendment decision must be approved by the cantonal government. As for districts, those consisting of monolingual municipalities with the same official language are deemed to be monolingual and those consisting of municipalities with different official languages are deemed to be multilingual.

²⁸ See the third report of the Committee of Experts of the European Charter for Regional or Minority Languages on Switzerland of 19 September 2007, ECMRL(2008)2, ad §§ 99-102.

14. Article 11 of the Framework Convention

14.1. Private signs visible to the public

14.1.1. Findings of the first cycle

130. In its first Opinion, the Advisory Committee noted the existence of certain exceptional limitations to the right to display in a minority language signs of a private nature visible to the public. These limitations only concerned a few municipalities in Graubünden and were guided by the legitimate concern to preserve the Romanche language.

14.1.2. Present situation

14.1.2.1. Positive developments

131. According to the authorities, such limitations concerned only one municipality several years ago and no similar case has ever been reported since. Furthermore, Article 17(1) of the Law on Languages of the canton of Graubünden now provides that in monolingual municipalities, private signs visible to the public must “adequately take into account the official language”.

15. Article 12 of the Framework Convention

15.1. Harmonisation of language teaching

15.1.1. Findings of the first cycle

132. In its first Opinion, the Advisory Committee noted that the role of English *vis-à-vis* the national languages was the subject of a wide-ranging debate in Switzerland. It stressed the legitimate concern, expressed by a considerable number of persons belonging to the linguistic minorities, that the introduction of English teaching at an early stage should not be to the detriment of the teaching of the national languages. It encouraged the authorities to ensure that the reforms underway would leave sufficient room for plurilingualism.

15.1.2. Present situation

15.1.2.1. a) Positive developments

133. In March 2004, the conference of cantonal ministers of education (CDIP) decided to pursue the coordinated development of language teaching in compulsory education and to foster language proficiency at an earlier age. The goal was to promote the first language (local national language) to a greater extent and, in the longer term, to teach all pupils two foreign languages from the third and fifth school years onwards at the latest. The foreign languages on offer will have to include a second national language and English. This coordinated development is to be realised by 2010, or 2012 at the latest, depending on the situation in the individual cantons. The order in which the two foreign languages are introduced is not decisive, the important element being to meet the targets set for the end of compulsory education, namely an equal proficiency in the two foreign languages.

134. The Advisory Committee notes with satisfaction that the CDIP has, through its 2004 decision, come out clearly in favour of retaining a second national language for all pupils in primary education from the fifth year at the latest. It is an important step for the strengthening of national cohesion and is fully in line with the letter and spirit of the new Federal Law on National Languages and Mutual Understanding between Linguistic Communities.²⁹ The changes decided by the CDIP were confirmed through the adoption of the inter-cantonal treaty “HarmoS” in June 2007. This provides for the details of the gradual harmonisation of compulsory education throughout Switzerland by the introduction of uniform and measurable educational standards in certain school years and certain subjects, including the first and second foreign languages. The “HarmoS” treaty, which has been signed by the cantonal ministers of education, will now have to be ratified by the parliaments of the cantons and will then enter into force.

Concerning the relationship between the 2004 decision of the CDIP on the teaching of languages during compulsory schooling and the provision on education in the new Federal Law on languages (Art. 15), it should be observed that it was really the former which influenced the latter.

Note that the Concordat HarmoS is an inter-cantonal treaty, not a “cantonal” one (7th line).

15.1.2.2. b) Outstanding issues

135. The CDIP’s strategy for nationwide coordination of language teaching in compulsory education has prompted strong resistance in several cantons of German-speaking Switzerland. It has been criticised for overloading primary school children, who already have to learn German – *de facto* a foreign language for them – after Swiss German. Opponents to the CDIP strategy favour the teaching of a single foreign language at primary school, which would be English. Consequently, French would be left out of primary education and only taught in secondary schools. Numerous popular initiatives and parliamentary interventions have been made in different cantons to introduce the model of a single foreign language at primary level. To date, however, it appears that no canton has finally opted for English as the single foreign language at primary school.

The CDIP feels that this paragraph and the related cantonal discussions on foreign language teaching are now outdated given the adoption in June 2007 of the Concordat HarmoS, the outcome of the cantonal initiatives in the matter, and the ensuing reactions in other cantons which had not yet settled the issue of a single foreign language at the time of the Swiss Government’s 2nd report on the implementation of the Framework Convention (31 January 2007).

The CDIP recalls in this connection that four cantons called upon to hold a vote refused these initiatives during the year 2006, confirming the strategy advocated by the CDIP, giving it greater democratic legitimacy and forestalling any other bid for a single foreign language model at primary level. Note also that the parliament of the canton of Nidwalden has revoked its decision of 2005 to exclude instruction in French from primary education and move it from the 5th to the 7th year of schooling. In the canton of Basel Country, the parliament in February 2007 accepted the teaching of French as from 3rd grade primary

²⁹ See in particular Article 15.

and that of English as from 5th grade primary. In the canton of Lucerne, the popular initiative against the CDIP's "3/5" language teaching model was withdrawn. In Appenzell-Outer Rhoden, primary level ("Mittelstufe") French courses will be reintroduced as from 2012.

