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

**OPINION ON SERBIA AND MONTENEGRO**  
(adopted on 27 November 2003)

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## EXECUTIVE SUMMARY

Following the receipt of the initial State Report of Serbia and Montenegro on 16 October 2002 (due on 1 September 2002), the Advisory Committee commenced the examination of the State Report at its 16th meeting on 17-21 February 2003. In the context of this examination, a delegation of the Advisory Committee visited Serbia and Montenegro from 27 September to 3 October 2003 in order to seek further information on the implementation of the Framework Convention from representatives of the Government as well as from NGOs and other independent sources. The Advisory Committee adopted its opinion on Serbia and Montenegro at its 18th meeting on 27 November 2003.

The Advisory Committee notes with satisfaction that, while the constitutional structures have undergone fundamental changes, the authorities of Serbia and Montenegro have taken decisive steps to protect national minorities in such fields as education and language rights. The Advisory Committee welcomes in particular the adoption of the Union Charter of Human Rights and Minority Rights and Civil Freedoms and the federal Law on the Protection of Rights and Freedoms of National Minorities, which constitute a good basis for the implementation of the Framework Convention and contain promising innovations such as the National Councils of national minorities. It further recognises the commitment of the Ministry for Human and Minority Rights to the implementation of the said laws.

At the same time, the Advisory Committee notes that a number of shortcomings remain. There is for example a need to clarify the legal status of the legislation concerning national minorities adopted by the former federal authorities. In Montenegro, the authorities should complete their work to couple the pertinent constitutional provisions with more detailed legal guarantees for the protection of national minorities, paying particular attention to the use of minority languages in contacts with administrative authorities and in the media as well as teaching in and of minority languages.

The Advisory Committee considers that the main problems in the protection of national minorities in Serbia and Montenegro pertain to the implementation of the relevant norms in practice, which is at times hampered by the limited co-operation between the relevant authorities of the State Union and its constituent states and the lack of clarity as to their relative competences. This needs to be addressed, including through improved co-operation from the side of the Montenegrin authorities and accelerated constitutional reform and institutional stabilisation in Serbia.

Furthermore, inter-ethnic relations are still seriously affected by the aggressive policies of the past regime and the legacy of the resulting conflicts. Despite marked progress, manifestations of inter-ethnic tension are still reported and the efforts to build tolerance and trust, which have been valuable for example in respect of the Albanian minority in Southern Serbia, need to be expanded further. Also, the Advisory Committee finds that the protection of national minorities should receive greater attention from law-enforcement agencies and that further improvements in the representation of the Bosniac and other national minorities in these agencies as well as within the judiciary should be achieved.

The Advisory Committee considers that both legislative and practical measures are needed to improve the implementation of the principles of non-discrimination and full and effective equality. In this respect, the serious difficulties faced by displaced and other Roma merit

urgent attention including in terms of the adoption and implementation of a comprehensive Roma strategy. These difficulties are particularly apparent in such fields as health, housing and employment as well as in education, where the problem of undue placing of Roma children in schools for persons with mental disabilities needs to be addressed as a matter of high priority.

The Advisory Committee notes that there are wide variations between regions in terms of efforts taken to protect languages and cultures of national minorities. Whereas in Vojvodina a number of commendable initiatives have been introduced, the situation is considerably less developed, for example, with respect to the protection of the Vlach national minority in North-Eastern Serbia. The Advisory Committee finds that the authorities should undertake more proactive monitoring and other measures to ensure that the relevant legislation, including the pertinent provisions of the federal Law on the Protection of Rights and Freedoms of National Minorities, is consistently implemented.

## I. PREPARATION OF THE CURRENT OPINION

1. The initial State Report of Serbia and Montenegro (hereinafter: the State Report), due on 1 September 2002, was received on 16 October 2002. The Advisory Committee commenced the examination of the State Report at its 16<sup>th</sup> meeting, on 17-21 February 2003.
2. In the context of this examination, the Advisory Committee identified a number of points on which it wished to obtain fuller information. A questionnaire was therefore sent to the authorities of Serbia and Montenegro on 23 June 2003. The reply of the Government of Serbia and Montenegro to this questionnaire was received on 23 September 2003.
3. Further to an invitation from the Government of Serbia and Montenegro, and in accordance with Rule 32 of the Committee of Ministers' Resolution (97) 10, a delegation of the Advisory Committee visited Serbia and Montenegro from 27 September to 3 October 2003 in order to obtain supplementary information from representatives of the Government, NGOs and other independent sources on the implementation of the Framework Convention. In preparing this opinion, the Advisory Committee also consulted a range of written materials from various Council of Europe bodies, other international organisations, NGOs and other independent sources.
4. The Advisory Committee subsequently adopted this opinion at its 18<sup>th</sup> meeting on 27 November 2003 and decided to transmit it to the Committee of Ministers<sup>1</sup>.
5. The present opinion is submitted pursuant to Article 26 (1) of the Framework Convention, according to which, in evaluating the adequacy of the measures taken by the Parties to give effect to the principles of the Framework Convention, "the Committee of Ministers shall be assisted by an advisory committee", as well as pursuant to Rule 23 of Resolution (97) 10 of the Committee of Ministers, according to which the "Advisory Committee shall consider the state reports and shall transmit its opinion to the Committee of Ministers".

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<sup>1</sup> The Advisory Committee decided, at its 12th meeting on 30 November 2001, to introduce certain changes to the structure of its opinions. It decided to discontinue the practice of submitting a "Proposal for conclusions and recommendations by the Committee of Ministers" (Section V of the earlier opinions) and to introduce a new section IV, entitled "Main findings and comments of the Advisory Committee". The Advisory Committee also decided to submit its "Concluding remarks" in Section V instead of Section IV. These changes are effective as from 30 November 2001 and they apply to all subsequent opinions adopted in the first monitoring cycle. These changes have been made in the light of the first country-specific decisions on the implementation of the Framework Convention adopted by the Committee of Ministers in October 2001.

## II. GENERAL REMARKS

6. The Advisory Committee notes that the State Report provides a detailed overview of the main aspects of the legislative framework and current and proposed practice pertaining to the protection of national minorities in Serbia, including commendable elements of self-criticism. However, there is considerably less information on the present situation with respect to the protection of national minorities in Montenegro. The situation in Kosovo, which is outside the effective control of the Government of Serbia and Montenegro, is, understandably, not covered in detail.

7. The Advisory Committee obtained a fuller picture of the situation through the Government's comprehensive written reply to a questionnaire by the Advisory Committee and, in particular, through the above-mentioned visit to Serbia and Montenegro (see paragraph 3 of the present opinion). The Advisory Committee finds that the visit organised upon an invitation by the Government of Serbia and Montenegro provided an excellent opportunity to have a direct dialogue with the relevant sources. The additional information provided by the Government and by other sources, including by representatives of national minorities, was most valuable, especially as concerns the implementation of relevant norms in practice. The meetings took place not only in Belgrade and Podgorica but also in Bujanovac, Niš, Novi Pazar and Novi Sad. The Advisory Committee recognises the co-operative spirit shown by the authorities of Serbia and Montenegro in the process leading to the adoption of this opinion.

8. According to the State Report, non-governmental organisations were consulted in the process of drawing up the report. It appears, however, that this consultation by the Government was quite limited in its scope and that a number of prominent non-governmental organisations dealing with minority issues were not informed about the process. The Advisory Committee hopes that wider consultations will take place in the future. The Advisory Committee notes with satisfaction that the authorities agreed to make the above-mentioned Government's reply to the questionnaire of the Advisory Committee public, but encourages the Government to take further measures to improve awareness of the Framework Convention, its explanatory report and the rules concerning its monitoring at the international level, including through publication and dissemination of the State Report and other relevant documents.

9. It should be noted as a preliminary remark that, when examining in detail the measures taken to give effect to the provisions of the Framework Convention, the Advisory Committee was not in a position to examine the situation in Kosovo, which is at present outside the effective control of the Government of Serbia and Montenegro and under UN administration in accordance with UN Security Council Resolution 1244. The Advisory Committee notes, however, that the events in Kosovo have resulted in thousands of internally displaced persons, including a large number of Serbs and Montenegrins as well as Roma and persons belonging to other national minorities, which has considerably affected the implementation of the Framework Convention in Serbia and Montenegro.

10. More generally, the Advisory Committee notes that the legacy of the aggressive nationalistic policies of the Milosevic regime is still widely felt in the society of Serbia and Montenegro. This legacy complicates the task of the present authorities to implement the Framework Convention and necessitates special measures aimed at rebuilding inter-ethnic

tolerance and true and effective equality in Serbia and Montenegro. The Advisory Committee appreciates the fact that the current authorities recognise the need to implement such special measures and that they have launched a number of initiatives to this effect.

11. The Advisory Committee notes that the Union of Serbia and Montenegro is a result of recent fundamental constitutional changes and restructuring, and that it is still undergoing comprehensive reforms which also affect the protection of national minorities. In the current stage of transition, there is a level of uncertainty as to the future of the allocation of responsibilities between various governmental structures and an apparent need, also from the point of view of national minority protection, to provide improved institutional stability, including through an accelerated constitutional reform process in Serbia.

12. The Advisory Committee notes that, pursuant to Article 9 of the Constitutional Charter of the State Union of Serbia and Montenegro, the two constituent states are “to regulate, ensure and protect human and minority rights”, and thereby they have the main responsibility for the practical implementation of principles contained in the Framework Convention. The Union authorities nevertheless have the task of “monitoring” the implementation of these rights and of ensuring their protection if such protection is not ensured by the constituent states. While the contacts and cooperation between the Union authorities and those of the Republic of Serbia function reasonably well, but could be further improved, the Advisory Committee notes that there is a clear lack of cooperation from the side of the authorities of the Republic of Montenegro. The Advisory Committee hopes that new initiatives – such as the appointment of a liaison officer to ensure contacts between the authorities of Montenegro and Union authorities – should be given priority so as to achieve an increased level of contacts and co-operation in the field of the protection of national minorities, which is essential to ensure that the Framework Convention is implemented consistently and comprehensively throughout Serbia and Montenegro.

13. Uncertainty and flux, as well as a certain lack of coherence, also characterises the status of relevant legislation, including new legislation on the protection of national minorities. This is particularly discernible as regards the federal Law on the Protection of Rights and Freedoms of National Minorities, adopted in 2002<sup>2</sup>. While that law is presently considered applicable in the Republic of Serbia until its future status has been determined by the Serbian Parliament, the authorities of the Republic of Montenegro do not apply the said law but continue the prolonged process of drawing up their own legislation on the protection of national minorities.

