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

COMMENTARY ON

**THE EFFECTIVE PARTICIPATION OF PERSONS
BELONGING TO NATIONAL MINORITIES
IN CULTURAL, SOCIAL AND ECONOMIC LIFE AND IN PUBLIC AFFAIRS**

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EXECUTIVE SUMMARY

Article 15 of the Framework Convention for the Protection of National Minorities stipulates that State Parties “shall create the conditions necessary for the effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs, in particular those affecting them”.

The purpose of this Commentary is to set out the Advisory Committee’s interpretation of the provisions within the Framework Convention relating to the effective participation of persons belonging to national minorities, drawing on the Advisory Committee’s country-specific Opinions adopted between 1999 and 2007. The Commentary aims to provide a useful tool for State authorities and decision-makers, public officials, organisations of minorities, non-governmental organisations, academics and other stakeholders involved in minority protection.

While the Commentary primarily focuses on participatory mechanisms at the domestic level, it is crucial that persons belonging to national minorities are also involved at all stages of the monitoring and implementation process of international instruments, and in particular the Framework Convention, in order to achieve a balanced and quality outcome.

PARTICIPATION IN ECONOMIC AND SOCIAL LIFE

Effective participation of persons belonging to national minorities encompasses their economic and social life as well as their engagement in the political and public sphere

Effective participation requires States not only to remove the barriers preventing minorities’ equal access to economic sectors and social services, so as to establish equal opportunities, but also demands that States promote their participation in the delivery of benefits and outcomes.

Reliable and easily accessible data is an essential precondition for developing effective measures to address socio-economic discrimination and encourage effective equality. Therefore, State Parties should regularly collect up-to-date data on the socio-economic and educational situation of persons belonging to national minorities in order to compare it with the situation of the majority population. The collection of such data should be made in accordance with international standards on personal data protection.

Effective participation in socio-economic life requires the existence of comprehensive legislation prohibiting discrimination on ethnic grounds, by public and private actors. This legislation should extend to employment, housing, health care and social protection. It is also important that appropriate legal remedies are available in cases of discrimination, and that particular attention is paid to multiple discrimination against women belonging to national minorities.

The participation of national minorities in socio-economic life is sometimes hampered by administrative obstacles, and by an institutional lack of sensitivity to their cultural background and specific needs. State Parties should develop training programmes for public service staff to enable them to adequately respond to the needs of national minorities.

Information on public services and welfare institutions needs to be easily accessible and, where appropriate, available in the languages of national minorities. Public institutions should promote the recruitment and retention of persons belonging to national minorities.

Those persons belonging to national minorities living in economically depressed regions, e.g. rural, isolated and border areas, war-damaged areas or regions affected by de-industrialisation, should be the target of specific measures to enable effective socio-economic participation. Such measures could be promoted through bilateral and cross-border co-operation where appropriate.

Furthermore, specific social and economic measures are often required for persons belonging to disadvantaged minority groups to ensure their effective equality.

In order to promote effective integration of Roma and Travellers in socio-economic life, comprehensive and long-term strategies should be designed and effectively implemented. The implementation of these strategies should be monitored, and the effects evaluated in close co-operation with those concerned.

State Parties should remove undue obstacles and excessive regulations hindering the practice of economic activities specific to certain minority groups, and which are under threat.

In order to guarantee full and effective equality for persons belonging to national minorities in privatisation processes, the authorities should not only ensure transparency, but also set up monitoring and evaluation mechanisms. Following armed conflicts, State Parties should ensure that property claims made by persons belonging to national minorities are processed and implemented in an efficient, transparent and non-discriminatory manner.

Land traditionally used by persons belonging to certain groups, such as indigenous peoples, should be given particular and effective protection. Representatives of these groups should be closely involved in any decision-making on land rights and land usage in their traditional areas of residency.

Access to the labour market, basic social benefits and public services should not be restricted by undue residency or language requirements, which particularly affect persons belonging to some national minorities. At the same time, State Parties should ensure that residency registration processes are easily accessible and do not discriminate -directly or indirectly - against persons belonging to national minorities and that they are regularly monitored.

In the housing sector, State Parties should take resolute measures to put an end to discriminatory practices that lead to segregation and marginalisation of persons belonging to certain national minorities. Moreover, they should develop comprehensive sectoral policies to remedy problems of substandard housing and lack of access to basic infrastructure, which particularly affect persons belonging to some minorities.

In the health care sector, State Parties should ensure the effective involvement of persons belonging to the minorities concerned, in the design, implementation and evaluation of measures taken to address health care issues, so as to better respond to their specific needs. Medical and administrative staff employed in health services should receive adequate training, and the recruitment of health care mediators belonging to national minorities should be encouraged.

Moreover, policies promoting equal opportunities should not be limited to access to health care only. They should also aim at the provision of quality services to persons belonging to national minorities, which have the same impact as the provisions for the rest of the population.

PARTICIPATION IN CULTURAL LIFE

When designing and implementing cultural policies that affect persons belonging to national minorities, it is essential that the authorities adequately consult those national minorities and involve them in the decision-making process to meet their needs effectively. This applies equally in the allocation of public support for minority cultures.

Processes of decentralisation, and the delegation of competences to cultural autonomies, can play an important role in enabling national minorities to participate effectively in cultural life.

The media play a pivotal role in cultural life; with this in mind, persons belonging to national minorities need to be able to create and make use of their own media. It is equally important that they are represented in the mainstream media, in order to present their views on issues of interest to the society at large.

PARTICIPATION IN PUBLIC AFFAIRS

Persons belonging to national minorities can be involved in public affairs through a number of arrangements, such as representation in elected bodies and public administration at all levels, consultative mechanisms or cultural autonomy arrangements. Particular attention should be paid to the balanced representation of women and men belonging to national minorities.

Notwithstanding that minority representation in elected bodies can be achieved by means other than the formation of specific political parties, legislation prohibiting the formation of political parties on an ethnic or religious basis can lead to undue limitations of the right

to freedom of association. Any limitation should be in line with the principles embedded in the norms of international law. Parties representing, or promoting the interests of persons belonging to national minorities should have adequate opportunities to campaign during elections.

Following due consultation, constitutional guarantees should be coupled with effective implementation of legislation to ensure the effective participation of persons belonging to national minorities. Whatever the arrangements chosen, it is advisable to carry out a periodical review in order to ensure that they adequately reflect developments in society.

As a rule, measures facilitating the representation of persons belonging to national minorities in elected bodies should be supported. Exemptions from threshold requirements, reserved seats or veto rights have often proved useful to enhance their participation in elected bodies. However, the mere introduction of such arrangements does not automatically provide persons belonging to national minorities with a genuine and substantial influence on decision-making. In certain specific circumstances, a system of 'veto' or 'quasi veto' rights can even lead to a paralysis of State institutions. In such cases, alternative ways of enabling persons belonging to national minorities to take part in the decision-making should be identified.

The introduction of parliamentary committees overseeing minority issues can contribute to keeping the concerns of persons belonging to national minorities high on the parliamentary agenda. These concerns should also, however, be highlighted in other parliamentary committees.

The way in which constituency or administrative boundaries are drawn may have an impact on minority participation. States should ensure that constituency changes do not reduce the opportunities for election of persons belonging to national minorities.

Citizenship is an important element which can influence minority participation in public affairs. While it is legitimate to impose certain restrictions on non-citizens concerning their right to vote and to be elected, they should not be applied more widely than is necessary. States are encouraged to provide non-citizens with an opportunity to vote and to stand as candidates in local elections. Language proficiency requirements imposed on candidates for parliamentary and local elections are not compatible with Article 15 of the Framework Convention, in so far as they have a negative impact on the effective participation of persons belonging to national minorities in public affairs.

Consultation mechanisms are an additional way to enable persons belonging to national minorities to take part in decision-making processes. However, just as representation in elected bodies alone may be insufficient to ensure substantial influence on the decision-making, mere consultation does not constitute a sufficient mechanism for ensuring effective participation of persons belonging to national minorities. Bearing in mind the need to take into account national circumstances, States should be encouraged to design a system that provides for both representation of and consultation with national minorities.

Consultative bodies should have a clear legal status and the obligation to consult them should be entrenched in law. Furthermore, the involvement in decision-making processes should be of a regular and permanent nature. Due attention should be paid to ensuring that consultative bodies are inclusive and representative. Appointment procedures should be transparent and designed in close consultation with national minority representatives. They should be periodically reviewed to ensure that the bodies concerned represent a wide range of views amongst persons belonging to national minorities. Consultative bodies should also regularly address issues of concern to numerically smaller minorities and persons belonging to national minorities living outside areas with traditional or substantial minority populations.

Public administration, judiciary, law-enforcement agencies and executive bodies should, to the extent possible, reflect the diversity of society. The recruitment of persons belonging to national minorities in the public sector should therefore be promoted. Measures aimed at reaching a rigid, mathematical equality in the representation of various groups should, however, be avoided. State language proficiency requirements placed on public administration personnel should not go beyond what is necessary for the post or service at issue. Increased attention should be given to Roma and Travellers and numerically smaller national minorities, who are often strongly under-represented in public administration.

States are encouraged to establish governmental structures dealing with national minorities. The role of these structures should be to initiate and coordinate governmental policy in the field of minority protection. Coordination between these structures on the one hand, and minority consultative mechanisms and other governmental structures on the other, is essential. Such arrangements can help ensure that minority concerns are prioritised in governmental policies.

The constitutional design of a State can have a decisive impact on the effective participation of persons belonging to national minorities in public life. Bearing in mind the need to take account of national circumstances, sub-national forms of government and minority autonomous self-governments can be valuable tools to foster effective participation of persons belonging to national minorities in many areas of life. Irrespective of the constitutional design of a State, the central authorities should remain committed to their responsibility towards persons belonging to national minorities resulting from the international and national legislative framework.

Adequate human and financial resources should be made available to enable bodies involved in minority issues to effectively carry out their work.

It is essential that the public is adequately informed, both by mainstream and minority media, about political issues relevant to persons belonging to national minorities. Hence it is important to ensure adequate participation of persons belonging to national minorities in various media-related bodies, such as supervisory boards and independent regulatory bodies, public service broadcast committees and auditors' councils.