The final sentence in para. 135 should therefore be replaced by these updated particulars. At all events, the question of teaching of national languages is plainly no longer among the "Outstanding issues", contrary to the Advisory Committee's belief.

15.1.3. Recommendation

136. The cantonal authorities should continue their efforts to ensure the swift implementation of the inter-cantonal harmonisation of language teaching without weakening the teaching of national languages. They should also intensify existing awareness raising measures on the need to promote plurilingualism of teachers and pupils.

15.2. Representation of Jewish history and culture in the curricula

15.2.1. Findings of the first cycle

137. In its first Opinion, the Advisory Committee called on the authorities to ensure that teaching programmes reflect more the history and concerns of the Jewish community and take account of phenomena connected with anti-Semitism.

15.2.2. Present situation

15.2.2.1. *Positive developments*

138. A number of commendable initiatives have been taken to increase the attention given to the history, culture and religion of the Jewish community in teaching programmes and school activities. For example, a "Day of Remembrance of the Holocaust and for the Prevention of Crimes against Humanity" is marked on 27 January every school year with effect from 2004 and school materials entitled "Surviving and bearing witness: Holocaust survivors in Switzerland" were published in January 2007. The Advisory Committee was pleased to learn that representatives of the Jewish community expressed satisfaction at the content of the curricula. The Advisory Committee recalls, however, the need to fight vigorously against current acts of anti-Semitism (see related comments under Article 6, above).

15.3. Promotion of the language and culture of Travellers

15.3.1. Findings of the first cycle

139. In its first Opinion, the Advisory Committee noted with satisfaction that the Federal authorities had initiated discussions with Travellers with a view to gaining a deeper knowledge of their linguistic and cultural needs and encouraged them to support new initiatives in this field. It also noted certain difficulties with regard to access to education for children of Travellers with an itinerant way of life.

15.3.2. Present situation

140. The Federal Office of Culture has on a number of occasions offered the Yenish community financial support for language projects. The Association of Travellers recently took the view that efforts to promote Yenish should be pursued only for the purpose of communication between members of the community and that it would reject all measures aimed at opening up the language to other cultural groups. During its visit, the Advisory Committee was made aware that other Yenish representatives take the view that the Confederation should develop a broader cultural policy for the Yenish, Sinti and Roma, including in the field of education where there is a need to develop further projects. The Advisory Committee is pleased to note that the Federal Office of Culture is fully aware of this and has reiterated its readiness to support projects promoting the Yenish language in close co-operation with the Yenish themselves. In April 2007 representatives of Travellers presented a scheme on the Yenish language, which aimed to record existing Yenish vocabulary and encourage the dissemination and use of this language in the Yenish community.

141. As regards reported difficulties in the access to education for children of Travellers practicing an itinerant way of life, the situation is generally considered satisfactory by Travellers. While welcoming that this issue can now be discussed more openly with those concerned, the authorities are ready to discuss further measures to help the children concerned to reach better school achievements, such as the possible introduction of educational assistance in stopping places and transit sites. Such measures should contribute to helping Travellers' children complete their vocational and higher education.

15.3.3. Recommendations

142. Switzerland should pursue its effort to support the language and culture of Travellers through various educational projects carried out in close co-operation with those concerned and with due sensitivity to the various viewpoints of the Yenish themselves.

143. Measures intended to facilitate regular school attendance from Travellers children practicing an itinerant way of life should be continued and developed where appropriate. Constant attention should be paid to promoting mutual understanding with the school authorities and pupils from the resident population.

16. Article 13 of the Framework Convention

16.1. Language of instruction in private schools

16.1.1. Findings of the first cycle

144. In its first Opinion, the Advisory Committee found that the legislation of certain cantons set out limits as to the language of instruction in private schools. It invited the authorities to make sure that the legal provisions concerned did not constitute a barrier to satisfying any needs in this respect, in particular for Italian-speakers living in large cities such as Bern.

16.1.2. Present situation

145. The authorities contend that the limitations imposed by some cantons on the language of instruction in private schools are meant to promote integration and maintain the traditional distribution of languages and thereby preserve minority languages. Such limitations, which exist in three cantons only, protect for example Italian in the canton of Ticino and help prevent Germanisation of the French-speaking minority part of the canton of Berne. These cantonal laws all provide for possible exceptions, one of which being the cantonal French-language school in the City of Bern.

146. In practice, there are no known instances of permission having been refused for the setting up of a private school using a minority language. This has in particular not been the case for the Italian language in large cities. In this context, the authorities recall that in most cantons, Italian-speaking pupils may attend, as part of elementary education, courses of Italian language and culture organised by the Italian consulates and embassy (see related comments under Article 14, below).

16.1.3. Recommendation

147. The competent cantonal authorities should continue to ensure that the implementation of relevant legislations on private education do not result in undue restrictions on the right to set up and manage private schools with instruction in a minority language.

17. Article 14 of the Framework Convention

17.1. Teaching of minority languages

17.1.1. Findings of the first cycle

148. In its first Opinion, the Advisory Committee concluded that all persons belonging to a linguistic minority had the possibility to learn their language in primary and secondary education, regardless of the canton in which they were residing.