14. The Advisory Committee finds it instrumental that, in these circumstances the authorities fully implement Article 9, paragraph 2, of the Constitutional Charter of the State Union of Serbia and Montenegro which provides that the achieved level of human and minority rights may not be reduced. Furthermore, the Advisory Committee considers it to be essential that new legislation in this field is endorsed as widely as possible. In this respect, the Advisory Committee welcomes that a coalition of NGOs dealing with minority protection is represented in the work of the working group on the draft law on the protection of national

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<sup>2</sup> The references to the “federal” legislation in the present Opinion refer to the legislation adopted by the legislature of the Federal Republic of Yugoslavia, which ceased to exist following the adoption in February 2003 of the Constitutional Charter of the State Union of Serbia and Montenegro. Pursuant to Article 64 of the Constitutional Charter, the laws of the Federal Republic of Yugoslavia, except for the laws that the Assembly of a member state decides not to be applicable, shall be applied as the laws of the member states pending the adoption of new regulations by the member states.

minorities in Montenegro. At the same time, it is important to bring the divisions causing the on-going boycott in Montenegro of the Parliament sessions to an end and thereby ensure broad participation in the drafting of the said law.

15. The Advisory Committee also wishes to specify that in examining the implementation of the Framework Convention by Serbia and Montenegro, it has taken into account the serious economic difficulties the country is facing at present. Aware of the importance of socio-economic conditions on the implementation of policies and measures that generally necessitate adequate financial resources, the Advisory Committee welcomes the efforts made by the authorities to protect national minorities and their concern to implement the Framework Convention.

16. In the following part of the opinion, it is stated in respect of certain provisions that, based on the information currently at its disposal, the Advisory Committee considers that implementation of the article at issue does not give rise to any specific observations. The Advisory Committee wishes to make clear that this statement is not to be understood as signalling that adequate measures have now been taken and that efforts in this respect may be diminished or even halted. Indeed, the Advisory Committee considers that the nature of the obligations of the Framework Convention requires a sustained and continued effort by the authorities to respect the principles and achieve the goals of the Framework Convention. Furthermore, a certain state of affairs may, in the light of the recent entry into force of the Framework Convention, be considered acceptable at this stage but that need not necessarily be so in further cycles of monitoring. Finally, it may be the case that issues that appear at this stage to be of relatively minor concern, prove over time to have been underestimated.

### III. SPECIFIC COMMENTS IN RESPECT OF ARTICLES 1-19

#### Article 1

17. The Advisory Committee notes that Serbia and Montenegro has ratified a wide range of relevant international instruments. Based on the information currently at its disposal, the Advisory Committee considers that implementation of this article does not give rise to any further observations.

#### Article 2

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

#### Article 3

19. The Advisory Committee underlines that in the absence of a definition in the Framework Convention itself, the Parties must examine the personal scope of application to be given to the Framework Convention within their country. The position of the authorities of Serbia and Montenegro is therefore deemed to be the outcome of this examination.

20. Whereas the Advisory Committee notes on the one hand that Parties have a margin of appreciation in this respect in order to take the specific circumstances prevailing in their country into account, it notes on the other hand that this must be exercised in accordance with general principles of international law and the fundamental principles set out in Article 3. In particular, it stresses that the implementation of the Framework Convention should not be a source of arbitrary or unjustified distinctions.

21. For this reason the Advisory Committee considers that it is part of its duty to examine the personal scope given to the implementation of the Framework Convention in order to verify that no arbitrary or unjustified distinctions have been made. Furthermore, it considers that it must verify the proper application of the fundamental principles set out in Article 3.

22. The Advisory Committee notes that Article 2 of the federal Law on the Protection of Rights and Freedoms of National Minorities contains the following definition of the term national minority:

*“Under the terms of this Law, a national minority is a group of citizens of the Federal Republic of Yugoslavia sufficiently representative, although in a minority position on the territory of the Federal Republic of Yugoslavia, belonging to a group of residents having a long term and firm bond with the territory and possessing some distinctive features, such as language, culture, national or ethnic belonging, origin or religion, upon which it differs from the majority of the population, and whose members should show their concern over preservation of their common identity, including culture, tradition, language or religion.*

*Under the terms of this Law, all groups of citizens who consider or define themselves as peoples, national and ethnic communities, national and ethnic groups, nations and nationalities, and who fulfil the conditions specified in paragraph 1 of this Article, shall be deemed national minorities for the purpose of this Law.*

23. The Advisory Committee finds it positive that this definition covers a large number of groups residing in Serbia and Montenegro, including numerically smaller ones.<sup>3</sup> However, it notes that limiting the scope of the term national minority to citizens only may have a negative impact for example on the protection of those Roma or other persons whose citizenship status, following the break-up of Yugoslavia and conflict in Kosovo, has not been regularised, including those displaced persons from Kosovo who, in the absence of personal documentation, have had difficulties in obtaining confirmation of their citizenship (see related comments under Article 4 below).

24. The Advisory Committee considers that there remains room for covering further groups within the scope of the Framework Convention and legislation pertaining to its implementation. The Advisory Committee is of the opinion that it would be possible to consider the inclusion of persons belonging to these groups, including non-citizens as appropriate, in the application of the Framework Convention on an article-by-article basis, and the Advisory Committee takes the view that the authorities should consider this issue in consultation with those concerned. It also calls on the authorities of Montenegro to ensure that the personal scope of application of the forthcoming law on the protection of national minorities will not contain any undue citizenship or other restrictions.

25. The Advisory Committee further considers that the flexible approach taken in Article 47 of the Union Charter of Human Rights and Minority Rights and Civil Freedoms and Article 2, paragraph 2, of the federal Law on the Protection of Rights and Freedoms of National Minorities as to the terminology used is in line with the principles of the Framework Convention. It notes that the issue of terminology is currently topical in Montenegro in the context of the drafting of a new law on the protection national minorities and urges the authorities to seek a solution that would reflect the wishes of the minorities concerned as well as international standards.

26. The Advisory Committee notes that there have been debates in Serbia and Montenegro on the inter-relation between Romanian and Vlach identities and between Croatian and Bunyevtsi identities as well as between Bosniac and Muslim identities. The Advisory Committee underlines that this issue should be approached with full respect to the principles contained in Article 3 of the Framework Convention, and that there should be no attempts to impose one or the other identity on the persons concerned. In this respect, the Advisory Committee welcomes the fact that the census of 2002 in Serbia recognised the identities concerned on an equal footing. Similarly, the Advisory Committee calls on the authorities to pay full attention to these principles with respect of Ashkali, Egyptians and Roma. The authorities should avoid unduly treating them as one indivisible minority, bearing in mind that, despite certain similarities, the persons belonging to the minorities concerned

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<sup>3</sup> According to the Communication of the Statistical Office of the Republic of Serbia, issued in December 2002, as regards national or ethnic group, the results of the census 2002 in Serbia (which did not cover Kosovo) were as follows: Serbs 6,212,838 (82.86 % of the total), Montenegrins 69,049 (0.92%), Yugoslavs 80,721 (1.08%), Albanians 61,647 (0.82%), Bosniacs 136,087 (1.82%), Bulgarians 20,497 (0.27%), Bunyevtsi 20,012 (0.27%), Vlachs 40,054 (0.53%), Gorantsi 4,581 (0.06%), Hungarians 293,299 (3.91%), Macedonians 25,847 (0.35%), Moslems 19,503 (0.26%), Germans 3,901 (0.05%), Roma 108,193 (1.44%), Romanians 34,576 (0.46%), Russians 2,588 (0.03%), Ruthenians 15,905 (0.21%), Slovaks 59,021 (0.79%), Slovenes 5,104 (0.07%), Ukrainians 5,354 (0.07%), Croats 70,602 (0.94%), Czechs 2,211 (0.03%), others 11,711 (0.16%); Did not declare themselves 107,732 (1.44%), Regional affiliation 11,485 (0.15%), unknown 75,483 (1.01%). The results of the 2003 census in Montenegro are not yet available.

perceive themselves as being distinct minorities, with differences in various elements of their respective identity.

27. The Advisory Committee notes that, in Serbia and Montenegro, ethnicity data is collected in various contexts, ranging from education to employment. While agreeing that there is a need to obtain quality data in these fields, the Advisory Committee emphasises that the collection of data on individuals' affiliation with a particular national minority needs to be coupled with adequate legal safeguards. It is also important to ensure that the right not to be treated as a person belonging to a national minority is protected and that the persons concerned are informed that the provision of ethnicity data is voluntary. The Advisory Committee welcomes the fact that the authorities of Serbia and Montenegro agree with these principles and that they are reflected also in Article 48 of the Union Charter of Human Rights and Minority Rights and Civil Freedoms and in the Constitutions of the two constituent states and that Article 18 of the federal Law on the Protection of Personal Data provides that personal data on racial origin, national belonging or religious and other beliefs may be gathered, processed and released for use only with the person's written consent.

28. The Advisory Committee is, however, concerned about reports according to which some pupils in Montenegro have been requested by their teacher to declare their ethnicity in front of their class. As such practices would not be compatible with Article 3 of the Framework Convention, the Advisory Committee urges the relevant authorities to look into these reports with a view to ensuring that the above-mentioned principles concerning data collection are consistently honoured in education and other fields.

29. The Advisory Committee considers that the population census conducted in Serbia in April 2002 marked clear progress in terms of the implementation of Article 3 of the Framework Convention despite certain criticism expressed by persons belonging to national minorities (see further comments under Article 4 below). For example, it is significant that replying to the question on "nationality" (ethnicity) was optional and that, unlike in the previous census, persons belonging to the Bosniac minority could freely declare themselves as such, while the category "Muslims" was also maintained as an option (see footnote 3 above).

30. The Advisory Committee has been informed that the Republican Statistical Bureau of Montenegro is also attaching great importance to the principles contained in Article 3 in the census of November 2003 and in the recording and processing of the optional replies to questions on "nationality" (ethnicity), language and religion. The Advisory Committee is of the opinion that one possible challenge is the treatment of twofold replies to the ethnicity questions (for example "Montenegrin of Albanian origin"). The Advisory Committee understands that in such cases, only the first part of the reply will be recorded by the census takers. The Advisory Committee finds that, in order for such a practice to respect the principles of Article 3 of the Framework Convention, it is essential that the persons concerned are clearly informed of this practice by census-takers, and the Advisory Committee encourages the authorities to analyse whether this practice affected the efforts to obtain accurate data on the numbers of national minorities.

#### **Article 4**

31. The Advisory Committee notes with satisfaction that there exist general guarantees against discrimination, including in the Union Charter of Human Rights and Minority Rights

and Civil Freedoms, in the federal Law on the Protection of Rights and Freedoms of National Minorities and in criminal legislation as well as in civil law legislation. The Advisory Committee notes however that the provisions would merit being developed further. It therefore welcomes the fact that a working group has been set up in Serbia and Montenegro for drafting an anti-discrimination law whereby the matter of discrimination would be fully regulated. The Advisory Committee expects that this work will lead to comprehensive anti-discrimination legislation that protects individuals from discrimination by both public authorities and private entities.