PART I	INTRODUCTION
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1. The effective participation of persons belonging to national minorities in various areas of public life is essential to ensure social cohesion and the development of a truly democratic society. The Framework Convention for the Protection of National Minorities¹ (hereinafter ‘the Framework Convention’) therefore stipulates in its Article 15 that State Parties “shall create the conditions necessary for the effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs, in particular those affecting them”.

2. In view of the importance of effective participation for the protection of persons belonging to national minorities, the Advisory Committee on the Framework Convention (hereinafter ‘the Advisory Committee’) decided to devote its second thematic commentary to the participation of persons belonging to national minorities in social, economic and cultural life and in public affairs. The main objective of this commentary is to highlight the interpretation given by the Advisory Committee, mainly in its country-specific Opinions adopted between 1999 and 2007, to the provisions of the Framework Convention relating to effective participation of persons belonging to national minorities. The commentary aims to provide a useful tool for State authorities and decision-makers, public officials, organisations of minorities, non-governmental organisations, academics and other stakeholders involved in minority protection.

3. The Preliminary Remarks to the Commentary introduce a reflection on the importance of participation and its relevance for the effective enjoyment of other rights guaranteed by the Framework Convention. The Commentary itself analyses a number of key findings on effective participation of persons belonging to national minorities, as identified in particular in the country-specific Opinions under various Articles of the Framework Convention (Part III). In its Conclusions, the Commentary highlights the main challenges which remain in this field and identifies areas which will need to be given further attention by the Advisory Committee in the future country-by-country monitoring. The Appendix contains an analysis of the relations between Article 15 and other articles of the Framework Convention. This Commentary is to be understood as a living document, which will need to be further developed as monitoring under the Framework Convention progresses.

4. In elaborating this Commentary, the Advisory Committee carried out extensive consultations with national minority representatives and organisations, academics and other stakeholders in order to ensure that the Commentary be as comprehensive as possible and that it adequately reflects the main challenges facing national minorities.

¹ The Framework Convention for the Protection of National Minorities, which was adopted in 1994, is the main Council of Europe instrument to protect persons belonging to national minorities. It entered into force in 1998 and it has so far been ratified by 39 Member States.

PART II PRELIMINARY REMARKS

**1. INTERNATIONAL STANDARDS FOR EFFECTIVE PARTICIPATION
OF PERSONS BELONGING TO NATIONAL MINORITIES: THE
FRAMEWORK CONVENTION AND OTHER INTERNATIONAL
INSTRUMENTS**

5. The protection of national minorities and of the rights and freedoms of persons belonging to national minorities, as embedded in the Framework Convention for the Protection of National Minorities, forms an integral part of the international protection of human rights.² Hence the right to effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs, as spelled out in Article 15 of the Framework Convention, forms also part of the international protection of human rights.

6. Although the Framework Convention protects the rights of individual persons belonging to national minorities,³ the enjoyment of certain rights, including the right to effective participation, has a collective dimension. This means that some rights can be effectively enjoyed only in community with other persons belonging to national minorities.⁴

7. Besides the Framework Convention, there are other international documents that are relevant for the participation of persons belonging to national minorities. The Advisory Committee has taken into account the standards contained in these international texts when preparing this Commentary. They range from legally binding standards to recommendations and guidelines. Legally binding standards include those contained in the European Convention for the Protection of Human Rights and Fundamental Freedoms and the related case-law of the European Court of Human Rights, the revised European Social Charter or the European Charter for Regional or Minority Languages. The Lund Recommendations on the Effective Participation of National Minorities in Public Life published by the OSCE High Commissioner on National Minorities, have also been carefully considered by the Advisory Committee in its analysis of Article 15 of the Framework Convention. The United Nations also contributed to developing norms in the field of participation, notably through the Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities (adopted in 1992), the Declaration on the Rights of Indigenous Peoples (adopted in 2007) and, on a more general level, in the International Convention on the Elimination of all forms of Racial Discrimination.

² See Article 1 of the Framework Convention.

³ See Explanatory report to the Framework Convention on Article 1 of the Framework Convention, paragraph 31.

⁴ See Article 3 paragraph 2 of the Framework Convention: “Persons belonging to national minorities may exercise the rights and enjoy the freedoms flowing from the principles enshrined in the present Framework Convention individually as well as in community with others”.

2. CORE CONSIDERATIONS ON ARTICLE 15 OF THE FRAMEWORK CONVENTION

8. Article 15 is a central provision of the Framework Convention in many respects. The degree of participation of persons belonging to national minorities in all spheres of life can be considered as one of the indicators of the level of pluralism and democracy of a society. Creating the conditions for effective participation of persons belonging to national minorities should, therefore, be considered by the State Parties as forming an integral part of the implementation of the principles of good governance in a pluralistic society.

9. Effective participation of persons belonging to national minorities is also crucial for enhancing social cohesion, as keeping national minorities on the periphery of society can lead to social exclusion and tensions among groups. Marginalising persons belonging to national minorities in socio-economic life also has implications for the country as a whole, with the risk of losing their contribution and additional input to society.

10. Article 15, like other provisions contained in the Framework Convention, implies for the State Parties an obligation of result: they shall ensure that the conditions for effective participation are in place, but the most appropriate means to reach this aim are left to their margin of appreciation. This Commentary aims to provide the State Parties with an analysis of existing experiences so as to help them to identify the most effective options.

11. Promoting the effective participation of persons belonging to national minorities in the society requires continuing and substantive dialogue, both between persons belonging to national minorities and the majority population and between persons belonging to national minorities and the authorities. These two dimensions of dialogue can be achieved only if effective channels for communication are in place.

12. The Advisory Committee considers that the monitoring mechanism set up under the Framework Convention is in itself a valuable process to facilitate dialogue between persons belonging to national minorities and the authorities.

a) Effective participation, full and effective equality and promotion of national minorities' identity and culture

13. While Article 15 is the Framework Convention's central provision devoted to the right to effective participation, participation is also key to the full enjoyment of other rights protected under the Convention.⁵ The relation between Article 15 and Articles 4 and 5 is, in this context, particularly important. In fact, Articles 15, 4 and 5 can be seen as the three corners of a triangle which together form the main foundations of the Framework Convention.

⁵ See Appendix to the Commentary.

14. Article 4 requires States to promote full and effective equality for persons belonging to national minorities in all areas of life. This implies the right of equal protection of the law and before the law and the right to be protected against all forms of discrimination based on ethnic origin and other grounds. Furthermore, full and effective equality also implies the need for the authorities to take specific measures in order to overcome past or structural inequalities and to ensure that persons belonging both to national minorities and to the majority have equal opportunities in various fields. Article 5 implies for State Parties an obligation “to promote the conditions necessary for persons belonging to national minorities to maintain and develop their culture and to preserve the essential elements of their identity, namely their religion, language, traditions and cultural heritage” in order to guarantee *effectively* their right to identity.

15. The right to effective participation, as enshrined in Article 15, makes it possible that the concerns of persons belonging to minorities regarding full and effective equality, and regarding their right to preservation and development of their specific identity, are heard and effectively taken into account.

b) Effective participation on “issues affecting national minorities”

16. Article 15 requires States to create the conditions necessary for the effective participation of persons belonging to national minorities on various issues, *in particular those affecting them*. This part of Article 15 requires that State Parties pay specific attention to the involvement of persons belonging to national minorities in decision-making processes on issues of particular relevance to them. The Advisory Committee has made extensive comments on the various mechanisms which have been established by States to involve national minorities’ representatives in consultative and decision-making processes on issues of relevance to them. These comments focus on mechanisms for involving national minorities in decision-making on specific cultural, social and economic policies as well as in public affairs.

17. At the same time, the Advisory Committee has often underlined that persons belonging to national minorities should also have a say on issues which are not of exclusive concern to them but affect them as members of the society as a whole. Participation in public affairs is indeed essential not only to ensure that the particular concerns of persons belonging to national minorities are taken into account, but also to make it possible for them to influence the general direction of development in society.

c) “Effectiveness” of participation

18. Another central issue in relation to Article 15 is the meaning of “effectiveness” in the context of minority participation. “Effectiveness” of participation cannot be defined and measured in abstract terms. When considering whether participation of persons belonging to national minorities is effective, the Advisory Committee has not only examined the means which promote full and effective equality for persons belonging to national minorities: it has also taken into account their impact on the situation of the persons concerned and on the society as a whole. This impact has qualitative and

quantitative dimensions and may be viewed differently by different actors, depending on their engagement in the processes.

19. Hence it is not sufficient for State Parties to formally provide for the participation of persons belonging to national minorities. They should also ensure that their participation has a substantial influence on decisions which are taken, and that there is, as far as possible, a shared ownership of the decisions taken.

20. Similarly, measures taken by the State Parties to improve participation of persons belonging to national minorities in socio-economic life should have an impact on their access to the labour market as individual economic actors, their access to social protection and, ultimately, their quality of life. Full and effective equality may, in this context, be seen as a result of effective participation.

21. It may be a challenge for representatives of national minorities to participate effectively in decision-making. It implies the allocation of time and resources, not only to participate, but also to try to reflect accurately the variety of views among persons belonging to their national minority. Consequently, national minorities require both capacity building and resources to ensure that their representatives can contribute effectively.

d) Effective participation of national minorities and intercultural dialogue

22. Article 15 is also intended to facilitate intercultural dialogue by making it possible for national minorities to be visible, have their voice heard and participate effectively in decision-making, including participation on issues of relevance to the society at large. In fact, dialogue should not be limited to representatives of the national minorities and the authorities, but it should be extended to all segments of society. The Framework Convention intends to provide persons belonging to national minorities with increased possibilities to participate in the mainstream society and at the same time for the majority population to become better acquainted with the culture, language and history of the national minorities, in a spirit of intercultural dialogue.⁶

⁶ See also Article 6.1 of the Framework Convention.