17.1.2. Present situation

17.1.2.1. a) Positive developments

149. A closer examination of the situation, undertaken on the basis of information provided by the Secretariat of the CDIP, reveals that as far as the Italian and Romanche languages are concerned, the situation is not uniform. Apart from Graubünden and Ticino, where instruction in Italian is available (or at least teaching of Italian outside Italian-speaking municipalities in Graubünden), 17 cantons offer optional Italian courses - usually between 2 and 4 hours a week - as from the last two grades of compulsory education; one canton even offers Italian teaching as from the 5th grade of primary school. Beyond compulsory education, Italian is available as an optional course in all cantons. Furthermore, Italian courses are available in a range of cantons and cities through the action of the diplomatic and consular representations of Italy.

150. As far as Romanche is concerned, the Advisory Committee is unaware of the existence of optional language courses in compulsory education outside the canton of Graubünden, but has not been faced with representations claiming the existence of particular needs in this respect. It is, however, worth recalling the existence of a bilingual German-Romanche section in a school of the municipality of Chur (the capital of Graubünden which is located outside the traditional Romanche area), which has been a considerable success since its creation. Other bilingual schools exist in the canton of Graubünden and experience suggests that they meet real needs from persons belonging to minorities.

17.1.2.2. b) Outstanding issues

151. According to the information received from the CDIP, there are at present six cantons which do not offer optional Italian language courses before the end of the compulsory education, namely Fribourg, Geneva, Glarus, Obwald, Schaffhausen and Thurgau. The reasons usually put forward for this state of affairs are not entirely clear, but range from an alleged lack of significant needs to the availability of language courses proposed as a complement by the diplomatic and consular representations of Italy, or to the overall requirement to maintain the traditional distribution of languages. Since the adoption of the inter-cantonal treaty “HarmoS” in June 2007, there have been prospects that the six cantons concerned might align their practice on the majority of cantons in the future and also offer optional Italian courses in compulsory education.

The canton of Thurgau begs to point out that the comment concerning it does not reflect the current situation. Most school districts of a certain size do indeed offer optional courses in Italian. In the smaller ones, realisation of this possibility depends on the enrolment, which must be eight or more pupils.

The canton of Schaffhausen reports that in the framework of compulsory education the school syllabus for the 9th year of schooling (“Sekundar- und Realschule”) includes optional Italian lessons at the rate of two per week.

The canton of Obwalden observes that while the cantonal law on education does not make mandatory provision for the teaching of Italian, it rests with the municipalities to determine the provision of optional courses. Thus there are municipalities in the canton of Obwalden which offer optional Italian courses. It should nevertheless be mentioned that optional courses in Italian organised by some municipalities have occasionally had to be cancelled in the end owing to insufficient demand. In view of the foregoing, the Advisory Committee’s assertion concerning Obwalden is too absolute and is incorrect.

The canton of Fribourg explains that the third national language, Italian in principle where it is concerned, must be offered on an optional basis during compulsory schooling. At present, the canton’s schools at the “orientation” level propose such instruction as an option, particularly in 9th grade. However, from a budgetary standpoint, the minimum number of pupils making it permissible to open a class has never been reached hitherto.

In the canton of Geneva, primary education currently offers pupils in the infant section language discovery training, which includes Italian. On the other hand, at intermediate level and likewise secondary level, optional courses in Italian are admittedly not offered for the time being.

Lastly, as mentioned by the Advisory Committee, an important consideration in this respect is that the inter-cantonal Concordat HarmoS contemplates suitable provision of optional instruction in a third national language during compulsory schooling. Discussions have been held in the Swiss Conference of Directors of State Education (CDIP) on arrangements for implementing this measure in the various cantons.

152. While recognising that in principle Article 14(1) of the Framework Convention does not imply positive action on the part of the State, it is important that the right to learn a minority language in compulsory education remains an effective possibility and not just a theoretical or abstract one. In this context, submissions from representatives of the Italian-speaking minority point to shortcomings in the existing possibilities to learn Italian in certain cantons, particularly in large cities with a sizeable number of Italian-speakers. The availability of Italian courses organised and supported by consular missions from Italy is certainly considered a useful complement, but is not perceived by those concerned as replacing Italian courses fully integrated within the respective cantonal educational system and curricula.

The Federal authorities appreciate the concern of Italian speakers who have left their traditional settlement areas about being able to learn their language, if possible before the end of compulsory education. In the spirit of the new Federal law on languages, they support multilingualism and encourage teaching of the national languages.

It must nonetheless be recalled that state education and its organisation are under the jurisdiction of the cantons.

Concerning the implementation of the Framework Convention, the right to learn one's minority language prescribed by Article 14 para.1 is central to freedom of language as extensively recognised in Swiss law. As the Advisory Committee itself has noted, the relevant undertaking by Contracting States presupposes no positive obligation on their part. Furthermore, neither Swiss constitutional law nor the Framework Convention preclude restrictions being placed on freedom of language, if the customary requirements for restrictions on fundamental rights are fulfilled. That is how, upon ratification of the Framework Convention, a declaration was made by Switzerland in order to establish that it would not prejudice the application of the principles observed by the Confederation and the cantons in determining official languages.

Although Article 14 para. of the Framework Convention may imply positive actions, it is rightly not invoked by the Advisory Committee in support of its recommendation to broaden the availability of courses in Italian. Its application in fact presupposes substantial or traditional settlement of persons belonging to a national minority and an adequate demand; moreover, it depends on the available resources of the community concerned.