32. The Advisory Committee considers that guarantees against discrimination should also be carefully examined in the on-going constitutional reform process. The Advisory Committee notes that the relevant guarantees in the Constitution of Serbia and the Constitution of Montenegro are largely limited to “citizens” only. While acknowledging that certain differences in treatment between citizens and others are legitimate, the Advisory Committee urges the authorities to expand the scope of the constitutional guarantees against discrimination to everyone, as provided by the Union Charter of Human Rights and Minority Rights and Civil Freedoms. Similarly, the Advisory Committee considers it essential that any undue citizenship criteria is also eliminated from other related legislation, bearing in mind that, for example, Article 134 of the federal Criminal Code protects only “citizens” from violence motivated by ethnicity or race. This is particularly important bearing in mind that, following the break-up of Yugoslavia, there have been a range of difficulties in terms of confirmation of citizenship in Serbia and Montenegro.

33. While stressing the importance of having adequate legislation in place to protect persons belonging to national minorities from discrimination, the Advisory Committee is particularly concerned about problems related to the implementation of such legislation in practice. While the situation has clearly improved in this respect following the end of the Milosevic regime, the problem of *de facto* discrimination of persons belonging to national minorities still persists. Such problems appear particularly prevalent in relation to Roma, including those who have been displaced from Kosovo or who have been repatriated from abroad.

34. The Advisory Committee welcomes the fact that the authorities recognise that the problem of ethnic discrimination exists in Serbia and Montenegro, in particular in relation to Roma, and that they are taking certain measures to address this issue. The Advisory Committee is nevertheless concerned that the developments in this field are not adequately monitored. The State Report refers to individual court cases concerning discrimination of Roma notably in their access to public services, but the Advisory Committee regrets that, according to the authorities of Serbia and Montenegro, no detailed statistics are available on the implementation of civil or criminal law provisions on ethnic discrimination. The Advisory Committee urges the authorities to step up its monitoring in this field as this would contribute to the design, implementation and evaluation of anti-discrimination measures.

35. In this connection, the Advisory Committee urges the authorities to consider the setting up of specific structures to combat ethnic discrimination. In addition, the Advisory Committee is of the opinion that these issues should be incorporated as a main element of the future activities of the Ombudsman offices. The Advisory Committee therefore welcomes the information that the Ombudsman of Montenegro, who is to operate in accordance with the law adopted in July 2003, as well the Ombudsman of Vojvodina, established pursuant to a decision taken by the Assembly of the Autonomous Province in December 2002, will have a

Deputy specifically devoted to the protection of national minorities, and the Advisory Committee calls for adequate support and guaranteed independence for these institutions. Furthermore, the Advisory Committee supports efforts in Serbia to swiftly adopt a law on the institution of the Ombudsman and to make the said institution operational.

36. The importance of such non-judicial mechanisms is underlined by the shortcomings that persist in terms of effectiveness and independence of the judiciary in Serbia and Montenegro as well as in the functioning of the prosecuting bodies. These shortcomings – many of which have been inherited from the previous regime – account for the limited trust amongst the public towards the said institutions and negatively affect the implementation of the non-discrimination provisions and other principles of the Framework Convention and should be addressed as a matter of priority.

37. Furthermore, the Advisory Committee notes that the Court of Serbia and Montenegro, envisaged in the Constitutional Charter of the State Union of Serbia and Montenegro, is not yet operational at the time of the adoption of the present Opinion. Bearing in mind that the Court's jurisdiction contains elements that are also important to further the implementation of the Framework Convention and to implement constitutional guarantees in this sphere, the Advisory Committee considers it essential that the Court commence its activities as soon as possible.

38. The Advisory Committee considers that one key to reaching full and effective equality for persons belonging to national minorities is the launching of additional positive measures in the field of employment and it supports efforts to seek financing for such measures. The situation of persons belonging to Albanian, Bosniac, Croatian and Muslim minorities merits particular attention, taking into account the past discriminatory measures aimed at curtailing their numbers in various fields of employment, including in the judiciary and other fields (see also related comments under Article 15 below). In this respect, the Advisory Committee welcomes the positive measures that have been launched in the municipalities of Bujanovac, Preševo and Medvedja in Southern Serbia, where there are a substantial number of Albanian and Roma inhabitants, aimed at promoting full and effective equality in the domain of economic life. The Advisory Committee urges the authorities to pursue such measures further and to draw on these practices in other relevant regions as well (see also related comments under Article 15 below).

39. As recognised by the authorities concerned, they have not been able to secure full and effective equality between the majority population and the Roma. It has been pointed out that the situation of Roma remains extremely difficult in such fields as housing, education and employment<sup>4</sup>. The Advisory Committee is particularly concerned about reports of alarming situation in informal Roma settlements, where thousands of Roma, including internally displaced Roma from Kosovo and Roma repatriated from abroad who face particularly serious difficulties<sup>5</sup>, live in substandard housing conditions without basic sanitary facilities, heating, water or power supplies. The Advisory Committee notes with concern that the conditions are in many settlements so sub-standard that they constitute a health risk for the residents, and, for example, the epidemiological situation in the Roma settlements of Palilula

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<sup>4</sup> See for example Memorandum on the Protection of Roma Rights in Serbia and Montenegro, April 2003, prepared by the European Roma Rights Centre in association with the UN Office of the High Commissioner for Human Rights, Human Rights Field Operation in Serbia and Montenegro.

<sup>5</sup> See Council of Europe Fact-Finding Mission to Serbia and Montenegro, Roma Returnees to Serbia and Montenegro, Whose Responsibility? Report issued on 14 April 2003.

has been described as catastrophic by researchers<sup>6</sup>. The Advisory Committee is of the opinion that the situation as described in these reports is not compatible with the principles contained in Article 4 of the Framework Convention and that these problems merit urgent attention and targeted measures by both domestic authorities as well as support by international donor agencies. In this connection, the Advisory Committee stresses that Roma women – many of whom have only limited information for example on reproductive health issues and who often go through pregnancies without any medical control – are particularly exposed to health risks and their situation merits specific emphasis.

40. Furthermore, Roma residing in settlements that have not been legalised are vulnerable to forced evictions without being provided alternative accommodation, as manifested by recent cases in both Serbia and Montenegro. It is therefore essential that the authorities address the legal status of these settlements as a matter of priority, including by using the new possibilities for legalisation offered by the Law on Project Design and Construction of the Republic of Serbia adopted in March 2003, and that no evictions involving human rights violations are carried out.

41. The problems of Roma are exacerbated by the fact that many of them do not possess personal documents, which in turn hampers their access to basic public services and causes some problems with regard to confirmation of their citizenship. The Advisory Committee is encouraged by the fact that certain NGO initiatives aimed at improving Roma's access to personal documents – such as the one carried out with Roma in Nikšić, where serious problems had been reported in this domain in the past – show that positive measures can yield impressive results. The Advisory Committee considers that the authorities should support similar initiatives in other locations as well.

42. Against this background, the Advisory Committee finds it encouraging that Roma issues have recently received increasing attention from the authorities of Serbia and Montenegro and the authorities openly admit that serious problems exist in this sphere. This increasing commitment is reflected in the initiative to draw up a comprehensive Strategy for the Integration and Empowerment of Roma. The Advisory Committee agrees that the themes identified in the ambitious draft Strategy as top priorities, namely housing, economic empowerment, education and living-conditions of displaced Roma, are indeed key questions in ensuring full and effective equality for Roma. The Advisory Committee regrets however that the formal endorsement of the draft Strategy has been delayed, and the Advisory Committee calls on the authorities to finalise and adopt the said Strategy as a matter of urgency. It is also essential to ensure that adequate structures are put in place, and resources allocated, for the Strategy's implementation, which should be pursued and monitored according to clearly set targets.

43. The Advisory Committee further notes that it is essential that such a strategic approach to Roma issues is also adopted and implemented by the authorities of Montenegro, where the protection of Roma has in recent years become an increasingly important issue with the arrival of internally displaced Roma from Kosovo and Roma repatriated from abroad. The Advisory Committee considers that the lack of *de facto* applicable detailed norms on minority protection – such as the federal Law on the Protection of Rights and

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<sup>6</sup> See Roma Health: Evaluation and Results of MAS Supervision of Data Processing, the Institute of Public Health Belgrade, Dr Predrag Kon, Oxfam GB, Belgrade Office 2003.

Freedoms of National Minorities – underlines the need to develop a clearer legal and policy framework for positive measures in support of Roma in Montenegro.

44. The Advisory Committee notes that there are wide discrepancies between the existing official statistics of the Government and the unofficial estimates of the actual number of persons belonging to certain national minorities in Serbia and Montenegro, including the Roma. The Advisory Committee is concerned that such discrepancies in figures can hamper the ability of the state to target, implement and monitor measures to ensure the full and effective equality of persons belonging to national minorities. The Advisory Committee expects that the results of the censuses conducted in Serbia in 2002 and in Montenegro in 2003 will be of assistance in this respect. The Advisory Committee notes, however, that, despite the improvements in relation to the past practices, these censuses alone do not necessarily satisfy the continuous need for up-to-date data, especially since the demographic picture of Serbia and Montenegro is currently in a state of flux (see related comments under Article 3 above and Article 5 below). In this connection, the Advisory Committee also notes that a number of persons belonging to national minorities have argued that, despite clear improvements in relation to past practices, the process of gathering census data in 2002 in Serbia left scope for improvements and that for example NGO efforts to improve awareness amongst Roma of the importance of the census were not always adequately supported.

45. The Advisory Committee therefore suggests that, on condition that the principles identified in the Committee of Ministers' Recommendation (97) 18 concerning the protection of personal data collected and processed for statistical purposes are respected, the Government try to identify further ways and means of obtaining reliable statistical data and notes that some steps in this direction are already being taken by the Ministry of National and Ethnic Communities which has initiated research aimed at creating a “database or a social map” to determine the number of the Roma and their settlements as well as statistics on their position in such fields as education, health and employment.

#### **Article 5**

46. The Advisory Committee welcomes the fact that the federal Law on the Protection of Rights and Freedoms of National Minorities, in its Article 12, envisaged state support for societies established to protect and promote cultures of national minorities.

47. To date, such support has been provided often on an *ad hoc* basis only and there are substantial differences in the commitment of the relevant authorities to such initiatives between the different parts of Serbia and Montenegro. For example, whereas in Vojvodina there appears to be a range of initiatives launched in this field with support from provincial and local authorities, reports from a number of other areas are less encouraging, for example, as far as the support for the cultural initiatives of Vlachs residing in North-Eastern Serbia is concerned.