PART III KEY FINDINGS ON PARTICIPATION OF PERSONS BELONGING TO NATIONAL MINORITIES IN CULTURAL, SOCIAL AND ECONOMIC LIFE AND IN PUBLIC AFFAIRS
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1) PARTICIPATION IN ECONOMIC AND SOCIAL LIFE

23. The Advisory Committee has frequently pointed out that *effective* participation of persons belonging to national minorities cannot be restricted only to their participation in public affairs, and that effective participation in economic and social life is of equal importance to their participation in public affairs, in conformity with the principles of the European Social Charter and the Revised European Social Charter.

24. Participation in social and economic life covers a wide range of issues, from access to adequate housing, health care, social protection (social insurance and social benefits), to social welfare services and access to work. Participation of persons belonging to national minorities in economic life implies both access to the labour market, public and private, and access to business and other self-employment opportunities. These are, in turn, closely linked to property rights and privatisation processes.

25. It is also important to recall that persons belonging to different minority groups face different obstacles to their participation in socio-economic life. Persons belonging to some groups, such as the Roma and Travellers or indigenous peoples, are more at risk of suffering forms of exclusion from socio-economic life than persons belonging to other national minorities or the majority population. These groups may require specific measures to address their needs.

26. Effective participation in social and economic life requires, *inter alia*, that State Parties remove barriers which prevent persons belonging to national minorities from having equal access to various spheres of economic life and social services and to promote their equal access to employment and market opportunities and to a range of public services, including social housing and health care.

27. Moreover, equal opportunities should not be limited to giving equal access to markets and services. Effective participation also requires that State Parties promote participation of persons belonging to national minorities in economic and social life and in benefits and outcomes in the social and economic spheres, which includes, among others, the right to benefit from economic development, health services, social security and other forms of benefits.

28. Therefore, the Advisory Committee findings which are presented below are the result of a combined analysis of findings in respect of Article 15 (effective participation) and Article 4 (equal treatment).

29. Some of the findings are relevant for most of the State Parties; these include the lack of statistical data on the socio-economic situation of national minorities and the sometimes inadequate response of public service to the needs of persons belonging to national minorities. Others specifically relate to some countries or regions or minority groups, such as difficulties resulting from land privatisation processes, obstacles in pursuing traditional activities by persons belonging to some national minorities.

a) Availability of statistical data on the socio-economic situation of persons belonging to national minorities

30. State Parties should regularly collect data and gather up-to-date information on the socio-economic and educational situation of persons belonging to national minorities in order to compare the latter with the situation of the majority population. The availability of reliable data, disaggregated by age, sex and geographical distribution, is an important condition for the development of well-targeted and sustainable measures, which meet the needs of the persons concerned. It is also crucial for the formulation of effective policies and measures to tackle discrimination in areas such as access to employment and housing. Data collected as a result of population census are, in general, insufficient to serve as a sound basis for these policies and measures.

31. The collection of data on the situation of national minorities should be made in accordance with international standards of personal data protection,⁷ as well as respecting the right for persons belonging to a national minority freely to choose to be treated or not to be treated as such. Wherever possible, representatives of the national minorities concerned should be involved throughout the process of data collection, while the methods of collection of such data should be designed in close co-operation with them.

b) Legislation prohibiting discrimination in socio-economic life

32. The Advisory Committee has frequently observed that some national minorities have proportionally higher unemployment rates, sometimes lower employment rates, and a generally lower participation in the labour market than the majority population. They can be faced with direct and indirect discrimination, inequalities in career development and often with structural obstacles (e.g. a ceiling to the level of their promotion within an organisation).

33. The existence of comprehensive legislation prohibiting discrimination on grounds of belonging to a national minority, covering the fields of employment, housing, health care and social protection by public and private actors, is a precondition in any policy aimed at promoting participation of persons belonging to national minorities in various spheres of socio-economic life.

⁷ See for instance the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS 108) and the Committee of Ministers Recommendation (97) 18 on the protection of personal data collected and processed for statistical purposes.

34. The Advisory Committee has, therefore, repeatedly insisted on the fact that anti-discrimination legislation should be enacted or, as appropriate, further developed and fully implemented with a view to eliminating discrimination against persons belonging to national minorities, especially in the labour market, in the field of housing and by health care providers. This also implies that adequate measures should be taken to raise awareness in the society at large and provide training for all stakeholders, including law-enforcement bodies.

35. It is also important that appropriate legal remedies are available in cases of discrimination. State Parties should raise awareness among persons belonging to national minorities on existing remedies and ensure that these are easily accessible.

36. Moreover, the Advisory Committee has often underlined that racism and discrimination can have a disproportionate impact on women and girls belonging to some minority groups in particular. They can experience multiple discrimination because of their ethnic origin and gender. Targeted measures should, therefore, aim to remedy specific forms of discrimination faced by women belonging to national minorities.⁸

c) Capacity of public service to deal with socio-economic needs of persons belonging to national minorities

37. Participation of persons belonging to national minorities in socio-economic life is sometimes hampered by administrative obstacles and by a lack of sensitivity to the specific needs and difficulties encountered by these persons on the part of administrations and public services. In some cases, difficulties arise from the insufficient capacity of the administrations concerned to cater for the specific needs of persons belonging to national minorities. Administrations and public services include education and social institutions, such as employment services, social services and social benefits providers, health and housing services, public transports and utilities, sports and recreation services.

38. State Parties should therefore take measures to better prepare the staff of public services and welfare institutions to provide adequate responses to the needs of persons belonging to national minorities. Specialised training may be required on the specific needs of persons belonging national minority communities as well as on the specific social and economic problems which may affect persons belonging to some national minorities in particular. In fact, persons belonging to some minority groups are more at risk of social exclusion and their integration in socio-economic life often requires targeted approaches, which fully take into account cultural and other specific circumstances.

39. Public services and welfare institutions need to be made easily accessible and available to national minorities. This may require a range of outreach activities and an adaptation of these services and institutions to ensure that they meet the specific needs of national minorities in practice as effectively as they meet the needs of the general population.

⁸ See for example second Opinion on Ireland, adopted on 6 October 2006, paragraphs 50 and 51.

40. Information and advice on public services and welfare institutions need to be made easily accessible and available, where appropriate, in the languages of national minorities.

41. Moreover, State Parties should promote the recruitment, promotion and retention in the administration and public services of persons belonging to national minorities, both at national and local levels.

d) Participation of persons belonging to national minorities in socio-economic life in depressed regions

42. Persons belonging to national minorities often live in border areas and other regions at a distance from political and economic centres of activity. Hence they can be confronted with more difficult socio-economic situations than the majority population. State Parties should take specific measures to increase the opportunities for persons belonging to minorities living in peripheral and/or economically depressed areas, such as rural, isolated and border areas, war-damaged areas or regions affected by de-industrialisation, to participate in socio-economic life.⁹

43. Where appropriate, this could result from bilateral or cross border co-operation. Trade and other economic activities across borders can be an important factor of economic and social development for persons belonging to national minorities. State Parties should, therefore, ensure that cross border co-operation is not limited by any undue obstacle.

44. State Parties should ensure that economic rehabilitation programmes and regional development initiatives targeting depressed regions, including some inner city areas, are designed and implemented in a manner that also provides benefits to those in need among persons belonging to national minorities who live in such regions. In order to ensure this, studies should be undertaken to assess the possible impact of development projects on persons belonging to national minorities. Particular attention should be paid to the situation of women and youth from national minority backgrounds.

45. The authorities should ensure that persons belonging to national minorities are fully involved in the planning, implementation, monitoring and evaluation of policies and projects likely to have an impact on their economic situation and the situation of the regions where they live in substantial numbers.

46. In post-conflict situations, particular attention should be paid to the socio-economic situation of persons belonging to minorities who have been discriminated against on account of their national minority background and were barred from

⁹ See for example 1st Opinion on Ukraine, adopted on 1 March 2002, paragraph 73 and 2nd Opinion on Estonia, adopted on 24 February 2005, paragraph 160.

employment. Specific measures should be taken to redress the consequences of past discrimination and promote these persons' participation in socio-economic life.¹⁰

e) Participation in socio-economic life of persons belonging to disadvantaged national minorities

47. Persons belonging to certain minority groups, among others the Roma and Travellers and indigenous peoples, often face more significant difficulties than others in accessing the labour market, education and training, housing, health care and social protection. Difficulties in the various sectors are often connected and mutually reinforcing and they can lead to a spiral of exclusion from socio-economic participation. Women belonging to these groups are often particularly vulnerable to poverty and social exclusion.

48. Furthermore, a certain number of persons belonging to these groups continue to occupy specific economic niches and pursue traditional activities and trades, which are sometimes difficult to maintain in a rapidly changing economic context. State Parties should remove undue obstacles, including excessive regulations, which hinders the practice of economic activities which are specific to certain minority groups. This concern should be borne in mind when new regulations in this area are developed.

49. In order to promote effective integration of persons belonging to disadvantaged minority groups in socio-economic life, comprehensive and long-term strategies should be designed and implemented. Where such strategies are in place, particular attention should be paid to their effective implementation. Adequate resources need to be provided in a timely manner at all levels of operation, especially locally. Furthermore, the implementation of such policies should be carefully monitored and their impact evaluated, in close co-operation with representatives of the minorities concerned, with a view to adapting and strengthening them over time. Effective coordination of measures undertaken by the various bodies involved should be a key concern.

f) Access to land and property as a condition for participation in socio-economic life

50. Obstacles to obtaining access to property (whether residential, commercial or agricultural) can have a disproportionate effect on persons belonging to national minorities, aggravating their economic difficulties and unemployment.