153. There have been laudable efforts to move towards a gradual harmonisation of compulsory education throughout Switzerland by the introduction of uniform and measurable educational standards based on the aforementioned HarmoS inter-cantonal treaty. Nevertheless there remains a need for more accurate and comparable statistical data, including on the availability and practical use of language courses, such as Italian courses outside Ticino and Graubünden. Such data could help determine the existing pattern with more precision and the possible outstanding needs.

17.1.3. Recommendation

154. The competent authorities should pursue their efforts to promote multilingualism through the harmonisation process of language teaching requirements in compulsory education. Consideration could be given to complementing the existing offer of optional Italian-language courses outside the areas where this language is traditionally spoken once the existing needs have been better examined. In this context, additional measures could be designed to gather further statistical data on the availability and practical use of language courses.

17.2. Language of primary education in bilingual cantons

17.2.1. Findings of the first cycle

155. In its first Opinion, the Advisory Committee found that the possibility for persons belonging to a linguistic minority to receive full primary education in their language was limited in practice by the principle of territoriality.

156. The Advisory Committee noted that bilingual teaching projects had been developed at the municipal level in a number of cantons and that generally these experiments had not been impeded by the application of the principle of territoriality. It encouraged the establishment of such bilingual sections/schools and the cantons to follow suit, especially in large cities of the country, where there is no risk to the maintenance of linguistic balance and where numerous persons belonging to linguistic minorities live with no possibility of receiving instruction in their language, in particular at primary level.

17.2.2. Present situation

17.2.2.1. a) Positive developments

157. The Advisory Committee notes with satisfaction that the choice of the language of instruction and the enrolment in the corresponding municipal schools has in practice given rise to less problems according to the authorities and representatives of the linguistic minorities. This is due to the evolution of the Federal Tribunal's case-law and also to important constitutional and legal reforms carried out in certain multilingual cantons. In individual cases, more weight is now given to freedom of language, as compared with the principle of territoriality, and the public interest connected with strictly safeguarding the linguistic homogeneity of the region concerned.

158. In the canton of Valais, the law states that a child must attend school in his or her place of residence but provides for exception from this rule. Accordingly a German-speaking child can attend nursery school (pre-school) and primary school in the towns of Sion (the cantonal capital) and Sierre, which both offer instruction in German although they are located in the French-speaking area. Legally and administratively, this raises no problems although the principle of territoriality remains valid in this canton. Furthermore, Valais has led the way in bilingual instruction in public education and a number of municipalities, including Sion, have already introduced bilingual education projects from nursery or primary school upwards, which have yielded positive results.

159. In the canton of Bern, the practice has also gradually moved towards a more flexible application of the principle of territoriality in relation to freedom of language in individual cases. Some commendable solutions have been introduced to simplify matters and/or strengthen the protection of persons belonging to the French-speaking minority. For example, the principle of personality is applied in the bilingual district of Biel, which ensures a complete freedom of choice as concerns the language of instruction. Also, parents residing in the German-speaking municipality of Nidau can choose to send their children to a neighbouring French-speaking school. Additionally a number of projects to develop bilingual teaching beyond compulsory education are carried out, including in areas which are distant from the language border.

160. In the canton of Fribourg, the dispute about switching from one school catchment area to another for linguistic reasons no longer seems to be an issue. The balance to be struck between freedom of language and the principle of territoriality has been clarified, including in the new Constitution. It mitigates the principle of territoriality by providing that the authorities must have regard to the traditional territorial distribution of languages and “take into account indigenous linguistic minorities”.³⁰ The territoriality principle is now applied more pragmatically on the language border by allowing children to receive instruction in the official language of their choice. Some municipalities in the Sarine district (with a French-speaking majority) have already gone one step further: although over the last hundred years they have only temporarily had sizeable German-speaking minorities or have had none at all, they have granted German-speaking pupils permission to receive instruction in German in the City of Fribourg.

17.2.2.2. b) Outstanding issues

161. Despite the introduction of more flexibility in the choice of the language of instruction along the language border, some representatives of linguistic minorities and various segments of civil society consider that more could be done to expand - at least partially - the availability of instruction in the national languages not traditionally present in the municipality concerned. The Advisory Committee understands that the new Federal Law on National Languages and Mutual Understanding between Linguistic Communities, which aims to promote plurilingualism in the field of education in its Articles 14 to 17, could be useful in this respect. Also, experience suggests that the development of bilingual classes/schools could be pursued without threatening the existing equilibria between freedom of language and the principle of territoriality and with full respect for the wide cantonal autonomy in determining the official use of their languages and the cantonal powers in the field of education.

17.2.3. Recommendation

162. The authorities should continue to be flexible in individual decisions allowing children to receive instruction in the other official language offered by a neighbouring municipality. Efforts should be pursued to encourage plurilingualism in the field of education.

³⁰ See Article 6(2) of the Constitution of Fribourg.

17.3. Language of primary education in Graubünden

17.3.1. Findings of the first cycle

163. The Advisory Committee noted that the freedom accorded to Graubünden municipalities to decide on the language of instruction used in public primary schools could present some risks owing to the lack of clear criteria as to the language of instruction. It suggested that the greatest possible caution should be exercised in examining any change in the language of instruction at the municipal level, particularly along the language border.