48. More generally, the Advisory Committee notes that persons belonging to those groups that have only relatively recently, following the break-up of Yugoslavia, been defined as national minorities, such as Croats and Macedonians, have often had difficulties in creating, and attracting adequate support for their cultural institutions and initiatives in the new circumstances. The Advisory Committee considers that these difficulties merit being addressed as a matter of priority and it encourages the authorities to pay careful attention to the initiatives of persons belonging to these national minorities in implementing Article 6 of

the Framework Convention. The cultural initiatives of Roma and other national minorities with no possibility to seek support from a “kin-state” should also be carefully considered in this respect.

49. The Advisory Committee notes that one potentially important tool for the implementation of Article 5 of the Framework Convention, namely a Fund for the Promotion of Social, Economic, Cultural and General Development of National Minorities envisaged in Article 20 of the federal Law on the Protection of Rights and Freedoms of National Minorities, has still not been established, and the regulations governing the activities of the said fund have not been adopted, by the time the present opinion was drawn up. While understanding the financial constraints involved, the Advisory Committee considers that the establishment of the said Fund should be pursued as a matter of priority. This is important not only for the protection of cultures of national minorities but also for the credibility of the federal Law on the Protection of Rights and Freedoms of National Minorities and of the authorities’ commitment to its implementation.

50. As regards the allocation of support for cultural initiatives of national minorities, the Advisory Committee considers that the involvement of representatives of national minorities in the decision-making process is essential to ensure that the support is provided in an optimum manner. This approach should also be reflected in the aforementioned regulations on the Fund, including in terms of the Fund’s membership, which should contain a significant proportion of persons belonging to national minorities and provide a key role for the Councils of National Minorities (see also related comments under Article 15 below).

51. The Advisory Committee notes that in Montenegro certain promising initiatives have been launched to create mechanisms for supporting culture of national minorities but these have not developed according to the expectations of persons belonging to national minorities. The role of the Republic Council for the Protection of Rights of Members of National and Ethnic Groups is widely seen as marginal (see related comments under Article 15 below) and the decision, adopted by the Government of the Republic of Montenegro in June 2001, to establish a centre for the preservation and enhancement of cultures of national and minority groups in Montenegro, has not produced concrete results. The Advisory Committee is therefore of the opinion that improved mechanisms for the support of cultures should be introduced in Montenegro, possibly through the envisaged new law on the protection of national minorities.

52. The Advisory Committee notes that when drawing on the results of the population censuses in designing measures to implement Article 5 of the Framework Convention, the authorities should take into account the reluctance, which may stem from past persecution or other factors, of some concerned to identify themselves as belonging to a national minority. Therefore, the number of certain national minorities suggested in the census results, is often lower than their real number.

## **Article 6**

53. The Advisory Committee notes with satisfaction that Article 56 of the Union Charter of Human Rights and Minority Rights and Civil Freedoms underlines the importance of promoting tolerance in education and other contexts and that the authorities have, on a number of occasions, emphasised the need for tolerance and for intercultural dialogue. Such messages are of utmost importance in Serbia and Montenegro, where inter-ethnic relations

are still seriously affected by the aggressive policies of the past regime and the legacy of the resulting conflicts (see also General comments above). It is of utmost importance that this approach is consistently reflected in the statements and acts of authorities, including those operating at the local level. In addition to the authorities, a constructive stance by other relevant actors, such as the religious institutions operating in Serbia and Montenegro, is essential to solidify a spirit of tolerance and intercultural dialogue.

54. While violence against persons belonging to national minorities has decreased significantly in recent years and is not sanctioned by the current political leaders, certain disconcerting instances of hostility are still reported. Such manifestations of hostility have on a number of occasions been targeted at Roma but also at Croats and persons belonging to other national minorities. The Advisory Committee is deeply concerned about the tension that remains in some parts of Serbia and Montenegro that have recently experienced a conflict, notably in Southern Serbia, where, despite a range of commendable efforts of the authorities and marked progress, violent incidents have recently been reported. Furthermore, it notes with concern that certain manifestations of tension between Serbs and Bosniacs – rightly denounced by the authorities – have been reported in Sandzak.

55. Against this background, the Advisory Committee finds initiatives aimed at promoting a spirit of tolerance and intercultural dialogue – such as the media campaign “Tolerance” launched in 2001 – highly valuable. There is a need to strengthen and expand further such initiatives, including at the regional and local level, with a view to increasing the public’s appreciation of and respect for the diversity that exists in Serbia and Montenegro.

56. The Advisory Committee notes that problems in the implementation of Article 6 have not solely involved relations between a national minority and the majority but that there have, occasionally, been tensions also between different minority communities. In particular, displaced Roma from Kosovo have at times met with resentment as they have moved to regions inhabited by persons belonging to other national minorities. The Advisory Committee believes that there is a clear need to launch initiatives that, instead of concentrating on one national minority only, are inclusive and promote inter-cultural dialogue between various minorities as well as with the majority population.

57. One forum that could be used to promote such inclusive exchanges and initiatives is the “Federal” Council of National Minorities, envisaged in Article 18 of the federal Law on the Protection of Rights and Freedoms of National Minorities, including representatives of various national minority councils. The Advisory Committee therefore urges the authorities to set up the said body as a matter of priority. Also, the local level councils for inter-ethnic relations envisaged in Article 63 of the Law on Local Self-Governance of the Republic of Serbia could develop into tools for the promotion of the principles contained in Article 6 of the Framework Convention, but this will largely depend on the composition and working-methods of the councils, which are to be decided upon at the municipality level.

58. The Advisory Committee stresses that the performance of the police and other law-enforcement authorities on issues related to national minorities merits particular attention. The Advisory Committee is concerned about reports indicating that some law-enforcement officials have prejudices against persons belonging to national minorities, including Roma, and about the resulting lack of confidence in these authorities that seems to be rather common amongst some national minorities. There is an apparent need to increase sensitivity of these issues within law-enforcement authorities and to ensure that ethnic discrimination and other

problems faced by persons belonging to national minorities are addressed more vigorously. The Advisory Committee welcomes in this connection the information received from the Ministry of Interior of Serbia that new instructions concerning police ethics emphasise the principles of non-discrimination and the protection of national minorities. Furthermore, it is imperative to ensure adequate police training as well as mechanisms to supervise the work of law-enforcement, bearing in mind, *inter alia*, that there have been allegations of abuse of Roma committed by law-enforcement officials<sup>7</sup>.

59. The Advisory Committee notes with satisfaction that the introduction of a multi-ethnic police force in Southern Serbia has, despite a range of challenges, largely been considered an important initiative for the inter-ethnic relations in the area, and the Advisory Committee urges the authorities to consider similar measures in other relevant regions in Serbia and Montenegro (see also related comments under Article 15 below).

60. Furthermore, the Advisory Committee considers that in order to create an atmosphere of mutual respect and co-operation it is essential that the past practices of hostility and violence towards persons belonging to national minorities, including alleged cases of serious human rights violations by the law-enforcement authorities, are addressed in an adequate manner, without further undue delays. This concerns, *inter alia*, the reported police violence and other incidents against persons belonging to the Bosniac minority in Sandzak during the Milosevic regime. Similarly, the Advisory Committee considers it essential for the implementation of Article 6 of the Framework Convention that the issue of addressing war crimes, both through the domestic courts and through co-operation with the International Tribunal for the former Yugoslavia, as well as questions relating to missing persons, are treated by the authorities increasingly effectively.

61. In the field of media, there have reportedly been certain improvements in the reporting pertaining to national minorities and some promising initiatives to give balanced coverage for minority issues have been launched in selected mainstream media. In spite of these positive developments, some print and electronic media still report in a manner that strengthens existing negative stereotypes of certain national minorities, in some cases amounting to incitement to racial hatred. The Advisory Committee notes that there have been only a few convictions on the basis of criminal law provisions on the incitement to national, racial and religious hatred, and it considers that the authorities should pay careful attention to the implementation of these provisions. Furthermore, the Advisory Committee believes that local NGO monitoring of the reporting on issues pertaining to national minorities is of particular importance in curbing such tendencies.

62. The role of a legitimate Broadcasting Council is also essential in ensuring balanced reporting on minority issues, and therefore the Advisory Committee regrets the persistent delays in the launching of the operations of the said body in Serbia. At the same time, it welcomes the fact that the coalition of NGOs dealing with the protection of national minorities has a representative on the Council of Public Service Radio and TV of Montenegro in accordance with the by-laws of the said body.

63. The Advisory Committee is deeply concerned about the phenomenon of human trafficking and its negative impact on the protection of persons belonging to national

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<sup>7</sup> See for example the Draft Strategy for the Integration and Empowerment of Roma, Discussion paper, 13 December 2002, page 94.

minorities. While reliable data is difficult to obtain in this domain, the authorities of Serbia and Montenegro note that Roma women are often victims of human trafficking and other sources suggest that Roma children are trafficked through Serbia and Montenegro. The Advisory Committee finds it essential that decisive measures are taken to prevent, investigate and prosecute such cases, including on the basis of the criminal law provisions pertaining to trafficking introduced recently, and that initiatives are launched to raise awareness of these issues amongst Roma women and other potential victims and to protect the victims.

64. The Advisory Committee is concerned about the vandalism of Jewish religious sites and other manifestations of anti-semitism that have been reported in Serbia and Montenegro. The Advisory Committee appreciates the fact that the authorities have clearly denounced cases of this nature and it calls on them to pay particular attention to the prevention as well as investigation and prosecution of such incidents.

### **Article 7**

65. The Advisory Committee considers that the provisions contained in the Union Charter of Human Rights and Minority Rights and Civil Freedoms provide a good basis for the implementation of the rights contained in Article 7. At the same time, the Advisory Committee recalls the importance of ensuring that any undue citizenship criteria or other restrictions are eliminated from the other pertinent constitutional and other guarantees of the constituent states of the Union (see also related comments under Article 4 above).

### **Article 8**

66. The Advisory Committee recognises that religious freedom is largely guaranteed in Serbia and Montenegro. It has, however, received reports about certain differences in approach to different religions in the army and in other contexts. The Advisory Committee further notes that the introduction of voluntary religious education in school curricula has prompted new challenges, including with respect to persons belonging to smaller religious communities of national minorities such as the Romanian Orthodox Church.

67. While recognising that the Framework Convention does not exclude all differences in the treatment of religious entities, the Advisory Committee considers that, where such differences exist, particular attention must be paid to the situation of persons belonging to national minorities with a view to guaranteeing them their rights under the present Article as well as their right to equality before the law and equal protection of the law, as guaranteed under Article 4 of the Framework Convention. The Advisory Committee calls on the authorities to pay particular attention to these principles in the context of the drafting of a new law on religious freedom in Serbia.

### **Article 9**

68. The Advisory Committee welcomes the fact that the legislation of Serbia and Montenegro, including Article 17 of the federal Law on the Protection of Rights and Freedoms of National Minorities, and Article 78 of the Broadcasting Law of Serbia in a number of respects reflect the principles contained in Article 9 of the Framework Convention and contain elements that support both passive and active access to the media by persons belonging to national minorities (see also comments under Article 6 above regarding bodies dealing with broadcasting issues).