51. The unequal access to property, including land property, is sometimes connected with privatisation processes and processes of property restitution which, in some cases, have had a disproportionate impact on persons belonging to vulnerable minority groups. State Parties should therefore ensure equal and fair access to privatisation and property restitution processes, as these have long-term implications for the effective participation of persons belonging to national minorities in economic life. In order to enhance full and effective equality for persons belonging to national minorities, the authorities should, in particular, ensure that the privatisation process is transparent and set up mechanisms to

¹⁰ See for example 2nd Opinion on Croatia, adopted on 1 October 2004, paragraphs 60 to 62.

monitor and, in due course, evaluate the impact of privatisation. Moreover, persons belonging to national minorities should participate effectively in these monitoring and evaluation processes.¹¹

52. Substantial difficulties in gaining access to property can also result from armed conflicts and the subsequent displacements of populations. State Parties should ensure that property claims by persons belonging to national minorities are processed and implemented in an efficient and transparent manner and do not result in discriminatory outcomes.¹²

53. Violations of land rights or limitations imposed on the use of land by certain groups such as indigenous peoples, whose economic situation is closely connected to land usage, can significantly undermine their participation in socio-economic life. Therefore, land traditionally used by them should be given particular and effective protection. Furthermore, the representatives of indigenous peoples should be closely involved in any decision-making affecting the use of land in their traditional areas of residency.

g) Residency, language and other requirements as a condition for participation in socio-economic life

54. In some State Parties, residency requirements are imposed by some employers or by the State as a prerequisite for recruitment,¹³ or for registering and running private business; these practices can affect in a disproportionate manner persons belonging to certain national minorities. They can face specific difficulties in registering their residency, due to administrative or other obstacles. Residency requirement problems can also hinder their access to basic social rights, such as healthcare, unemployment services and pension entitlements. Persons belonging to national minorities which have a nomadic lifestyle also face obstacles to participation in socio-economic life when residency-related requirements are not adapted to their lifestyle.

55. Moreover, undue or disproportionate language proficiency requirements in order to access certain jobs or in the provision of goods and services, especially in the private sector, can hamper access to employment and social protection of persons belonging to national minorities.¹⁴ State Parties should therefore take effective measures to remove any undue restrictions in the access to the labour market, which particularly affect persons belonging to certain national minorities. In situations where language proficiency requirements are a legitimate condition for access to certain jobs, notably in the public service, language training courses should be made available to prevent discrimination of persons belonging to national minorities. Access to basic social benefits and to certain public services should not be hampered by undue language or residency requirements.

¹¹ See for example Opinion on Kosovo (UNMIK), adopted on 25 November 2005, paragraph 115.

¹² See for example Opinion on Kosovo (UNMIK), paragraph 116.

¹³ See for example 2nd Opinion on the Russian Federation, paragraphs 59, 272 and 273.

¹⁴ See for example 1st Opinion on Azerbaijan, adopted on 22 May 2003, paragraph 79.

56. At the same time, State Parties should ensure that residency registration processes are accessible and do not discriminate, directly or indirectly, against persons belonging to national minorities. Where needed, assistance for registration should be available for persons belonging to national minorities and, finally, regular monitoring of the registration processes should be carried out by the authorities.

h) Housing standards and participation in socio-economic life

57. Substandard housing conditions, often coupled with the physical/spatial separation of persons belonging to certain national minorities, in particular Roma and Travellers, considerably affect their ability to participate in socio-economic life and can result in their further poverty, marginalisation and social exclusion. This is frequently made more acute by the lack of legal provisions securing their residency rights and by their vulnerability to forced evictions, including as a consequences of processes of property restitution.¹⁵

58. State parties must take effective measures to put an end to discriminatory practices which lead to segregation and marginalisation of persons belonging to certain national minorities.¹⁶ Particular attention should be paid to ensuring full respect for the human rights of persons belonging to national minorities in housing matters.

59. Moreover, State Parties should develop comprehensive sectoral policies to address problems of substandard housing and lack of access to basic infrastructure, which affect persons belonging to certain minorities. State Parties should also promote their equal access to adequate housing, in particular by improved access to subsidised housing.

60. In doing so, the authorities should provide for adequate participation of the persons concerned in decision-making on housing and related programmes designed to improve their socio-economic situation, in order to ensure that the needs of these persons are adequately catered for. Such policies should be adequately funded. It is equally important for State Parties to ensure that local authorities comply with existing anti-discrimination legislation in housing matters as measures which perpetuate segregation are often taken locally.

i) Health care and participation in socio-economic life

61. Persons belonging to certain national minorities face particular difficulties in their access to health care, a situation which results from different factors, such as discrimination, poverty, geographical isolation, cultural differences or language obstacles. Difficulties in the access to health care have a negative impact on the participation of persons belonging to national minorities in socio-economic life.

¹⁵ See for example 2nd Opinion on Romania, adopted on 24 November 2005, paragraphs 80 and 82.

¹⁶ See for example 2nd Opinion on the Czech Republic, adopted on 24 February 2005, paragraphs 52 and 57, 2nd Opinion on the Slovak Republic, adopted on 26 May 2005, paragraph 46 and 2nd Opinion on Slovenia, adopted on 26 May 2005, paragraphs 67 and 68.

62. State Parties should ensure the effective involvement of persons belonging to the minorities concerned in the design, implementation, monitoring and evaluation of measures taken to address problems affecting their health care. These are necessary to enable health services to respond more effectively to their specific needs.

63. Medical and administrative staff employed in health services should receive training on the cultural and linguistic background of national minorities, so that they can adequately respond to the specific needs of persons belonging to national minorities.¹⁷ The employment of health mediators or assistants belonging to national minorities can contribute to improved communication and more appropriate approaches.¹⁸

64. Particular emphasis should be put on providing equally effective services to persons belonging to national minorities in the health care system.¹⁹ Equal opportunity policies should not be limited to access to health care only. They should also aim at the provision of quality services to persons belonging to national minorities, which have the same impact as the provisions for the rest of the population.

2) PARTICIPATION IN CULTURAL LIFE²⁰

65. The effectiveness of the participation of persons belonging to national minorities in cultural life is in most State Parties closely connected to their level of participation in public affairs and in social and economic life. The Framework Convention protects both the right for persons belonging to minorities to preserve and develop their own cultural heritage and identity and the right for them to take part effectively and interact in mainstream cultural life, in a spirit of tolerance and intercultural dialogue. Therefore, the findings presented in this chapter result from a combined analysis of Articles 5, 6 and 15.

66. When designing and implementing cultural policies affecting persons belonging to national minorities, it is important that the authorities carry out adequate consultations with them so as to meet their needs effectively. National minorities, through their

¹⁷ See also remarks in part c) above.

¹⁸ See for example 2nd Opinion on the Czech Republic, adopted on 24 February 2005, paragraph 55, and 2nd Opinion on the Slovak Republic, adopted on 26 May 2005, paragraphs 56 and 57.

¹⁹ See for example 2nd Opinion on the Slovak Republic, adopted on 26 May 2005, paragraphs 56 and 57.

²⁰ See also other Council of Europe reference texts on cultural diversity and on the media, such as:

- *The Faro Declaration on the Council of Europe's Strategy for Developing Intercultural Dialogue*, adopted by the Ministers responsible for Cultural Affairs of the States parties to the European Cultural Convention, meeting in Faro on 27 and 28 October 2005.
- *The Declaration on Intercultural Dialogue and Conflict Prevention*, adopted by the Conference of the European Ministers of Culture on 22 October 2003.
- 7th European Ministerial Conference on Mass Media Policy: *Integration and diversity: the new frontiers of European media and communications policy*. Texts adopted (MCM(2005)005).
- Recommendation No. R (97) 21 of the Committee of Ministers *on the media and the promotion of a culture of tolerance and its Explanatory Memorandum*.
- Parliamentary Assembly of the Council of Europe: Recommendation 1773 (2006): *The 2003 guidelines on the use of minority languages in the broadcast media and the Council of Europe standards: need to enhance co-operation and synergy with the OSCE*.
- Parliamentary Assembly of the Council of Europe: Recommendation 1277 (1995) *on migrants, ethnic minorities and media*.

representatives, should also be effectively involved in processes of allocation of public support for their cultural initiatives. Moreover, when specific institutions exist for channelling such support, persons belonging to national minorities should be adequately represented and should be able to take part in the corresponding decision-making.²¹

67. Processes of decentralisation can play an important role in creating the conditions necessary for persons belonging to national minorities to participate effectively in cultural life. In particular, cultural autonomy arrangements, whose aim is *inter alia* to delegate competences to persons belonging to national minorities in the sphere of culture and education, can result in increased participation of minorities in cultural life.²²

68. Additionally, when analysing the participation of minorities in cultural life, it is important to assess their level of participation in the media. It is important that minorities have the possibility to create and use their own media. It is, however, equally important that they have access to and are present in mainstream media so as to be able to present their views on issues of interest to the society at large.

3) PARTICIPATION IN PUBLIC AFFAIRS

69. The Advisory Committee, while considering whether persons belonging to national minorities effectively participate in public affairs, has examined their overall involvement in decision-making. It has not only examined their representation and participation in various mechanisms, but also devoted particular attention to the effectiveness of their influence on decision-making processes. The different decision-making arrangements which exist in the State Parties should take into account the composition of society and reflect its diversity.

70. Effective participation includes a wide range of possible forms, such as an exchange of information, dialogue, informal and formal consultation and participation in decision-making. It can be ensured through different channels, ranging from consultative mechanisms to special parliamentary arrangements. Particular attention should be paid to equal participation of women and men belonging to national minorities.

71. Whatever the mechanisms chosen, persons belonging to national minorities should be given real opportunities to influence decision-making, the outcome of which should adequately reflect their needs. According to the Advisory Committee, mere consultation is, as such, not a sufficient means to be considered effective participation.

72. Representation and participation of persons belonging to national minorities in elected bodies, public administration, judiciary and law-enforcement agencies is an essential but not sufficient condition for effective participation. Their inclusion in elected bodies at different levels largely depends on the constitutional traditions and guarantees provided for by electoral legislation. The choice and modalities of the electoral system often has a direct impact on the effectiveness of minority participation in decision-

²¹ See for example 2nd Opinion on Norway, adopted on 5 October 2006, paragraphs 60 and 69.

²² See also paragraphs from 133 to 137 below on autonomy arrangements.

making. Besides the possibilities provided for by the two main types of electoral systems (majoritarian and proportional), special mechanisms, such as reserved seats, quotas, qualified majorities, dual voting or 'veto' rights, may be introduced. In addition, cultural autonomy arrangements can reinforce minority participation in public affairs.