17.3.2. Present situation

17.3.2.1. a) Positive developments

164. In the canton of Graubünden, specific provision is made in Article 16(2) of the Schools Act of 26 November 2000 for children to be enrolled in schools in neighbouring municipalities offering instruction in a minority language (i.e. Romanche or Italian). In practice, however, the option of attending school in a neighbouring municipality offering instruction in a minority language is rarely used.

165. The new Law on Languages of Graubünden settles the question of language selection by applying clear criteria, which rightly confer more weight to the principle of territoriality as is the case in bilingual cantons. The Advisory Committee strongly welcomes these new guarantees, which consolidate minority language instruction especially in municipalities where Romanche or Italian are under threat. Municipalities are classified as monolingual or multilingual by the same criteria used for official languages (see related comments under Article 10, above). In the interests of preserving a cantonal language that is under threat, the cantonal Government may, at the request of the municipality concerned, authorise exceptions on the choice of language of instruction.³¹ In monolingual municipalities, instruction takes place in the official language of the municipality (first language). In multilingual municipalities, instruction takes place in the autochthonous language (first language).³² In municipalities in which the proportion of the population belonging to an autochthonous linguistic minority is at least 10%, Romanche or Italian must be offered throughout the period of compulsory education.³³ A change in the language of instruction is subject to the same requirements as a change in the official language (see related comments under Article 10, above).

17.3.2.2. b) Outstanding issues

166. To date, there have been very few changes in the language of instruction in municipalities of Graubünden. The last municipality which abandoned Romanche and switched to German as the language of instruction was Bergün in 1983. Although not a formal change, since they never had primary schools before, a few other municipalities have opted for German (Ilanz, Domat).

³¹ See Article 18(3) of the cantonal Law on Languages.

³² See Article 20(1) of the cantonal Law on Languages.

³³ See Article 20(3) of the cantonal Law on Languages.

17.3.3. Recommendation

167. Efforts should be pursued to consolidate the position of Italian and Romanche as a language of instruction in the municipalities concerned. A regular dialogue between cantonal and municipal authorities is needed to implement the new legislative guarantees with due regard to the overall situation of languages in Graubünden.

18. Article 15 of the Framework Convention

18.1. Representation of minorities in the Federal civil service

18.1.1. Findings of the first cycle

168. In its first Opinion, the Advisory Committee noted with satisfaction that the institutional framework enabled linguistic minorities in Switzerland to participate in political life to a very high degree both at the Federal and cantonal levels. The Advisory Committee also found that persons belonging to linguistic minorities were, in general, fairly represented in the Federal administration.

18.1.2.1. a) *Positive developments*

169. A better implementation of the Directives adopted by the Government to achieve greater Latin representation³⁴ within the Federal administration has been encouraged through several parliamentary motions. For example, such motions have called for the promotion of Italian-speakers when advertising the Confederation's vacancies or stressed the particular need to ensure fair representation of linguistic minorities in Federal Offices, both at managerial level and among employees as a whole. Efforts are also made to sensitise managers to the need to recruit French-, Italian-, and Romanche-speakers- when vacant posts are advertised.

Note that further parliamentary motions have been tabled on this subject since the 2nd report on the implementation of the Framework Convention and the Advisory Committee's visit to Switzerland. One was moved by MP Parmelin on 12 March 2008 (08.3066) concerning respect for linguistic minorities. In it, the National Council member asks the Federal Council specifically whether it is prepared, when projects are being devised in the administration, to undertake to ensure that a significant number of persons representing linguistic minorities are routinely included in each working group set up.

In May 2008 the Federal Council replied that in practice the various bodies may also be composed according to other criteria such as language and that Latin representation in the Federal civil service today was satisfactory and in proportion to the resident population of Swiss nationality. The Federal Council has emphasised its resolve to move ahead in this direction and support adequate representation of linguistic minorities.

170. In the canton of Graubünden, Article 6 of the new Law on Languages now explicitly requires that, in cases where applicants have equivalent qualifications, preference be given in recruitment procedures to those candidates who have a proficiency in a second or third official language.

³⁴ This expression includes persons belonging to the French-, Italian- and Romanche-speaking minorities.

18.1.2.2. b) Outstanding issues

171. Although the Federal Office for Staff matters collects quantitative data broken down by linguistic affiliation of civil servants, there is a lack of reliable qualitative data in this sphere. Such data would shed light on the actual representation of the Latin minorities in managerial positions in the various Federal Departments and Offices and would help better understand the alleged chronic problem of under-representation of Latin minorities at senior level.

As at 1 January 2008, the official statistics show that the various linguistic communities are equitably represented in all grades of the Federal civil service. However, certain highly specific data on certain very senior positions are still missing. To remedy this, the Federal Office for Staff Matters plans to publish, in its next report on promotion of multilingualism during the period 2004-2007, additional statistics reflecting the breakdown by incumbents' mother tongue of the various managerial posts (directorships, heads of communication, information technology, personnel, etc.). The data have now been gathered. The report assessing the promotion of multilingualism will be published by the end of the year 2008. It will provide fresh information on the representation of linguistic minorities. If necessary, recommendations will be made.