69. The Advisory Committee is however concerned about the lack of clarity in certain language requirements contained in the aforementioned Broadcasting Law. Whereas programmes for national minorities are explicitly excluded from the scope of Article 72, paragraph 1, of the Law which provides for the general obligation to broadcast in Serbian or with translation into Serbian, the law does not contain such a clear exemption in respect of the obligation that at least 50 percent of the broadcasting time must be in Serbian, contained in Article 73, paragraph 1. The Advisory Committee considers that the application of this language quota to broadcasters using minority languages would be highly problematic notably as far as local and regional broadcasters are concerned, bearing in mind, *inter alia*, the size of the population concerned and the fact that they often reside compactly in specific regions. In the light of the foregoing, the Advisory Committee consider that the authorities should clearly exclude broadcasters using minority languages from the scope of the 50 percent quota contained in the said paragraph.

70. As regards Montenegro, Article 3 of the 2002 Media Law of Montenegro contains certain guarantees for the use of minority languages and Article 95 of the 2002 Broadcasting Law of Montenegro envisage programmes in minority languages. These norms are however of a rather general nature, and the Advisory Committee expects that more detailed guarantees for the implementation of Article 9 of the Framework Convention will be introduced, possibly in the forthcoming law on the protection of national minorities in Montenegro.

71. With regard to practice in the field of print media, the Advisory Committee notes that the freedom of persons belonging to national minorities to receive and impart information and ideas in their language without interference by the public authorities, following serious problems during the Milosevic regime, is largely respected in Serbia and Montenegro. A considerable number of newspapers and other publications are published in the languages of national minorities, in particular in Vojvodina, often with support from public sources, although financial difficulties remain a major obstacle for further progress in this sphere.

72. In this connection, the Advisory Committee notes that certain public authorities are currently in the process of cutting back the publishing of minority language publications and designing alternative forms of support for such publications. The Advisory Committee finds it important that the maximum availability, quality and diversity of minority language publications are assured in this process.

73. As concerns the electronic media, the Advisory Committee welcomes the fact that, in practice, a number of radio and TV broadcasters, of both private and public service nature, use minority languages at the regional and local level, although scarce resources, weak transmission capacity and other problems persist. The Advisory Committee welcomes the fact that the authorities have in recent years addressed certain clear shortcomings in this sphere, including by supporting the introduction of Albanian language radio broadcasting in Southern Serbia.

74. The Advisory Committee notes that a number of additional concerns about access to the media expressed by national minorities merit further attention. This relates, *inter alia*, to persons belonging to the Vlach minority, who report that they have no regular access, passive or active, to print or electronic media in their area of compact residence in North-Eastern Serbia. As regards Roma, certain valuable media initiatives have been launched – including a

private Roma TV station, but this is at the early stages and further progress is called for, including at the state level, bearing in mind that Roma are a dispersed national minority.

75. The Advisory Committee notes that the authorities of Montenegro have made some important efforts to secure adequate access for Albanians to the public radio and TV. However, the needs of other national minorities in Montenegro merit increased attention in the on-going process of developing a public service broadcasting service, taking into account, for example, the pending proposal to introduce Roma language radio programmes.

### **Article 10**

76. The Advisory Committee welcomes the fact that Articles 10 and 11 of the federal Law on the Protection of Rights and Freedoms of National Minorities contains important guarantees that reflect the principles of Article 10 of the Framework Convention. The Advisory Committee welcomes that the law contains an obligation to introduce the “official use” of minority languages – which includes the oral and written use of the said language in relations with the authorities – in those local self-government units where the number of persons belonging to the national minority concerned has reached 15 percent, and that the local-self government units may decide to introduce this measure even with a lower percentage of the minority population. An important additional guarantee is contained in Article 16 of the Law on the Official Use of Language and Script of Serbia, which details conditions under which a national minority language can be used also in procedures before agencies in areas where a minority language is not in official use.

77. In practice, there are certain commendable efforts to provide “official use” of minority languages, including their use in relations with administrative authorities. The situation is particularly developed – albeit not altogether without problems – in Vojvodina, where guarantees have recently been extended with respect to the Croatian language. Furthermore, in recent years, such official use has been expanded and introduced, often following intense debates, for example, in three municipalities in Southern Serbia for the Albanian language and in the municipalities of Novi Pazar, Sjenica and Tutin for the Bosniac language.

78. Bearing in mind that the present legal situation is rather complicated and there are various differences between the approaches adopted in different localities, the Advisory Committee believes that the authorities should review the situation in order to ensure that the above-mentioned legal obligations have been implemented *de facto* and *de jure* in all municipalities concerned. In this connection, it is important to ensure that persons belonging to national minorities can use their language not only in their relations with the municipal authorities but with all administrative authorities, including law-enforcement and other agencies of constituent states, located in the areas concerned.

79. The Advisory Committee has also been informed that in some areas where legal guarantees are in place, the persons concerned seem only rarely to invoke the possibility of using their minority language in contacts with administrative authorities. While there are many potential factors behind this state of affairs, the Advisory Committee is of the opinion that there is a need for additional measures to raise awareness, amongst persons belonging to the Bulgarian, Slovak and other national minorities, of their rights in this sphere.

80. As regards Montenegro, the Advisory Committee welcomes the fact that the right of persons belonging to national minorities to use their language in relations with administrative authorities is reflected in Article 72 of the Constitution and this has to an extent been implemented in practice in some areas for persons belonging to the Albanian minority. However, bearing in mind that the above-mentioned federal Law on the Protection of Rights and Freedoms of National Minorities is not applied by the authorities in Montenegro, there is a clear need to provide further guarantees and legal clarity as regards the implementation of this right. The Advisory Committee considers that this should be one of the main issues to be tackled in the forthcoming law on the protection of national minorities in Montenegro.

### **Article 11**

81. The Advisory Committee welcomes the fact that Article 52 of the Union Charter of Human Rights and Minority Rights and Civil Freedoms and Article 10 of the federal Law on the Protection of Rights and Freedoms of National Minorities guarantee the right of persons belonging to national minorities to use their language and script in private and in public. The Advisory Committee is however concerned that this right is not fully reflected in the wording of other pertinent legislation, notably in Article 20 the Law on the Official Use of Language and Script of Serbia. According to the said Article, the annotation of an enterprise, institution and other legal person may be written, in addition to Serbian, also in the language of a nationality that is in official use in the location of the seat or business of the entity. The Advisory Committee considers that the provision is too restrictive in so far as it may be interpreted as preventing persons belonging to a national minority from displaying certain information of a private nature visible to the public also in a minority language that is not in official use. Bearing in mind that the expression “of a private nature” in Article 11 of the Framework Convention refers to all that is not official, the Advisory Committee is of the opinion that Serbia should revise the said provision with a view to ensuring its compatibility with Article 11 of the Framework Convention.

82. The Advisory Committee notes that Article 16 of the federal Law on the Protection of Rights and Freedoms of National Minorities provides that persons belonging to national minorities have the right to choose and use their national symbols but that these symbols cannot be identical with symbols of another state. The Advisory Committee acknowledges the sensitivity of the issues involved and notes that the Framework Convention does not exclude restrictions on the use of symbols of foreign states by national minorities in official contexts. As regards the use of symbols of national minorities in private contexts, the Advisory Committee appreciates the authorities’ efforts to ensure that restrictions are introduced only when they are necessary to protect a legitimate public interest.

83. The Advisory Committee notes that there are important guarantees in Article 19 of the Law on the Official Use of Language and Script of Serbia, and there are certain commendable practices, concerning display of topographical indications intended for the public in those local self-government units where a minority language is in official use. At the same time, additional efforts are needed in practice, for example, in relation to the street names in areas inhabited by a substantial number of Romanians and Croats respectively. Also, more vigilance and consistency is needed to ensure that, in addition to the local-self government units, the agencies of the constituent states display inscriptions in minority languages in areas traditionally inhabited by a substantial number of persons belonging to a national minority when there is a sufficient demand.

84. As regards Montenegro, the Advisory Committee is of the opinion that there is a need to complement the general provision of the Constitution with further guarantees and legal clarity as regards the implementation of Article 11 of the Framework Convention.

## **Article 12**

85. The Advisory Committee notes that there have been serious shortcomings in the implementation of the principles of Article 12, paragraph 1, of the Framework Convention in Serbia and Montenegro, but the authorities are at present taking decisive measures to address these problems in line with Article 12 of the federal Law on the Protection of Rights and Freedoms of National Minorities, Article 71 of the Constitution of Montenegro and other pertinent provisions.

86. In this connection, the Advisory Committee refers in particular to the on-going efforts to improve, in co-operation with the Council of National Minorities, history and other textbooks that have to date contained only limited information on national minorities and their cultures and have in some cases contributed to negative stereotypes as regards Albanians, Germans, Muslims and persons belonging to other national minorities.

87. The Advisory Committee notes that the production and sales of textbooks is increasingly moving from the public sector to the private sector. The Advisory Committee urges the authorities to monitor this process carefully and, where necessary, take positive measures to ensure that this process does not harm the accessibility or affordability of textbooks in minority languages.

88. Additional efforts are also needed to address the various shortcomings that remain in terms of availability of qualified teachers (reported by Albanians, Slovaks, Romanians, Ruthenians and a number of other national minorities).

89. The Advisory Committee is deeply concerned about the access of Roma children to education in Serbia and Montenegro. The Advisory Committee finds it particularly alarming that, according to the research quoted by the authorities, in Serbia, Roma children account for 50 to 80 percent of the total number of pupils in the so-called "special schools" designed for children with mental disabilities. Roma are placed in these schools upon enrolment to elementary school on the basis of verbal tests that do not take into account the specific needs, social and cultural characteristics or language skills of Roma. The Advisory Committee stresses that the resulting situation is not compatible with Article 12, paragraph 3, of the Framework Convention. However, the Advisory Committee welcomes the fact that the authorities openly recognise the serious shortcomings outlined in the preceding paragraph and that the Ministry of Education of Serbia intends to devise, by the 2004-2005 school-year, a new enrolment policy that would, inter alia, be adapted to the children's knowledge of Serbian. The Advisory Committee urges the authorities in Serbia to pursue this issue as a matter of high priority and to introduce also additional measures to integrate in regular schools those Roma children who have been unduly placed in special schools. Furthermore, it urges the authorities in Montenegro to review the situation in this domain and to address any shortcomings identified.