73. Specialised governmental structures dealing with minority issues contribute to ensuring that the needs of minorities are consistently integrated into governmental policies. Minority-related issues should, however, not remain exclusively in the domain of specialised governmental bodies. The minority perspective needs to be mainstreamed in general policies at all levels and procedural steps by the actors involved in policy-making.

74. The media should inform the society at large of minority-related issues with a view to promoting a spirit of tolerance and intercultural dialogue.

a) Participation of persons belonging to national minorities in legislative process

i. Political parties

75. The right of every person belonging to a national minority to freedom of peaceful assembly and freedom of association as stipulated in Article 7 of the Framework Convention implies, *inter alia*, the right to form political parties and/or organisations. Legislation which prohibits the formation of political parties on an ethnic or religious basis can lead to undue limitations of this right. Any limitation should, in any case, be in line with the norms of international law and the principles embedded in the European Convention on Human Rights.²³

76. The registration of national minority organisations and political parties may be subject to certain conditions. Such requirements should, however, be designed so that they do not limit, unreasonably or in a disproportionate manner, the possibilities for persons belonging to national minorities to form such organisations and thereby restrict their opportunities to participate in political life and the decision-making process. This concerns, *inter alia*, numerical and geographical conditions for registration.²⁴

77. State Parties should ensure that parties representing or including persons belonging to national minorities have adequate opportunities in election campaigning. This may imply the display of electoral advertising in minority languages. The authorities should also consider providing opportunities for the use of minority languages in public

²³ Article 11 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), which guarantees the right to freedom of peaceful assembly and of association, provides that no restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others.

²⁴ See for example 2nd Opinion on Moldova adopted on 9 December 2004, paragraphs 74 to 77, 2nd Opinion on the Russian Federation adopted on 11 May 2006, paragraph 261 and 1st Opinion on Bulgaria, adopted on 27 May 2004, paragraphs 61 to 63.

service television and radio programmes devoted to election campaigns and on ballot slips and other electoral material in areas inhabited by persons belonging to national minorities traditionally or in substantive numbers.²⁵

78. Political parties, both mainstream and those formed by persons belonging to national minorities, can play an important role in facilitating participation of persons belonging to national minorities in public affairs. Internal democratic processes of selection of their candidates by mainstream parties are crucial in ensuring participation of persons belonging to national minorities. Inclusion of minority representatives in mainstream political parties does, however, not necessarily mean the effective representation of the interests of minorities.

79. In countries where prominent minority parties exist, it is important to ensure that other minority parties or political organisations wishing to represent the interests of other persons belonging to the same national minorities have opportunities to do so.

ii. Design of electoral systems at national, regional and local levels

80. The participation of persons belonging to national minorities in electoral processes is crucial to enable minorities to express their views when legislative measures and public policies of relevance to them are designed.

81. Bearing in mind that State Parties are sovereign to decide on their electoral systems, the Advisory Committee has highlighted that it is important to provide opportunities for minority concerns to be included on the public agenda. This may be achieved either through the presence of minority representatives in elected bodies and/or through the inclusion of their concerns in the agenda of elected bodies.

82. The Advisory Committee has noted that when electoral laws provide for a threshold requirement, its potentially negative impact on the participation of national minorities in the electoral process needs to be duly taken into account.²⁶ Exemptions from threshold requirements have proved useful to enhance national minority participation in elected bodies.

83. Constitutional guarantees for the representation of persons belonging to national minorities in elected bodies need to be coupled with effective implementing legislation and accompanying measures within reasonable time.²⁷ The Advisory Committee considers it essential that persons belonging to national minorities participate or are consulted in the process of drafting such legislation and monitoring its implementation.

84. State Parties are encouraged to strengthen the participation of persons belonging to national minorities, including those in a disadvantaged position, in local elected

²⁵ See for example 1st Opinion on Estonia adopted on 14 September 2001, paragraphs 55 and 56.

²⁶ See for example 2nd Opinion on the Russian Federation adopted on 11 May 2005, paragraph 262 and 1st Opinion on Serbia and Montenegro, adopted on 27 November 2003, paragraph 102.

²⁷ See for example 1st Opinion on Hungary adopted on 9 December 2004, paragraph 48.

councils. In this respect, the Advisory Committee has underlined that due attention should be paid to the possible negative impact of certain residency requirements on the participation of persons belonging to national minorities in local elections.²⁸

85. Electoral provisions aimed at promoting a balanced presence of women in elected bodies can be designed to have a positive impact on the participation of women belonging to national minorities in public affairs.

86. Whatever the arrangements chosen, it is in general advisable to carry out a periodical review in order to ensure that they adequately reflect developments in the society and the needs of persons belonging to national minorities.

87. Where possibilities for persons belonging to national minorities to be represented in elected bodies are in practice limited, alternative channels, such as specific arrangements to facilitate minority representation, need to be considered in order to enhance their participation.²⁹

iii. Administrative and constituency boundaries

88. Changes of electoral constituencies may affect efforts to ensure effective participation of persons belonging to national minorities in public affairs, including in elected bodies. When considering reforms leading to constituency changes, State Parties should ensure that they do not undermine the opportunities of persons belonging to national minorities to be elected.³⁰

89. When considering reforms which aim to modify administrative boundaries, the authorities should consult persons belonging to national minorities and carefully consider the possible impact of such reforms on their participation in public affairs.³¹

90. In any case, State Parties should not adopt measures which aim to reduce the proportion of the population in areas inhabited by persons belonging to national minorities or to limit the rights protected by the Framework Convention.³² On the contrary, administrative reforms in such areas should aim *inter alia* to increase opportunities for minority participation.

²⁸ See for example 2nd Opinion on Ireland, adopted on 6 October 2006, paragraph 104.

²⁹ See 2nd Opinion on Denmark adopted on 9 December 2004, paragraph 154.

³⁰ See for example 2nd Opinion on the Slovak Republic adopted on 26 May 2005, paragraph 115 and 1st Opinion on Ukraine adopted on 1 March 2002, paragraph 69.

³¹ See for example 1st Opinion on “the former Yugoslav Republic of Macedonia” adopted on 27 May 2004, paragraph 103.

³² See Article 16 of the Framework Convention.

iv. Reserved seats system

91. Arrangements involving reserved and/or shared seats for representatives of national minorities have in a number of cases proved to be a useful means to enhance participation of persons belonging to national minorities in decision-making. The provision of reserved seats, whether shared between various national minorities or designed for one group, is one of the ways in which the representation of persons belonging to national minorities can be ensured in elected bodies.

92. The 'shared seats' system is particularly adapted to the needs of numerically small minorities. For such an arrangement to have a significant impact on the participation of all the national minorities represented through the shared seat(s), it is important that the minorities concerned agree on a common strategy and shared goals to be reached through the representation in the electoral body at stake. Elected representatives occupying shared seats should take due care to represent the concerns of all persons belonging to national minorities in the constituency. A rotation of the representatives of the different national minorities may help create the sense of a shared seat.

93. In order to ensure that a guaranteed seat arrangement contributes substantially to effective participation, it is important that the minority representatives elected are effectively involved in decision-making processes. Moreover, they should have a real possibility to influence decisions taken by the elected body, including those not strictly related to national minorities. It is therefore important that they have speaking and voting rights in the elected body and that their role is not limited to a mere observer status.³³

94. However, the Advisory Committee is of the opinion that the mere establishment of such arrangements does not automatically provide persons belonging to national minorities with a genuine and substantial influence in decision-making.³⁴

v. Parliamentary practice

95. In those State Parties where there are special parliamentary committees to address minority issues, these bodies have, in a number of cases, helped take into account concerns of national minorities in decision-making processes. The possibility of using minority languages in these committees has proved particularly effective. Nonetheless, the importance of effective participation in other parliamentary committees also involved in aspects of minority protection should not be neglected. Co-operation across party lines within the parliamentary committees strengthens efforts conducive to mainstreaming minority issues into policies.

96. For the work of such committees to be effective, it is essential that appropriate attention be given to their recommendations, particularly when drafting or amending legislation concerning national minorities. In addition, regular dialogue should be

³³ See 1st Opinion on Cyprus adopted on 6 April 2001, paragraph 41.

³⁴ See for example Opinion on Kosovo (UNMIK) adopted on 25 November 2006, paragraph 110.

pursued between the committees and the relevant authorities as well as between them and minority associations.

vi. ‘Veto’ rights

97. In some State Parties, members of parliaments representing national minorities have a ‘veto-type’ right over draft legislation directly affecting them. This mechanism, which may constitute a valuable tool in certain circumstances, has been introduced by some State Parties in order to ensure that minority representatives have a possibility to accept or reject legislation on matters directly affecting them.

98. The Advisory Committee has noted, however, that ‘veto’ rights can usually be invoked only in relation to legal acts concerning *exclusively* the rights and status of persons belonging to national minorities.³⁵ Hence, it might not be sufficient to guarantee the proper involvement of minority representatives in issues which do not concern them directly or exclusively.

99. There are also concerns that such a system of “veto” right or a “quasi veto” right on some matters can, in specific circumstances, lead to a paralysis of State institutions.³⁶ In such cases, other and/or additional ways of enabling persons belonging to national minorities to voice their views in legislative processes can be identified as a substitute or a complement to the ‘veto’ system.

vii. Citizenship requirements

100. Citizenship is an important element that can substantially influence participation in public affairs. Experience has shown that citizenship requirements can hamper effective participation in certain fields of public affairs. When examining the personal scope of application of the Framework Convention, the Advisory Committee has, in a number of cases, called for flexibility and inclusiveness in the approach taken by the State Parties.³⁷ Moreover, the Advisory Committee has consistently emphasised the fact that the application of the Framework Convention to non-citizens belonging to national minorities can enhance a spirit of tolerance, intercultural dialogue and co-operation.