18.1.3. Recommendation

172. Additional measures should be developed to collect qualitative data on the representation of linguistic minorities within the Federal administration and efforts should be intensified to improve their representation also in managerial positions.

18.2. Participation in social and economic life

18.2.1. Findings of the first cycle

173. In its first Opinion, the Advisory Committee found that the unemployment rates in French-speaking Switzerland and Ticino were higher on average than those in the German-speaking cantons and that companies were increasingly tending to re-deploy their decision-making centres to large cities, most often in German-speaking Switzerland.

18.2.2. Present situation

18.2.2.1. Positive developments

174. Macroeconomic indicators have shown significant improvements since the first monitoring cycle and this has been the case in most sectors and regions, including the unemployment rates in French-speaking Switzerland and Ticino.

175. In recent years Switzerland has embarked on an extensive process of reform with the launch of its New Regional Policy (NRP). The NRP is designed to improve the competitiveness of certain regions and, in particular, assist outlying areas to make the most of their potential by promoting entrepreneurship and innovative capacity. Indirectly, the purpose is to help maintain and create jobs, promote decentralised settlement and remove regional inequalities. Federal aid of around 70 million Swiss francs a year is planned, in

the shape of financial assistance, low-interest loans for infrastructure projects, and tax relief to attract foreign firms to the country. The new Regional Policy Law was passed by Parliament in 2006 and it should come into force in 2008.

The new Federal Regional Policy Law was (RS 901.0) came into force on 15 March 2007. During the autumn 2007 session, parliament passed two Federal orders establishing the priorities and the funding for regional policy from 2008 to 2015. The cantons henceforth hold the principal responsibility for its implementation.

176. The reform of financial equalisation and division of responsibilities between Confederation and cantons, approved by referendum in November 2004, will also help to reduce regional disparities. This reform, which should come into effect in early 2008, is particularly designed to allow cantons greater freedom of action in carrying out their tasks. More decisions should in future be taken closer to the populations concerned, which should allow the needs of minorities to be better taken into account. The other basic aim of the reform is equalisation between the cantons on the basis of their potential resources. The present system of financial equalisation will be replaced by resource levelling. Similarly, through an equalisation of burdens, some cantons having to bear special burdens will receive appropriate support from the Confederation. This applies to mountain cantons such Graubünden, Ticino and Valais.

The complete reform of financial equalisation and division of responsibilities between Confederation and cantons became fully effective on 1 January 2008.

18.2.3. Recommendation

177. Switzerland should pursue its efforts to implement a new policy aimed to reduce regional disparities and develop related projects in association with the minority populations concerned, particularly in alpine cantons.

18.3. Participation mechanisms for Travellers

18.3.1. Findings of the first cycle

178. In its first Opinion, the Advisory Committee found that participation mechanisms for Travellers were still inadequate and invited the Federal authorities to consider the possibility of reinforcing the competences of the Foundation in terms of coordination, as well as reinforcing the composition of its constituent organs. It also invited the cantons to review their mechanisms for consulting Travellers and, where necessary, to strengthen them.

18.3.2. Present situation

18.3.2.1. a) Positive developments

179. The report prepared by the Government on the situation of Travellers in October 2006 underlines the unique role played by the Foundation, the mandate of which is to improve the living conditions of Travellers and preserve their cultural identity.³⁵ The aforementioned report also stressed the importance of the Association of Travellers, which as the umbrella association of Travellers ensures - through its statutory representation in

³⁵ The Board of the Foundation, which includes five representatives of Travellers, two representatives of the Association of Swiss Municipalities, two representatives of the cantons and two representatives of the Federal civil service, is presided by a former Senator.

the Board of the Foundation – that measures proposed by the Foundation effectively serve the interests of those concerned. It also helps overcome mistrust from Travellers towards the authorities. The Association has been very active in raising awareness of the general population on Travellers' needs.

With reference to the footnote to the Advisory Committee's Opinion, it should be pointed out that the Board of the Foundation "A Future for Swiss Travellers" is chaired not by a former "Senator" but by a former member of the cantonal government (translation error).

18.3.2.2. b) Outstanding issues

180. A strengthening of the co-operation between the authorities and Travellers through the Foundation is required, as suggested by the Foundation itself and the Association of Swiss Municipalities during the consultation on the report. These organisations believe that support for the Foundation and the Association of Travellers should be increased if they are to carry out their work effectively (see related comments under Article 5, above). The Government also acknowledged that an obvious lack of legal instruments and financial means was impeding efforts by the Foundation to influence the political will of cantons and municipalities to develop further stopping places and transit sites. There remains scope for widening the competences of the Foundation and reinforcing the position of Travellers in its Board, who are currently in a minority, as well as for consolidating the financial structure of both the Foundation and the Association of Travellers. These steps could be promoted through the introduction of new legislative guarantees in the Federal Culture Promotion Bill (see related comments under Article 5, above).

181. Given that Travellers themselves may have varying views on certain questions, such as the promotion of their language and culture, it is important that the opinions and concerns expressed outside the Foundation and the Association of Travellers be also given due consideration. Furthermore, state policies should be designed and implemented so as to reflect the diversity of opinions within Travellers' community (see related comments under Article 5, above).