90. A separate problem, which the authorities are actively seeking to address, is that in some municipalities the measures taken with respect to Roma pupils have led to the establishment of specific classes for Roma. The Advisory Committee considers that specific

classes devoted to one national minority as such (rather than, for example, to the teaching in/of their language and of their culture) risk placing the children concerned at a disadvantage and harming the implementation of Article 12 and the principle of intercultural dialogue contained in Article 6 of the Framework Convention. The Advisory Committee finds it important that the authorities pursue their efforts in this sphere, in consultations with the persons concerned, with a view to enabling and encouraging Roma children to stay in the regular classes, also bearing in mind the principles contained in the Committee of Ministers' Recommendation No. (2000) 4 on the education of Roma/Gypsy children in Europe.

91. The Advisory Committee notes that Roma face other serious problems in terms of their access to education, despite the fact that the authorities have launched some commendable initiatives to improve their situation, including the provision of free textbooks for Roma pupils and the introduction of positive measures to improve access of Roma to secondary education and higher education. One persistent problem is the low school attendance and high drop-out rates amongst Roma children, in particular girls, in elementary schools. The Advisory Committee considers that the draft Strategy for the Integration and Empowerment of Roma contains a number of initiatives that, if properly implemented, could significantly improve the situation. The Advisory Committee refers in particular to the conclusions of the draft Strategy that the educational system should reflect better the Roma culture and language, and that stereotypes regarding Roma should be eliminated and that the authorities should make additional efforts to monitor and support, including amongst Roma parents, the implementation of legal provisions concerning compulsory education and school attendance. Finally, the Advisory Committee believes that specific priority areas should also include the elimination of language barriers that many internally displaced Roma from Kosovo and Roma repatriated from abroad face in accessing education (see related comments under Article 14 below) and further attention by the authorities to pre-school education of Roma, taking into account results achieved by civil society initiatives in this field.

92. The Advisory Committee notes that one controversial question affecting the implementation of Article 12 of the Framework Convention in particular as regards persons belonging to the Albanian minority has been the non-recognition and delays in the recognition of certain diplomas from educational institutions abroad and from Kosovo. While there have been positive developments in respect of the recognition of diplomas from Kosovo, the Advisory Committee finds that there is a need to make further progress with respect to diplomas obtained in Albania or other foreign countries and it encourages the authorities to find legitimate and balanced solutions that reflect the principles of the Framework Convention.

### **Article 13**

93. The Advisory Committee welcomes the fact that Article 15 of the federal Law on the Protection of Rights and Freedoms of National Minorities recognises the right of persons belonging to national minorities to establish private educational institutions, schools and universities. The Advisory Committee stresses, however, that this right should also be better reflected in other pertinent legislation, notably in the Law on Elementary Schools of the Republic of Serbia, which at present excludes the establishment of regular private primary schools.

**Article 14**

94. The Advisory Committee welcomes the fact that the right of persons belonging to national minorities to receive education in their language is guaranteed at the constitutional level in Serbia and Montenegro and that the principles of Article 14 of the Framework Convention are well reflected in Article 13 of the federal Law on the Protection of Rights and Freedoms of National Minorities concerning minority language education as well as in the Law on Elementary Schools of the Republic of Serbia. The main rule resulting from these regulations is that instruction in a minority language or bilingual instruction is provided if 15 persons apply for it and that such teaching can also be organised for a smaller group upon approval by the Ministry of Education of Serbia.

95. As regards practice, the Advisory Committee welcomes the fact that instruction is provided in a number of minority languages and new initiatives, including instruction in Croatian, have been introduced in recent years in Vojvodina. There are however clear gaps in some areas in terms of the provision of teaching in or of certain minority languages. The Advisory Committee notes, in particular, that persons belonging to the Vlach national minority in North-Eastern Serbia are not provided any teaching in or of their language in the public education institutions. While noting that the authorities argue that this is due to a limited demand for such teaching, the Advisory Committee considers that, bearing in mind the clear interest in such language teaching expressed by organisations representing the Vlach minority, the authorities should take more proactive measures to analyse the level of demand and introduce such teaching whenever the criteria established by the domestic legislation are met.

96. The Advisory Committee notes that certain representatives of the Bosniac national minority regret the fact that there is no instruction available in the Bosniac language in the public educational system in Sandzak. While understanding the need to avoid undue separation in the educational system and while noting that there are different views on this issue amongst the Bosniacs, the Advisory Committee calls on the authorities to review the situation with a view to ensuring that the domestic legislation pertaining to the teaching in or of minority languages is fully implemented also in respect of the Bosniac language.

97. The Advisory Committee notes that the Serbian legislation provides that, when a minority language is the language of instruction, a certain amount of Serbian must nevertheless also be taught. While it is fully legitimate to ensure that the Serbian language is taught to all pupils, the Advisory Committee finds it important that the teaching of the Serbian language is introduced in a manner that does not discourage pupils from opting for minority language teaching. In this respect, the Advisory Committee is concerned about the reports that such Serbian language teaching has been introduced as an addition to, rather than part of, the regular school work of the pupils concerned. The Advisory Committee believes that such classes should be a truly integral part of the regular education of the pupils concerned and it calls on the authorities to review the situation and to introduce improvements where necessary.

98. Those persons belonging to national minorities who have Serbian as their main language of instruction have in some cases been provided optional classes on their minority language and culture. These optional classes, limited in most cases to two hours per week, are particularly important for certain national minorities, including the Bulgarians, Roma and

Slovaks. The Advisory Committee considers that in addition to reviewing the adequacy of the volume of such teaching, the authorities should ensure that it is satisfactorily integrated in the regular school curriculum of the pupils concerned.

99. In Montenegro, the legal situation concerning minority language teaching is less developed than that applicable in Serbia. Article 11, paragraph 2, of the General Law on Education envisages teaching in a minority language in the municipalities where a national minority constitutes “a majority or a significant part of the population” without providing clear criteria for the implementation of this provision. The Advisory Committee considers that there is a need to provide further guarantees and legal clarity as regards the implementation of this principle. In practice, Montenegro has introduced instruction in the Albanian language in a number of schools but the linguistic needs of other national minorities, including Roma, merit increased attention.

100. In this connection, the Advisory Committee is concerned about the reports indicating that many Roma displaced from Kosovo, and Roma repatriated from abroad, have faced particular problems as they have been placed in Serbian language schools without adequate support and without due regard to their linguistic backgrounds and needs. The Advisory Committee refers to the estimates provided by the authorities according to which, in Montenegro, 58 percent of the internally displaced Roma from Kosovo speak Albanian, and it calls on the authorities, both in Montenegro and in Serbia, to ensure that these persons are provided adequate opportunities to receive education in their language.

#### **Article 15**

101. The Advisory Committee welcomes the fact that a number of persons belonging to national minorities have obtained seats in elected bodies at the local and regional level, including in Vojvodina, and that clear improvements have recently been achieved in this respect for example in the representation of the Albanian minority in the municipalities of Southern Serbia. There is however scope for further improvement in a number of municipalities, and for example the low representation of Roma in elected bodies remains a serious problem.

102. A number of persons belonging to national minorities have also been elected to the legislative bodies of the constituent states of Serbia and Montenegro. However, as regards the Parliament of Serbia, representatives of national minorities are concerned that the threshold contained in the electoral legislation, stating that an electoral list must obtain a minimum of 5 percent of the votes cast in the constituency in order to obtain a seat in parliament, is an obstacle to further progress in this sphere. The Advisory Committee agrees that the said threshold can affect the participation of persons belonging to national minorities in the said legislature, and it is therefore pleased that the Ministry of Human and Minority Rights of the State Union has formed a working group to prepare draft amendments to those electoral laws which contain provisions unfavourable to national minorities and that one of the proposals being discussed is to exempt national minorities from the said threshold. However, the Advisory Committee notes that the authorities of the Republic of Serbia did not introduce legislative improvements in this respect for the early parliamentary elections scheduled for 28 December 2003.

103. The Advisory Committee finds that one particularly acute problem in terms of the implementation of Article 15 of the Framework Convention is the representation of national minorities in law-enforcement bodies and in the judiciary. Despite some positive initiatives,

such as the introduction of a multi-ethnic police force in Southern Serbia (see related comments under Article 6 above), the Advisory Committee is concerned about the reports indicating that in this key sphere the progress has been regrettably slow in Sandzak and in a number of other regions. In addition, the Advisory Committee regrets that the authorities were not in a position to submit quality data on the present situation in this field. The Advisory Committee calls on the relevant authorities, both in Serbia and in Montenegro, to review and monitor the situation with increased vigour and to take additional measures to ensure a better representation of national minorities, at all levels, in law-enforcement agencies and the judiciary.

104. Persons belonging to national minorities report significant differences in the level of their access to the decision-making processes of various governmental structures. A number of representatives of national minorities have had positive experiences in terms of their access to, and consultations by, such bodies as the Ministry of Human and Minority Rights of the State Union and the Provincial Secretariat for Regulations, Administration and National Minorities of Vojvodina. At the same time, the authorities of the constituent states responsible for specific sectors relevant for minority protection were seen by many as less open to regular involvement of national minorities in their decision-making processes. Bearing in mind that the authorities of the constituent states have the main responsibility for education and other key issues for the protection of national minorities, it is essential to ensure that persons belonging to national minorities are increasingly involved in the design, implementation and evaluation of their pertinent activities.

105. Furthermore, the Advisory Committee notes that, unlike in the Republic of Montenegro, there is no specific authority responsible for the coordination of minority issues in the Republic of Serbia. This may complicate the attempts of national minorities to contact and liaise with the appropriate authorities. The Advisory Committee encourages the authorities of the Republic of Serbia to consider, in consultation with the Ministry of Human and Minority Rights of the State Union and representatives of national minorities, whether a coordination function could be usefully introduced within the Republic's governmental structures.

106. The Advisory Committee considers that amongst the recent initiatives pertaining to the participation of national minorities in decision-making, the introduction of the National Councils of national minorities is of particular importance. Pursuant to Article 19 of the federal Law on the Protection of Rights and Freedoms of National Minorities, the National Councils are to represent national minorities in respect of official use of language, education, information in the language of the national minority and culture. They are also to participate in the decision-making as well as take decisions on issues in these fields. Furthermore, the said article stipulates that, in deciding on these issues, the bodies of the government, territorial autonomy or local self-government shall request the opinion of the councils.

107. The Advisory Committee notes with satisfaction that there is considerable interest in such National Councils amongst national minorities; ten national minorities have already elected their councils and the setting-up of additional councils is currently under preparation. The Advisory Committee is of the opinion that the Councils may become a central tool in the implementation of Article 15 of the Framework Convention. This will however depend largely on how consistently and widely the authorities involve the representatives of the councils in the decision-making. Some positive measures to involve the national councils have already been taken, for example, as regards reform of textbooks for national minorities.

However, in general, the exact role and scope of activities of the councils is yet to be determined. The Advisory Committee considers that one forum to develop the role of the councils in general would be the “Federal” Council for National Minorities, envisaged in Article 18 of the federal Law on the Protection of Rights and Freedoms of National Minorities, and it urges the authorities to address the delays in the setting up of this body (see also related comments under Article 6 above).