101. Although it is legitimate to impose certain restrictions on non-citizens concerning their right to vote and to be elected, such restrictions should not be applied more widely than is necessary. While citizenship requirements can be applied in relation to parliamentary elections, State Parties are encouraged to provide non-citizens belonging to national minorities with a possibility to vote and to stand as candidates in local elections and governing boards of cultural autonomies.³⁸ Citizenship should not be a condition for persons belonging to national minorities to join trade unions and other civil society

³⁵ See 1st Opinion on Slovenia adopted on 12 September 2002, paragraph 71.

³⁶ See 1st Opinion on Bosnia and Herzegovina adopted on 27 May 2004, paragraphs 100 and 101.

³⁷ See also remarks in respect of Article 3 of the Framework Convention in the Appendix to this Commentary.

³⁸ See for example 1st Opinion on Estonia, adopted on 14 September 2001, paragraph 55.

associations. This is particularly important in State Parties where citizenship policy has been in a state of flux.

viii. Language proficiency requirements

102. Language proficiency requirements imposed on candidates for parliamentary and local elections are not compatible with Article 15 of the Framework Convention. They negatively affect the effective participation of persons belonging to national minorities in public affairs.³⁹

b) Participation of persons belonging to national minorities through specialised governmental bodies

103. The establishment of specialised governmental structures dealing with national minorities within national, regional or local authorities can help improve minority participation in public affairs. Where such bodies have not been set up, State Parties are encouraged to establish them or, at a minimum, to identify contact points for minority issues within public services.

104. Specialised bodies should not substitute but complement national minorities' consultative mechanisms. Their effectiveness depends to a great extent on the level of coordination and complementarity with consultation bodies. The recruitment and retention of staff with national minority background and/or minority language skills in these specialised bodies can contribute to their effective functioning.

105. Specialised governmental bodies should not substitute the work of mainstream government institutions on minority-related issues. The main role of specialised bodies is to initiate and coordinate governmental policy in the field of minority protection. They are therefore seen as important channels of communication between the Government and minorities. It is essential that the relevant governmental institutions be aware of the needs of persons belonging to national minorities and that minority issues be mainstreamed in the work of other governmental services.⁴⁰

c) Participation of persons belonging to national minorities through consultative mechanisms

i. Setting-up consultative mechanisms

106. Consultation of persons belonging to national minorities is particularly important in countries where there are no arrangements to enable participation of persons belonging to national minorities in parliament and other elected bodies. Consultation alone does not, however, constitute a sufficient mechanism for ensuring *effective* participation of persons belonging to national minorities.

³⁹ See 1st Opinion on Estonia, paragraph 55.

⁴⁰ See for example 2nd Opinion on Armenia adopted on 12 May 2006, paragraph 122.

107. It is important to ensure that consultative bodies have a clear legal status, that the obligation to consult them is entrenched in law and that their involvement in decision-making processes is of a regular and permanent nature. While there are various models as regards the functioning of such structures,⁴¹ it is important to ensure that relevant regulations are detailed enough to provide for efficient and consistent consultation.

108. The authorities may also organise joint consultations with representatives of different national minorities and/or enter into a direct dialogue with representatives of individual national minorities. While the former is an important method to address common issues and to enhance dialogue between various national minorities, the latter is appropriate, for example, to consider those issues which concern only a specific national minority. The Advisory Committee has noted that, in some cases, consultation with umbrella bodies of national minorities only is not sufficient to adequately take into account the concerns of individual national minorities.

ii. Representativeness of consultative mechanisms

109. Appropriate attention should be paid to the ‘inclusiveness’ and ‘representativeness’ of consultative bodies. This implies, *inter alia*, that where there are mixed bodies, the proportion between minority representatives and officials should not result in the latter dominating the work. All national minorities should be represented, including numerically smaller national minorities.⁴²

110. Representativeness of consultative bodies also depends on minority organisations and their appointment procedures. Moreover, when specific consultative mechanisms in respect of an individual national minority are set up, due regard should be paid to the diversity within this group.⁴³

111. For the credibility of consultative bodies, it is essential that their appointment procedures be transparent and designed in close consultation with national minorities. State Parties are encouraged periodically to review the appointment procedures to make sure that the bodies concerned are as inclusive as possible, maintain their independence from governments, and genuinely represent a wide range of views amongst persons belonging to national minorities. It is important to ensure that women belonging to national minorities are involved in consultative bodies.

112. Consultation should not be limited to the concerns of persons belonging to national minorities who live in areas with traditional or substantial minority population. This also implies that the agenda should not only reflect the concerns of the numerically largest minorities.

⁴¹ See also the DH-MIN Handbook on minority consultative mechanisms (www.coe.int/minorities).

⁴² See for example 2nd Opinion on Ireland adopted on 6 October 2006, paragraph 112.

⁴³ See for example 2nd Opinion on Germany adopted on 1 March 2006, paragraph 152.

iii. Types of consultative mechanisms

113. While *ad hoc* consultations can be useful to address a particular issue, State Parties are encouraged to establish regular consultative mechanisms and bodies with a view to institutionalising dialogue between the governments and minority representatives.⁴⁴

114. Consultative mechanisms with persons belonging to national minorities should not exclude, where appropriate, parallel consultation with independent experts. The Advisory Committee has noted in some cases that expertise is a useful complement to the consultation procedure.

115. In addition to national structures, regional and local consultative mechanisms have, in some circumstances, proved to be a useful additional channel for the participation of persons belonging to national minorities in decision-making, especially in areas of competencies where decision-making powers have been decentralised. In such situations, it is important that local and regional authorities regularly involve these consultative bodies in their decision-making processes, when dealing with minority issues.⁴⁵

iv. Role and functioning of consultative bodies

116. It is essential that the legal status, role, duties, membership and institutional position of consultative bodies be clearly defined. This includes the scope of consultation, structures, rules governing appointment of their members and working methods. It is important to ensure that consultative bodies have a legal personality, as a lack of this may undermine their effectiveness and their capacity to fulfil effectively their mission. Working methods of consultative bodies should be transparent and their rules of procedures clearly defined. Publicity of the work of the consultative bodies should be promoted so as to enhance transparency.

117. State Parties are invited to take measures to enable persons belonging to national minorities to be aware of the existence, mandate and activities of such consultative bodies. In addition, it is important that the meetings of these bodies are convened frequently and on a regular basis.⁴⁶

118. Consultative bodies need to be duly consulted in the process of drafting new legislation, including constitutional reforms that directly or indirectly affect minorities. State Parties should also consult persons belonging to national minorities and their

⁴⁴ See for example 2nd Opinion on Finland adopted on 2 March 2006, paragraphs 148 to 151.

⁴⁵ See for example 2nd Opinion on the Czech Republic adopted on 24 February 2005, paragraphs 171 and 172.

⁴⁶ See for example 1st Opinion on Ukraine adopted on 1 March 2002, paragraph 72 and 1st Opinion on Azerbaijan adopted on 22 May 2003, paragraphs 73 and 74.

consultative structures in relation to obligations arising under international treaties, including in respect of reporting obligations of interest to them.

119. Adequate resources should be made available to support the effective functioning of consultative mechanisms.⁴⁷

d) Representation and participation of persons belonging to national minorities in public administration, in the judiciary and in the executive

120. Public administration should, to the extent possible, reflect the diversity of society. This implies that State Parties are encouraged to identify ways of promoting the recruitment of persons belonging to national minorities in the public sector, including recruitment into the judiciary and the law enforcement bodies. Participation of persons belonging to national minorities in public administration can also help the latter better respond to the needs of national minorities.⁴⁸

121. One way of pursuing this aim is to provide a legal basis for promoting the recruitment of persons belonging to national minorities in public administration. It is important that such guarantees are coupled with adequate implementation measures.

122. It is also important to promote participation of persons belonging to national minorities in the judiciary and the administration of justice. Measures in this respect should be implemented in a way which fully guarantees the independence and the effective functioning of the judiciary.⁴⁹

123. Measures which aim to reach a rigid, mathematical equality in the representation of various groups, which often implies an unnecessary multiplication of posts, should be avoided. They risk undermining the effective functioning of the State structure and can lead to the creation of separate structures in the society.

124. Roma and Travellers, indigenous peoples and numerically small national minorities are often particularly under-employed in public administration and this issue requires specific attention from the authorities. Their employment in public administration can contribute to a better image and increased awareness of such minorities in the society at large, which in turn is likely to improve their participation at all levels.

125. Targeted measures can be designed to address the specific circumstances of past inequalities in employment practices of some national minorities, including the most marginalised. This implies that all employees need to be sufficiently trained and competent to perform their work effectively.⁵⁰

⁴⁷ See also remarks in paragraphs 137 and 138 below.

⁴⁸ See for example 1st Opinion on the United Kingdom adopted on 30 November 2001, paragraphs 96 to 99.

⁴⁹ See for example 2nd Opinion on Croatia adopted on 1 October 2004, paragraphs 154 to 159.

⁵⁰ See also remarks in paragraphs 36 and 37 above.

126. State language proficiency requirements placed on public administration personnel should not go beyond what is necessary for the post or service at issue. Requirements, which unduly limit the access of persons belonging to national minorities to employment opportunities in public administration, are not compatible with the standards embedded in the Framework Convention.⁵¹ Where necessary, targeted support should be provided to facilitate the learning of the official language for applicants or personnel from national minorities.

127. Comprehensive data and statistics are crucial to evaluate the impact of recruitment, promotion and other related practices on minority participation in public services. They are instrumental to devise adequate legislative and policy measures to address the shortcomings identified. The collection of data on the situation of national minorities should be made in accordance with international standards of personal data protection,⁵² as well as the right for persons belonging to a national minority freely to choose to be treated or not to be treated as such. Representatives of the national minorities concerned should be involved in the entire process of data collection and the methods of collection of such data should be designed in close co-operation with them.

128. Attention should also be paid to the participation of persons belonging to national minorities in the executive. Effective participation can be advanced by various means such as the introduction of posts assigned for minority representatives in the executive at all levels. Measures excluding persons belonging to national minorities from accessing public posts are potentially discriminatory.⁵³

e) Participation of persons belonging to national minorities through sub-national forms of government

129. Sub-national forms of government can play an important role in creating the necessary conditions for effective participation of persons belonging to national minorities in decision-making. This is particularly relevant for regions where persons belonging to national minorities live compactly.