182. Despite laudable efforts by the Foundation to try and coordinate efforts to meet Travellers' needs for stopping places and transit sites, there remains an obvious lack of coordination between cantons, as well as an absence of institutionalised, decision-making forum to discuss these issues regularly (see related comments under Article 5, above).

183. At the cantonal and municipal levels there are no special mechanisms for consulting Travellers, for example on planning or education. As for the question of stopping places and transit sites, the Government acknowledges that systematic involvement of the organisations representing Travellers in cantonal and municipal consultation procedures on legislative issues and practical plans would enable their needs to be better taken into account. Furthermore, although some cantons have endeavoured to involve Travellers more consistently in procedures and decisions concerning them, notably by inviting them to take part in *ad hoc* discussions and/or committees, a systematic dialogue is needed in the majority of cantons.

Here it should be observed that the canton of Aargau has now set up a specialised cantonal department (“Fachstelle”) dealing with Travellers. This body is supported by an interdepartmental working group on the same questions. It is currently occupied with implementing the Aargau concept for Travellers adopted in May 2007 (v. supra, *re* para. 74).

The canton of Vaud reports a very recent development in this area: on 14 June 2008, through the good offices of the Chair of the working group “Gypsies/Canton of Vaud”, a new association was created, entitled “Yenish CH”, in order to bring together the itinerant Travellers of French-speaking Switzerland and be the main go-between for municipalities and individuals regarding provision of encampment areas. The Association is responsible in particular for activating the contacts with ArmaSuisse concerning reassignment of the military sites belonging to the Confederation.

The canton of Zurich, while acknowledging that it has no systematic mechanism for consulting Travellers, states that it has appointed several persons responsible for Travellers’ affairs to the cantonal directorate of public works, and also to the cantonal directorate of justice and internal affairs.

18.3.3. Recommendations

184. The Advisory Committee encourages the authorities to reconsider the terms of reference of the Foundation, to strengthen its powers in certain fields and give a stronger say to representatives of Travellers. The possibility of identifying additional financial support for the Association should also be explored (see related comments under paragraph 65, above).

185. More systematic forms of consultation of Travellers at the cantonal level should be introduced. More efficient and coordinated inter-cantonal mechanisms should also be developed to address their specific needs.

19. Articles 17 and 18 of the Framework Convention

19.1. Effect of existing bilateral agreements on Travellers

19.1.1. Present situation

186. While welcoming that EU Travellers can stop and work in Switzerland for up to 90 days, with a simple notification at the municipality, Swiss Travellers regret that they are themselves only entitled to stay in EU countries for 8 days without a work permit. The Advisory Committee understands that this state of affairs, which is specific to the field of itinerant trade, results from an allegedly restrictive interpretation given to the existing bilateral agreements between Switzerland and the EU on freedom of movement of persons.

The fact that Swiss Travellers themselves cannot stop and work in the EU countries for up to 90 days with a simple notification (as EU travellers can in Switzerland) does not arise from a restrictive interpretation of the bilateral agreements between Switzerland and the EU on freedom of movement of persons, which do not address these issues. It is linked with the legislation on itinerant trade in the adjacent EU countries making the pursuit of itinerant trade subject to a more restrictive authorisation procedure than the one applying in Switzerland. In Switzerland, the Federal Law of 23 March 2001 on itinerant trade stipulates equal treatment of Swiss and foreign nationals wishing to engage in itinerant trade.

19.1.2. Recommendation

187. The Advisory Committee encourages the Swiss authorities to look into possible ways - including through bilateral co-operation where appropriate - of improving the situation of those Swiss Travellers who wish to practice their itinerant way of life in neighbouring EU countries.

Having regard to the explanations given in respect of para. 186, it is evident that the solution for improving the situation of Swiss Travellers rests with the adjacent EU countries and depends on liberalisation of their legislations on itinerant trade.

III. CONCLUDING REMARKS

188. 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 Switzerland.

20. Positive developments

189. Switzerland 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 February 2003 and the Committee of Ministers' Resolution in December 2003. The constitutional and legal framework has been complemented in a number of respects both at the Federal and cantonal levels and this has *inter alia* resulted in significant reinforcement of the protection offered to the linguistic minorities. For example, promising measures to support national languages are expected to be developed and supported by the new Federal Law on National Languages and Mutual Understanding between Linguistic Communities.

190. The Swiss Government adopted a commendable, comprehensive and self-critical report addressing problems faced by Travellers, in fields ranging from discrimination and participation to stopping places. The Federal authorities have shown increased understanding of the gravity of the problems faced by Travellers and expressed strong commitment to resolve them in co-operation with the cantonal authorities.

191. In the field of education, promising developments have taken place at the inter-cantonal level to move towards a real harmonisation of language teaching, in a manner which should preserve the teaching of a second national language at an early stage to reach

equal proficiency with English. Efforts have been made to promote plurilingualism of teachers and pupils and the new Federal legislation on languages should open up new perspectives in this field.

192. Switzerland's public service broadcasting encompasses a range of laudable legal obligations and practices in terms of minority language media. These include the obligation to broadcast programmes in German, French and Italian of the same quality all over the country, and a consolidation of the position of the Romanche. Radio and television programmes in Romanche have significantly increased since the first monitoring cycle.