108. The issue of funding of the National Councils has not yet been adequately addressed. While understanding the economic constraints involved, the Advisory Committee calls on the authorities to address this issue as a matter of priority with a view to ensuring adequate funding is allocated in a manner that contributes to the independence of these councils. At the same time, the Advisory Committee finds it essential for the effectiveness and credibility of the National Councils that they pursue their work in an inclusive and balanced manner without undue politicisation. These aims should also be taken into account in the on-going work to draw up legislation on the election of the National Councils.

109. While understanding the privileged position envisaged for the National Councils as partners of the authorities, the Advisory Committee finds it important that they are not perceived as the sole and exclusive interlocutor of the authorities in minority questions and that also other relevant actors – including NGOs and associations of national minorities – are, as appropriate, brought into the relevant decision-making processes.

110. The Advisory Committee notes that, in Montenegro, the main body established for the protection of national minorities is the Republic Council for the Protection of Rights of Members of National and Ethnic Groups, which was set up in accordance with Article 76 of the Constitution and whose composition is, under Article 9 of the decision on its competences and composition, to reflect the “representation of all religious, national and ethnic groups”. The Advisory Committee welcomes the fact that the need to have a body devoted to the protection of national minorities is recognised at the constitutional level. However, the Advisory Committee is aware that the actual impact of the said body on the protection of national minorities has been largely questioned amongst national minorities. Its working methods have been criticised as ineffective and its role in decision-making has been seen as marginal by a number of commentators. Against this background, the Advisory Committee urges the authorities, including in the context of the on-going drafting of a law on national minorities, to review the working methods of the Council and introduce improved mechanisms for involving persons belonging to national minorities in decision-making affecting them.

111. The Advisory Committee recalls that decentralised or local forms of government are often an important factor in creating the necessary conditions for effective participation of persons belonging to national minorities in decision-making. This issue is of great significance in Serbia and Montenegro, where the undue emphasis on centralisation by the Milosevic regime dramatically undermined the protection of national minorities. The Advisory Committee notes with satisfaction that the present authorities have taken certain steps to advance decentralisation. These include the adoption of new legislation on local self-government in Serbia and in Montenegro and improved commitment to decentralisation for example in the field of education. However, the Advisory Committee considers that the protection of national minorities would benefit from further development of the authorities’ approach to decentralisation and that this should also be reflected in the context of the pending constitutional reforms in the constituent states.

112. As regards Vojvodina, the adoption of the Law on Defining of Competences of an Autonomous Province (the so-called Omnibus Law) in February 2002 had clear relevance also for the protection of national minorities. With this law, the province regained administrative authority in a number of fields pertaining to national minorities and it can be seen as a positive step in the implementation of Article 15 of the Framework Convention. At the same time, the Advisory Committee is aware that many representatives of national minorities argue that the province should have more far-reaching competences, including in domains pertaining to minority protection. The Advisory Committee calls on the authorities to take the views of persons belonging to national minorities carefully into account in addressing this issue in the constitutional reform and other pertinent processes.

113. The Advisory Committee notes with concern the shortcomings that remain as concerns the effective participation of persons belonging to national minorities in economic life, in particular with respect to their access to the labour market. While recognising that unemployment and low income are problems affecting the society at large, they appear to affect particularly severely persons belonging to Roma and certain other national minorities. As regards Albanians, Bosniacs and Bulgarians, these problems are at least partially due to the fact that a large number of persons belonging to these national minorities are concentrated in areas with particularly severe economic difficulties. The Advisory Committee welcomes the initiatives that the authorities have already launched to address these problems and believes that they should be pursued decisively and expanded (see related comments under Article 4 above).

#### **Article 16**

114. The Advisory Committee notes that the policies of the Milosevic regime and the resulting conflicts seriously undermined the principles contained in Article 16 of the Framework Convention and altered substantially the proportions of populations in a number of areas inhabited by persons belonging to national minorities. Bearing in mind this background and the fact that the situation with regard to the proportion of national minorities in different areas continues to change as a result of internal displacement and other factors, the Advisory Committee calls on the authorities to pay particular attention to the principles contained in Article 16 of the Framework Convention.

#### **Article 17**

115. The Advisory Committee draws attention to the concerns that the future entry of neighbouring states of Serbia and Montenegro into the European Union could cause new obstacles for persons belonging to the Hungarian and other national minorities in their contacts across frontiers. The Advisory Committee supports the efforts of Serbia and Montenegro to ensure with its neighbours, *inter alia*, that any visa requirements are implemented in a manner that does not cause undue restrictions on the right of persons belonging to national minorities to establish and maintain contacts across frontiers.

#### **Article 18**

116. The Advisory Committee welcomes the fact that Serbia and Montenegro is party to a number of bilateral treaties and cultural agreements touching upon the protection of persons belonging to national minorities, and that new agreements have recently been signed with

Romania and Hungary respectively. It also supports the on-going attempts to conclude additional bilateral agreements of this nature, including with Croatia.

#### **Article 19**

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

### **IV. MAIN FINDINGS AND COMMENTS OF THE ADVISORY COMMITTEE**

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

#### **In respect of general remarks**

119. The Advisory Committee *finds* that the Union of Serbia and Montenegro is a result of recent fundamental constitutional changes and that it is still undergoing comprehensive reforms which also affect the protection of national minorities. The Advisory Committee *considers* that there is a need to provide improved institutional stability, including through an accelerated constitutional reform process in Serbia.

120. The Advisory Committee *finds* that there is uncertainty as to the allocation of responsibilities between various governmental structures and *considers* it important that new initiatives are implemented to increase the level of contacts and co-operation between the authorities in the field of the protection of national minorities.

121. The Advisory Committee *finds* that uncertainty and flux also characterises the status of relevant legislation and *considers* it instrumental that in the on-going reforms, the achieved level of human and minority rights will not be reduced and that new legislation in this field is endorsed as widely as possible.

#### **In respect of Article 3**

122. The Advisory Committee finds that it would be possible to consider the inclusion of persons belonging to additional groups in the application of the Framework Convention on an article-by-article basis, and considers that the authorities should examine this issue in consultation with those concerned.

123. The Advisory Committee *finds* that there have been debates in Serbia and Montenegro on the inter-relation between different identities that have certain similarities and *considers* that the authorities should continue their efforts to exclude all attempts to impose a specific identity on the persons concerned.

124. The Advisory Committee *finds* that ethnicity data is collected in various contexts and *considers* that the authorities should ensure that the right not to be treated as a person belonging to a national minority is protected, including in schools.

**In respect of Article 4**

125. The Advisory Committee *finds* that the legal guarantees against discrimination are limited in their scope and *considers* that they should be developed further.

126. The Advisory Committee *finds* that the problem of *de facto* discrimination of persons belonging to national minorities still persists, in particular in relation to Roma. It *considers* that the authorities should step up monitoring in this field and give thought to the setting up of specific structures to combat ethnic discrimination and incorporate these issues as a main element of the future activities of the Ombudsman offices.

127. The Advisory Committee *finds* that the shortcomings in the effectiveness and independence of the judiciary in Serbia and Montenegro as well as in the functioning of the prosecuting bodies negatively affect the implementation of the Framework Convention and *considers* that they should be addressed as a matter of priority.

128. The Advisory Committee *finds* that the Court of Serbia and Montenegro has not yet started operating and *considers* it important that the Court commence its activities as soon as possible.

129. The Advisory Committee *finds* that positive measures in the field of employment are important, in particular for persons belonging to those national minorities that were targets of past discriminatory measures in this sphere. The Advisory Committee *considers* that the positive measures that have been launched in this field should be expanded.

130. The Advisory Committee *finds* that the authorities have not been able to secure full and effective equality between the majority population and Roma and that the housing and health situation in informal Roma settlements, as described in various reports, is alarming and not compatible with the principles contained in Article 4 of the Framework Convention. The Advisory Committee *considers* that these problems merit urgent attention and targeted measures, including as regards the legal status of such settlements.

131. The Advisory Committee *finds* that problems of Roma are exacerbated by the fact that many of them do not possess personal documents and *considers* that the authorities should support additional initiatives aimed at improving Roma's access to such documents.

132. The Advisory Committee *finds* that the authorities' increasing commitment to Roma issues is reflected in the initiative to draw up a comprehensive Strategy for the Integration and Empowerment of Roma and *considers* that a strategy should be finalised and adopted as a matter of urgency, and that such a strategic approach should also be adopted and implemented by the authorities of Montenegro.

133. The Advisory Committee *finds* that there are wide discrepancies between the existing official statistics of the Government and the unofficial estimates of the actual number of persons belonging to certain national minorities in Serbia and Montenegro and *considers* that the authorities should identify further ways and means of obtaining reliable statistical data.

### **In respect of Article 5**

134. The Advisory Committee *finds* that state support for societies protecting and promoting cultures of national minorities has been provided often on an *ad hoc* basis only and there are substantial differences in the commitment of the relevant authorities to such initiatives. The Advisory Committee *considers* that the authorities should pay careful attention to the initiatives of persons belonging to those groups that have only relatively recently been defined as national minorities. Furthermore, it *considers* that the authorities should pursue the establishment of the Fund for the Promotion of Social, Economic, Cultural and General Development of National Minorities as a matter of priority and ensure the involvement of representatives of national minorities in the relevant decision-making process.

135. The Advisory Committee *finds* that in Montenegro certain promising initiatives launched to create mechanisms for the support of cultures of national minorities have not developed according to the expectations of persons belonging to national minorities and *considers* that improved mechanisms should be introduced.

### **In respect of Article 6**

136. The Advisory Committee *finds* that inter-ethnic relations are still seriously affected by the aggressive policies of the past regime and certain disconcerting instances of hostility against persons belonging to national minorities are reported. The Advisory Committee *considers* that promotion of tolerance should be consistently reflected in the statements and acts of authorities and other relevant actors and that initiatives aimed at promoting a spirit of tolerance and intercultural dialogue need to be expanded further, through, *inter alia*, the local level councils for inter-ethnic relations and the “Federal” Council of National Minorities.

137. The Advisory Committee *finds* that there is a need to ensure that ethnic discrimination and other problems faced by persons belonging to national minorities are addressed with increasing vigour by the law-enforcement authorities and *considers* that such important initiatives as the introduction of a multi-ethnic police force in Southern Serbia should be expanded further.

138. The Advisory Committee *finds* that in order to create an atmosphere of mutual respect and co-operation it is essential that the past practices of hostility and violence towards persons belonging to national minorities are addressed in an adequate manner and it *considers* that these issues need to be treated by the authorities increasingly effectively.