130. In order to ensure that, in practice, decentralisation and devolution processes have a positive effect on the participation of persons belonging to national minorities in public life, it is crucial to clearly define the respective competencies of sub-national and central authorities. Lack of clarity in this respect can reduce the level of participation of persons belonging to national minorities and may also hamper minority access to the public funds needed for their activities. It is also important to provide local authorities with appropriate resources to enable them to carry out their tasks effectively.⁵⁴

⁵¹ See for example 1st Opinion on Azerbaijan adopted on 22 May 2003, paragraph 79.

⁵² See Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS 108) and the Committee of Ministers' Recommendation 97 (18) concerning the protection of personal data collected and processed for statistical purposes.

⁵³ See for example 1st Opinion on Bosnia and Herzegovina adopted on 27 May 2004, paragraph 98.

⁵⁴ See also remarks in paragraphs 138 and 139 below.

131. Where reforms relating to sub-national forms of government are considered, it is essential that their impact on the protection of persons belonging to national minorities be carefully analysed. To this end, State Parties are encouraged to provide ways of involving regional institutions as well as minority representatives in reform processes. Attention should be paid, in particular, to the potentially negative consequences of these measures for the protection of national minorities, notably as regards minority access to decision-making processes and financial resources.⁵⁵

132. Irrespective of the territorial structure adopted by State Parties, the central authorities should remain committed to their general responsibility resulting from their international obligations and the national legal framework regarding participation of persons belonging to national minorities in various spheres. In this respect, State Parties are encouraged to ensure that sub-national authorities respect the obligations arising from the Framework Convention. Specific awareness-raising at the local and regional level is often needed to ensure this outcome.

f) Participation of persons belonging to national minorities through autonomy arrangements

133. The Framework Convention does not provide for the right of persons belonging to national minorities to autonomy, whether territorial or cultural. Yet, the Advisory Committee has examined the functioning and impact of territorial and cultural autonomy arrangements on participation of persons belonging to national minorities in State Parties where they exist.

134. The Advisory Committee found that, in the State Parties in which territorial autonomy arrangements exist, as a result of specific historical, political and other circumstances, they can foster a more effective participation of persons belonging to national minorities in various areas of life.

135. The Advisory Committee commented more extensively on cultural autonomy arrangements in those State Parties in which they have been established. These cultural autonomy arrangements are granted collectively to members of a particular national minority, regardless of a territory. They aim *inter alia* to delegate to national minority organisations important competences in the area of minority culture, language and education and can, in this regard, contribute to the preservation and development of minority cultures.

136. Where State Parties provide for such cultural autonomy arrangements, the corresponding constitutional and legislative provisions should clearly specify the nature and scope of the autonomy system and the competencies of the autonomous bodies. In addition, their legal status, the relations between them and other relevant State institutions as well as the funding of the envisaged autonomy system, should be clarified in the respective legislation. It is important that persons belonging to national minorities be

⁵⁵ See for example Opinion on Kosovo (UNMIK) adopted on 25 November 2005, paragraph 113.

involved and that their views be duly taken into account when legislation on autonomy arrangements is being prepared or amended.

137. When designing electoral systems for autonomous bodies, the representativeness of the national minority concerned should be a key consideration. Electoral systems for self-government arrangements should entail protection against possible abuse.⁵⁶

g) Availability of financial resources for minority-related activities

138. Availability of financial resources for bodies involved in minority protection is essential to enable them to carry out their mission. This implies the availability of funding for consultative mechanisms, cultural autonomy arrangements and government bodies involved in minority issues at all levels.

139. The resources allocated should be proportionate to the responsibilities of the bodies in question. Funding and budgetary arrangements for minority autonomy bodies should be designed so that they do not undermine their operational autonomy.⁵⁷ Consultative bodies also need to be provided with adequate resources, including staff and financial means, to support their effective functioning. Resources are also needed to enable them to communicate effectively with their constituencies and to monitor and evaluate the implementation of legislation and policies which affect them.

h) Media as a source for the effective participation of persons belonging to national minorities in public affairs

140. It is essential that the public be adequately informed about issues relevant to persons belonging to national minorities, which should also be part of mainstream media reporting. It is essential that both mainstream and minority media play a key role in this process, not only by means of transmitting information, but also by promoting tolerance.⁵⁸ At the same time, excessive politicisation of minority issues through the media should be avoided. Moreover, the media, in particular electronic media, can facilitate consultation processes with persons belonging to national minorities.

141. The participation of persons belonging to national minorities in supervisory boards of public service broadcasts, auditors' councils and other media-related bodies, as well as in production teams, is essential to ensure adequate dissemination of information on national minorities. In the private sector, providing incentives for broadcasting in minority languages or on minority-related issues can contribute to increasing participation of persons belonging to national minorities in the media.

⁵⁶ See 1st Opinion on Hungary adopted on 22 September 2000, paragraph 52.

⁵⁷ See 2nd Opinion on Hungary adopted on 9 December 2004, paragraphs 116 to 119.

⁵⁸ See also paragraphs 68 and 74 above.

i) Participation of persons belonging to national minorities in the monitoring of the Framework Convention

142. Participation of persons belonging to national minorities in the monitoring process of the Framework Convention is crucial for achieving a balanced and quality outcome. When preparing State Reports or other written communications required under the Framework Convention or other international treaties pertaining to minority issues, State Parties should respect the principles enshrined in Article 15 of the Framework Convention and consult persons belonging to national minorities. In this and other contexts, it is important that interlocutors, such as consultative bodies, be not perceived as exclusive interlocutors but that State authorities also include other actors, especially minority or/and non-governmental organisations in the consultation process. The Advisory Committee welcomes the inclusion of comments made by minorities and civil society in State Reports, as well as in the Comments on the Advisory Committee's Opinions.

143. The Advisory Committee also welcomes alternative reports prepared by non-governmental actors. They often constitute a valuable additional source of information. They are also an evidence of a desire of non-governmental actors to engage in a constructive dialogue based on international human rights norms.

144. It is essential that transparency of the consultation process be ensured and that State Parties make the full text of the Opinions of the Advisory Committee and the Resolutions of the Council of Europe Committee of Ministers available to persons belonging to national minorities and to the public at large as early and as widely as possible. The authorities should ensure that these, and other monitoring documents, including the State Report, are made available in local languages so that minorities can take part in the process in an inclusive manner.

145. The Advisory Committee has encouraged State Parties to set up a system of regular consultation providing an opportunity for minority representatives to discuss their concerns between the monitoring cycles of the Framework Convention, be it follow-up seminars or other modalities. This dialogue is crucial to respond to specific concerns and also to build trust and confidence in the implementation of the Framework Convention. It creates a climate of tolerance and dialogue which enables diversity to be a source and a factor, not of division, but of enrichment for each society.

PART IV CONCLUSIONS

146. This Commentary is the result of the Advisory Committee's effort to provide a summary of its interpretation of Article 15 and related articles of the Framework Convention for those involved in the implementation of this Convention. The ultimate aim is to help advance participation of persons belonging to national minorities in various areas of life, to improve the implementation of the principles of the Framework Convention and to help State authorities build up a more integrated and better functioning society.

147. Based directly and indirectly on the country-specific work of the Advisory Committee, the Commentary is providing decision-makers, public officials, non-governmental organisations, academics and other stakeholders, not least among minorities themselves, with an analysis of possible options to enable them to make adequate and informed choices when designing legislation and policies to improve minority participation. Choices to be made should be agreed upon by the authorities and the national minorities if they are to be sustainable. It is also important that they take into account the views of the majority population and the type of relations prevailing among various groups in society.

148. It is obvious that different solutions can be applied to different national minorities as well as to different situations prevailing in the State Parties. Measures taken in some State Parties have been considered by the Advisory Committee as an adequate implementation of Article 15 of the Framework Convention in given circumstances. Yet, it is important to recall that a measure that leads to effective participation in one State Party does not necessarily have the same impact in another context. State Parties therefore need to assess, in the light of their own domestic situation, the applicability and effectiveness of measures that have, elsewhere, resulted in increased participation of national minorities. The Advisory Committee's objective, in this Commentary, is to highlight those experiences out of which meaningful conclusions can be drawn for the benefit of all State Parties.

149. Additionally, the fact that actions taken by State Parties may be considered satisfactory in given circumstances and at a given stage of the monitoring process does not mean that they will be sufficient to ensure compliance with the standards of the Framework Convention in the future. This Commentary, therefore, also attempts to help State Parties set up conditions enabling them to comply, in a sustainable way, with the provisions of the Framework Convention in the future and adopt longer-term perspectives on minority protection and the type of relations in society they want to achieve.

150. Moreover, the situation of minorities and majorities alike is in constant evolution and new issues will develop or arise over time. Some of the issues mentioned in this Commentary, notably in the field of participation in socio-economic life, have not yet been fully explored and analysed, neither by the Advisory Committee in its country-by-

country work nor by other actors involved in the protection of minority rights. Further attention needs to be given to a range of such issues, in particular concerning effective participation in economic, social and cultural life. Examples of issues to be further explored range from the impact of environmental problems on participation of persons belonging to vulnerable minorities, to access by persons belonging to national minorities to credit and banking services.

151. Other issues will have to be reassessed by the Advisory Committee in subsequent cycles of monitoring, when a longer term perspective on their impact on participation will be available. As already mentioned in the Introductory Remarks, this document is to be seen as a living instrument, which should be developed as monitoring under the Framework Convention progresses.

APPENDIX
RELEVANCE OF OTHER ARTICLES OF THE FRAMEWORK CONVENTION
FOR THE INTERPRETATION OF ARTICLE 15

Article 3⁵⁹

152. In its Article 3, the Framework Convention stipulates the right of persons belonging to national minorities to freely choose to be treated or not to be treated as such. Inclusion in the personal scope of application of the Framework Convention is important for the enjoyment of the minority rights contained in the Framework Convention, including the right to effective participation in all areas of life. In its examination of the personal scope of application of the Framework Convention, the Advisory Committee has consistently recommended that State Parties avoid arbitrary or unjustified exclusions from the protection of the Framework Convention and that they opt for an ‘inclusive’ approach. On many occasions, it has invited State Parties to review and consider extending the personal scope of application of the Framework Convention as circumstances have changed over time.