193. Participation mechanisms at the Federal and cantonal levels are very extensive for persons belonging to linguistic minorities due to the institutional framework and the Federal system. Ambitious reforms have been carried out to design a new regional policy intended to improve competitiveness and reduce regional economic disparities. These reforms should have positive effects especially in mountainous cantons such as Graubünden, Ticino and Valais, which are the traditional areas of settlement of a number of persons belonging to linguistic minorities.

21. Issues of concern

194. General budgetary savings in the public sector have adversely affected institutions promoting human and minority rights. Ongoing discussion on the possible introduction of an Ombudsman Office and/or an independent human rights institution have not yet yielded concrete results and the Federal Commission against Racism has been weakened.

See comments on paras. 42 and 44.

195. The overall situation of Italian and Romanche-speakers who live outside their traditional areas of settlement regarding opportunities to enjoy cultural and linguistic support, particularly in terms of access to language teaching, has not significantly improved.

See comments on paras. 151 and 152.

196. The current position of Italian tends to lose importance within Federal authorities, especially within the Federal administration.

See comment on para. 115.

197. In the canton of Graubünden, the development of the daily use of Italian and Romanche in official contexts is essential to preserve the identity of the canton and to give effect to the new constitutional guarantee which recognises German, Romanche and Italian as national and official languages in equal measure. There is also a need to ensure that in the municipalities to be considered as multilingual according to the new cantonal Law on Languages, official documents are consistently published also in Romanche or Italian where appropriate.

198. To date, there is no specific legal basis to promote the identity and culture of Travellers. Limited public support has been provided to the institutions of Travellers and

their overall contribution to the Swiss society is not sufficiently recognised and valued by the authorities.

199. The shortage of stopping places and transit sites remains acute in Switzerland. Little progress has been made in practice and the total number of existing sites has even been reduced since 2001. In several cantons, proposals to create further sites have been frozen or even withdrawn following adverse reactions, including by the municipalities concerned. The reassignment of military sites belonging to the Confederation has so far not met with the interest of the cantons due to a range of factors, including of a financial nature. In the absence of additional Federal legislative guarantees, urban planning instruments have led to the creation of sites only in a few cases and after long delays.

See comments on paras. 74, 76, 77, 78, 79, 80.

In the light of the above-mentioned comments, it would be advisable to moderate the phrase “In several cantons.....” by saying: “in this or that canton.....”. The term “several” suggests a large number of similar cases, which is incorrect.

In the light of the above-mentioned comments, it would be advisable to moderate the purport of the sentence: “The reassignment of military sites belonging to the Confederation has so far not met with the interest of the cantons”, by saying: “The reassignment of military sites belonging to the Confederation has not had tangible results in the cantons for the time being”. Discussions in the matter with the cantons are in fact proceeding.

In the light of the above-mentioned comments, particularly the one concerning para. 80, it would be advisable to delete the words: “In the absence of additional Federal legislative guarantees” in the last sentence. Likewise, in para. 201, the 6th recommendation should be adapted accordingly.

200. A more systematic dialogue is required at the cantonal and municipal levels since there are currently no special mechanisms for consulting Travellers. A lack of legal instruments and financial means is impeding efforts by the Foundation “A Future for Swiss Travellers” to influence the political will of cantons and municipalities to develop further stopping places and transit sites. The competences of the Foundation are also limited.

At the cantonal and municipal levels, in principle there are no special mechanisms for consulting Travellers. On the other hand, several cantons are endeavouring to give Travellers’ representatives more of a part in the working groups or commissions which they have set up on questions of concern to them, particularly in the field of land-use planning and creation of stopping places or transit sites. It would therefore be advisable to moderate the phrase: “...since there are currently no special mechanisms for consulting Travellers”, by saying: “...since there are often no special mechanisms for consulting Travellers”. In this connection, see the comments and the developments mentioned under para. 183.

21. Recommendations

201. 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:

- take measures to strengthen existing institutions promoting human rights and the fight against discrimination;
- make particular efforts to ensure the full implementation of the new Federal legislation on languages, including to promote more decisively multilingualism, mutual understanding and exchanges between linguistic communities;
- pursue efforts to promote the official use of the Romanche and Italian languages at the municipal and district levels in the canton of Graubünden by ensuring the swift implementation of the new cantonal Law on Languages;
- take further steps in the canton of Graubünden to encourage wider written and oral use of Italian and Romanche by the general public as well as within the administration and the judiciary;
- pursue the harmonisation process of language teaching requirements in compulsory education and consider complementing the existing offer of optional Italian-language courses outside the areas where this language is traditionally spoken on the basis of existing needs;
- consider introducing new Federal legislative guarantees to ease and accelerate the planning and creation of transit sites and stopping places for Travellers. Develop stronger financial and other incentives to promote action by the cantons and pursue further efforts to create stopping places and transit sites, including the reassignment of military sites. Develop stronger inter-cantonal co-operation from planning to operation of stopping places and transit sites;
- pursue efforts to support the language and culture of Travellers through various educational projects carried out in close co-operation with those concerned and to facilitate regular school attendance of children practising an itinerant way of life;
- ensure effective participation of Travellers' representatives in the work of various bodies dealing with Travellers' issues and set up mechanisms of systematic consultation at the cantonal and municipal level where appropriate.