139. The Advisory Committee *finds* that some media report in a manner that strengthens existing negative stereotypes of certain minorities. The Advisory Committee *considers* that the authorities should pay increased attention to the implementation of the provisions on the incitement to national, racial and religious hatred and that local NGO monitoring and the launching of activities of a legitimate Broadcasting Council are also essential in ensuring balanced reporting on minority issues.

140. The Advisory Committee *finds* that human trafficking has a negative impact on the protection of persons belonging to national minorities in Serbia and Montenegro, and the Advisory Committee *considers* it essential that decisive measures are taken to prevent,

investigate and prosecute such cases and to protect the victims as well as to raise awareness of these issues amongst Roma women and other potential victims.

141 The Advisory Committee *finds* that certain manifestations of anti-semitism have been reported in Serbia and Montenegro and *considers* that particular attention should be paid to the prevention as well as investigation and prosecution of such incidents.

#### **In respect of Article 7**

142. The Advisory Committee *considers* it important to ensure that any undue citizenship criteria or other restrictions are eliminated from the constitutional and other guarantees of the constituent states of the Union pertaining to the implementation of Article 7 of the Framework Convention.

#### **In respect of Article 8**

143. The Advisory Committee *finds* that there are certain reported differences in approach to different religions in the army and in other contexts, and it *considers* that, where such differences exist, particular attention must be paid to the situation of persons belonging to national minorities.

#### **In respect of Article 9**

144. The Advisory Committee *finds* that there is a lack of clarity in certain language requirements contained in the Broadcasting Law of Serbia and *considers* that the authorities should more clearly exclude the application of undue language quota on minority language programming.

145. The Advisory Committee *finds* that the legislation of Montenegro on minority languages programmes is of a rather general nature and *considers* that more detailed guarantees for the implementation of Article 9 of the Framework Convention should be introduced.

146. The Advisory Committee *finds* that the remaining concerns about access to the media expressed by certain national minorities, such as the Vlachs and Roma, merit further attention.

#### **In respect of Article 10**

147. The Advisory Committee *finds* that the present legal situation pertaining to the implementation of Article 10 of the Framework Convention is rather complicated and *considers* that the authorities should review the situation in order to ensure that the pertinent legal obligations have been implemented in all municipalities concerned.

148. The Advisory Committee *finds* that there is a need to provide further guarantees and legal clarity as regards the implementation of the right of persons belonging to national minorities to use their language in relations with administrative authorities in Montenegro and *considers* that this should be tackled in the forthcoming law on the protection of national minorities.

### **In respect of Article 11**

149. The Advisory Committee *finds* that the right of persons belonging to national minorities to use their language and script in private and in public is not fully reflected in all provisions of the Law on the Official Use of Language and Script of Serbia and *considers* that the authorities should ensure the law's compatibility with Article 11 of the Framework Convention.

150. The Advisory Committee *finds* that additional efforts are needed in practice to implement the guarantees concerning display of topographical indications.

151. The Advisory Committee *finds* that, in Montenegro, there is a need to complement the general provision of the Constitution with further guarantees and legal clarity as regards the implementation of Article 11 of the Framework Convention.

### **In respect of Article 12**

152. The Advisory Committee *finds* that that the production and sales of textbooks is increasingly moving from the public sector to the private sector and *considers* that the authorities should ensure that this process does not harm the accessibility or affordability of textbooks in minority languages.

153. The Advisory Committee *finds* that additional efforts are needed to address the various shortcomings that remain in terms of availability of qualified teachers.

154. The Advisory Committee *finds* that, in Serbia, Roma children are frequently placed in the so-called "special schools" designed for children with mental disabilities, on the basis of tests that do not take into account the needs and culture of Roma. The Advisory Committee *finds* that the resulting situation is not compatible with Article 12, paragraph 3, of the Framework Convention and *considers* that the authorities should pursue as a matter of high priority their plans to address this issue.

155. The Advisory Committee *finds* that in some municipalities specific classes have been established for Roma and *considers* that the authorities should pursue their efforts in this sphere with a view to enabling and encouraging Roma children to stay in the regular classes.

156. The Advisory Committee *finds* that low school attendance and high drop-out rates are a problem amongst Roma children, and it *considers* that the draft strategy for the Integration and Empowerment of Roma contains a number of initiatives that could significantly improve the situation.

157. The Advisory Committee *finds* that the non-recognition and delays in the recognition of certain diplomas from educational institutions abroad and from Kosovo has been controversial, and it *considers* that the authorities should seek legitimate and balanced solutions to these issues.

**In respect of Article 13**

158. The Advisory Committee *finds* that the right of persons belonging to national minorities to establish private educational institutions, schools and universities should be better reflected in the Law on Elementary Schools of the Republic of Serbia and *considers* that the authorities should address this issue.

**In respect of Article 14**

159. The Advisory Committee *finds* that there are gaps in some areas in terms of the provision of teaching in or of certain minority languages and *considers* that the authorities should take more proactive measures to analyse the level of demand and review the situation with a view to ensuring that the domestic legislation pertaining to the teaching in or of minority languages is fully implemented.

160. The Advisory Committee *finds* that the Serbian language teaching has reportedly been in some cases introduced as an addition to the regular school work of the pupils receiving instruction in a minority language. The Advisory Committee *considers* that such teaching should be a truly integral part of the regular education of the pupils concerned and that the authorities should review the situation and introduce improvements where necessary.

161. The Advisory Committee *finds* that optional classes on a minority language and culture are particularly important for certain national minorities and *considers* that the authorities should review the adequacy of the volume of such teaching and its integration in the regular school curriculum.

162. The Advisory Committee *finds* that in Montenegro the legal situation concerning minority language teaching is less developed, and it *considers* that there is a need to provide further guarantees and legal clarity in this sphere.

163. The Advisory Committee *finds* that many displaced and repatriated Roma have reportedly faced particular problems as they have been placed in the Serbian language schools without adequate support and without due regard to their linguistic backgrounds and needs. The Advisory Committee *considers* that the authorities should ensure that these persons are provided adequate opportunities to receive education in their language.

**In respect of Article 15**

164. The Advisory Committee finds that there is scope for further improvements in a number of municipalities in terms of representation of national minorities in elected bodies and that, as regards the Parliament of Serbia, representatives of national minorities are concerned that the 5 percent threshold contained in the electoral legislation is an obstacle to further progress in this sphere. The Advisory Committee considers that the authorities should address the issue of electoral legislation as a matter of priority, bearing in mind the impending parliamentary elections in Serbia.

165. The Advisory Committee finds that one particularly acute problem is the representation of national minorities in law-enforcement bodies and in the judiciary and considers that the authorities should take additional measures to ensure a better representation of national minorities in these fields.

166. The Advisory Committee finds that persons belonging to national minorities report significant differences in the level of their access to the decision-making processes of various governmental structures and considers it essential to ensure that persons belonging to national minorities are increasingly involved also in the pertinent activities of the authorities of the constituent states and that the authorities examine whether a coordination function for minority issues could be usefully introduced within Serbia's governmental structures.

167. The Advisory Committee finds that the exact role and scope of the activities of the National Councils of national minorities is yet to be determined and considers that the authorities should address the delays in the setting-up of the "Federal" Council for National Minorities and address the issue of funding of National Councils as a matter of priority.

168. The Advisory Committee finds that, in Montenegro, the impact of the Republic Council for the Protection of Rights of Members of National and Ethnic Groups has been largely questioned amongst national minorities, and it considers that the authorities should introduce improved mechanisms for involving persons belonging to national minorities in decision-making affecting them.

169. The Advisory Committee *finds* that the protection of national minorities would benefit from further development of the authorities' approach to decentralisation and *considers* that this should also be reflected in the context of the pending constitutional reforms.

170. The Advisory Committee *finds* that shortcomings remain as concerns the effective participation of persons belonging to national minorities in economic life and *considers* that the initiatives to address these problems should be pursued decisively and expanded.

## V. CONCLUDING REMARKS

171. The Advisory Committee considers that the concluding remarks below reflect the main thrust of the present opinion and that they could therefore serve as the basis for the corresponding conclusions and recommendations to be adopted by the Committee of Ministers.

172. The Advisory Committee notes with satisfaction that, while the constitutional structures have undergone fundamental changes, the authorities of Serbia and Montenegro have taken decisive steps to protect national minorities in such fields as education and language rights. The Advisory Committee welcomes in particular the adoption of the Union Charter of Human Rights and Minority Rights and Civil Freedoms and the federal Law on the Protection of Rights and Freedoms of National Minorities, which constitute a good basis for the implementation of the Framework Convention and contain promising innovations such as the National Councils of national minorities. It further recognises the commitment of the Ministry for Human and Minority Rights to the implementation of the said laws.

173. At the same time, the Advisory Committee notes that a number of shortcomings remain. There is for example a need to clarify the legal status of the legislation concerning national minorities adopted by the former federal authorities. In Montenegro, the authorities should complete their work to couple the pertinent constitutional provisions with more detailed legal guarantees for the protection of national minorities, paying particular attention

to the use of minority languages in contacts with administrative authorities and in the media as well as teaching in and of minority languages.

174. The Advisory Committee considers that the main problems in the protection of national minorities in Serbia and Montenegro pertain to the implementation of the relevant norms in practice, which is at times hampered by the limited co-operation between the relevant authorities of the State Union and its constituent states and the lack of clarity as to their relative competences. This needs to be addressed, including through improved co-operation from the side of the Montenegrin authorities and accelerated constitutional reform and institutional stabilisation in Serbia.

175. Furthermore, inter-ethnic relations are still seriously affected by the aggressive policies of the past regime and the legacy of the resulting conflicts. Despite marked progress, manifestations of inter-ethnic tension are still reported and the efforts to build tolerance and trust, which have been valuable for example in respect of the Albanian minority in Southern Serbia, need to be expanded further. Also, the Advisory Committee finds that the protection of national minorities should receive greater attention from law-enforcement agencies and that further improvements in the representation of the Bosniac and other national minorities in these agencies, as well as within the judiciary, should be achieved.

176. The Advisory Committee considers that both legislative and practical measures are needed to improve the implementation of the principles of non-discrimination and full and effective equality. In this respect, the serious difficulties faced by displaced and other Roma merit urgent attention including in terms of the adoption and implementation of a comprehensive Roma strategy. These difficulties are particularly apparent in such fields as health, housing and employment as well as in education, where the problem of undue placing of Roma children in schools for persons with mental disabilities needs to be addressed as a matter of high priority.

177. The Advisory Committee notes that there are wide variations between regions in terms of efforts taken to protect languages and cultures of national minorities. Whereas in Vojvodina a number of commendable initiatives have been introduced, the situation is considerably less developed, for example, with respect to the protection of the Vlach national minority in North-Eastern Serbia. The Advisory Committee finds that the authorities should undertake more proactive monitoring and other measures to ensure that the relevant legislation, including the pertinent provisions of the federal Law on the Protection of Rights and Freedoms of National Minorities, is consistently implemented.