Article 6⁶⁰

153. Article 6(1) of the Framework Convention invites State Parties to encourage ‘a spirit of tolerance and intercultural dialogue’ and promote ‘mutual respect and understanding’ among all persons living on their territory. As already mentioned above,⁶¹ effective participation of persons belonging to national minorities in various spheres of life is an important tool to enhance intercultural dialogue.

154. At the same time, the effectiveness of the participation of persons belonging to national minorities depends on the existence of a climate of mutual respect, tolerance and recognition in the society. It is therefore essential that State Parties take measures to encourage intercultural dialogue between the majority and minorities, as well as between various minorities and, more generally, among all persons living on their territory. In this context, the Advisory Committee has often stressed the importance of integration

⁵⁹ 3(1) Every person belonging to a national minority shall have the right freely to choose to be treated or not to be treated as such and no disadvantage shall result from this choice or from the exercise of the right which are connected to that choice.

3(2) Persons belonging to national minorities may exercise the rights and enjoy the freedoms flowing from the principles enshrined in the present framework Convention individually as well as in community with others.

⁶⁰ 6(1) The Parties shall encourage a spirit of tolerance and intercultural dialogue and take effective measures to promote mutual respect and understanding and co-operation among all persons living on their territory, irrespective of those persons’ ethnic, cultural, linguistic or religious identity, in particular in the fields of education, culture and the media.

6(2) The Parties undertake to take appropriate measures to protect persons who may be subject to threats or acts of discrimination, hostility or violence as a result of their ethnic, cultural, linguistic or religious identity.

⁶¹ See paragraph 21.

policies, both as a way of promoting equal opportunities and preventing tensions in society.

155. Furthermore, the Advisory Committee has often underlined the importance of the participation of persons belonging to national minorities in decision-making concerning activities to promote a better knowledge of minority cultures in the society at large. This includes the field of education, particularly when deciding on the inclusion of elements concerning national minorities in educational material, the media and the design and implementation of cultural policies.

Article 7⁶²

156. State Parties are requested to ensure that the right of every person belonging to a national minority to freedom of peaceful assembly and of association, as embedded in Article 7 of the Framework Convention, is respected. This includes the right to form minority associations and political parties, which are important forms of participation. State Parties should refrain from any unjustified interference with the exercise of this right, and create conditions allowing minority associations and parties to acquire and enjoy legal personality, and to operate freely. The right to freedom of assembly and association is a prerequisite to the enjoyment of the provisions of Article 15, even though it is not sufficient in itself to ensure effective participation.

Article 9⁶³

157. Article 9 (1) protects the right of persons belonging to national minorities to freely receive and impart information and ideas in the minority language, and therefore, the possibility for them to participate in public debates and public affairs in general, notably through the media. Moreover, Article 9 (1) requires that State Parties ensure respect for the prohibition of discrimination in minorities' access to the media. Under Article 9 (4) of the Framework Convention, the authorities are required to adopt appropriate measures to facilitate access to the media of persons belonging to national minorities.

158. The access to and participation in the media of persons belonging to national minorities involves various dimensions: they should have access to the media as part of the audience, as owners of media outlets and as representatives of minorities in the mainstream media.

159. Adequate access to mainstream and minority media by persons belonging to national minorities considerably contributes to their effective participation in society, in particular in cultural life. It facilitates awareness-raising of the society at large about

⁶² The Parties shall ensure respect for the right of every person belonging to a national minority to freedom of peaceful assembly, freedom of association, freedom of expression, and freedom of thought, conscience and religion.

⁶³ 9(4) In the framework of their legal systems, the Parties shall adopt adequate measures in order to facilitate access to the media for persons belonging to national minorities and in order to promote tolerance and permit cultural pluralism.

minorities' culture and identity. Moreover, the possibility for national minorities to create and use their own media is in itself an effective form of participation, in particular in public affairs and cultural life. This may also have direct and indirect social and economic benefits for persons belonging to national minorities.

Article 10⁶⁴

160. The right to use freely minority languages orally and in writing, in private and in public, as well as in relations with administrative authorities is a significant factor enhancing the participation of persons belonging to national minorities. This is particularly relevant for persons belonging to national minorities who live in areas inhabited traditionally or in substantial numbers by national minorities.⁶⁵ For example, policies of recruitment of civil servants favouring those with minority language proficiency are a positive way of promoting and enhancing minority participation in public administration. Likewise, the possibility of using minority languages in relations with administrative authorities can contribute to more effective communication with the authorities by persons belonging to national minorities. In local elected bodies, the possibility to use minority languages can allow persons belonging to national minorities to participate more effectively in decision-making. In contrast, strict language requirements may seriously hamper participation of national minorities in certain areas of life, in particular in socio-economic life and electoral processes. Yet, the importance of proficiency in the official language should not be underestimated as it also contributes to the effective participation of persons belonging to national minorities.⁶⁶

Article 12, 13 and 14

161. Articles 12, 13 and 14 of the Framework Convention encapsulate wide-ranging provisions in the field of education, which have been extensively analysed by the Advisory Committee in its Commentary on Education adopted in 2006⁶⁷.

162. Article 12 (1) requires that State Parties take measures to foster knowledge of the culture, language, history and religion of national minorities and of the majority population. Together with Article 6 (1),⁶⁸ Article 12 thus sets the objective for State

⁶⁴ 10(2) In areas inhabited by persons belonging to national minorities traditionally or in substantial numbers, if those persons so request and where such a request corresponds to a real need, the Parties shall endeavour to ensure, as far as possible, the conditions which would make it possible to use the minority language in relations between those persons and the administrative authorities.

⁶⁴ 10(1) The Parties undertake to recognise that every person belonging to a national minority has the right to use freely and without interference his or her minority language, in private and in public, orally and in writing.

⁶⁵ 10(2) In areas inhabited by persons belonging to national minorities traditionally or in substantial numbers, if those persons so request and where such a request corresponds to a real need, the Parties shall endeavour to ensure, as far as possible, the conditions which would make it possible to use the minority language in relations between those persons and the administrative authorities.

⁶⁶ See also the remarks below concerning Article 14.

⁶⁷ See Commentary on education under the Framework Convention for the Protection of National Minorities, adopted by the Advisory Committee on 2 March 2006.

⁶⁸ See paragraph 152 above.

Parties to promote a climate of mutual understanding and intercultural dialogue, which is a precondition for effective participation of persons belonging to national minorities. In order to meet this objective, there is a need for adequate teaching and other material to be made available, for teachers to be adequately trained and for exchanges between students and teachers to be promoted, as highlighted under Article 12 (2). Moreover, under this Article, the Advisory Committee has often recommended that the authorities provide for the participation of persons belonging to national minorities in the preparation of legislation on education, as well as in the monitoring and evaluation of educational policies and programmes, in particular those concerning them.

163. Article 12 (3) of the Framework Convention is of particular relevance when analysing Article 15 as it requests State Parties to promote equal opportunities for persons belonging to national minorities in access to education at all levels, including in vocational training and adult education.

164. Article 14 (1) and (2),⁶⁹ on the one hand, sets the right for persons belonging to national minorities to learn their minority language and provide that State Parties should, under certain conditions, endeavour to provide adequate opportunities for receiving instruction or for being taught in a minority language. This is an important means to preserve and develop their identity and culture, as also stipulated in Article 5.⁷⁰ Article 14 (3) on the other hand, specifies that this should be implemented without prejudice to the learning of the official language. Adequate knowledge of the official language by persons belonging to national minorities is indeed essential for their participation in various spheres of life and their integration in mainstream society.⁷¹ Therefore, the main foundations underlying the Framework Convention, already described in paragraphs 13 to 15 above on the connection between Articles 4, 5 and 15, are also fully reflected in Article 14.

165. The Advisory Committee has in many cases stressed the importance of effective participation of persons belonging to national minorities for the implementation of the rights contained in Article 14. It is, in particular, crucial to involve persons belonging to national minorities in decisions taken with regard to the organisation of minority language education⁷² to ensure that this type of education caters for the needs of national minorities.

⁶⁹ 14 (1) The Parties undertake to recognise that every person belonging to a national minority has the right to learn his or her minority language.

14 (2) In areas inhabited by persons belonging to national minorities traditionally or in substantial numbers, if there is sufficient demand, the Parties shall endeavour to ensure, as far as possible, and within the framework of their education systems, that persons belonging to those minorities have adequate opportunities for being taught the minority language or for receiving instruction in this language.

14 (3) Paragraph 2 of this article shall be implemented without prejudice to the learning of the official language or the teaching of this language.

⁷⁰ See paragraphs 13 and 14 above.

⁷¹ See also remarks under Article 10 above.

⁷² See also the Commentary on Education under the Framework Convention for the Protection of National Minorities, adopted by the Advisory Committee on 2 March 2006.

Article 17 and Article 18⁷³

166. Article 17 (1) of the Framework Convention stipulates that State Parties shall not prevent persons belonging to national minorities from establishing and maintaining free and peaceful contacts across frontiers, in particular with persons belonging to the same national minorities. Article 17 (2) aims to ensure that persons belonging to national minorities can make an active contribution to civil society, at the national and international levels.

167. Like Article 17, Article 18 (2) encourages a proactive approach to transfrontier co-operation, but between States. Cross-border co-operation can significantly contribute to developing participation of persons belonging to national minorities in public affairs and in social, economic and cultural life.

⁷³ 17 (1) The Parties undertake not to interfere with the rights of persons belonging to national minorities to establish and maintain free and peaceful contacts across frontiers with persons lawfully staying in other States, in particular those with whom they share an ethnic, cultural, linguistic or religious identity, or a common cultural heritage.

17 (2) The Parties undertake not to interfere with the right of persons belonging to national minorities to participate in the activities of non-governmental organisations, both at the national and international levels.

18 (2) Where relevant, the Parties shall take measures to encourage transfrontier cooperation.