



Strasbourg, 02 March 2006

ACFC/OP/I(2005)004

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

**OPINION ON THE IMPLEMENTATION OF THE FRAMEWORK CONVENTION  
FOR THE PROTECTION OF NATIONAL MINORITIES  
IN KOSOVO**

(adopted on 25 November 2005)

**Table of contents:**

EXECUTIVE SUMMARY .....	3
I. PREPARATION OF THE CURRENT OPINION .....	5
II. GENERAL REMARKS.....	6
Significance of the Agreement on the monitoring of the Framework Convention.....	6
Functioning of the monitoring process .....	7
Responsibilities for the implementation of the Framework Convention .....	8
Legacy of the recent past .....	9
III. SPECIFIC COMMENTS IN RESPECT OF ARTICLES 1-19 .....	11
Article 1 .....	11
Article 2 .....	11
Article 3 .....	11
Article 4 .....	14
Article 5 .....	17
Article 6 .....	18
Article 7 .....	20
Article 8 .....	21
Article 9 .....	21
Article 10 .....	22
Article 11 .....	24
Article 12 .....	25
Article 13 .....	29
Article 14 .....	29
Article 15 .....	32
Article 16 .....	34
Article 17 .....	35
Article 18 .....	35
IV. CONCLUDING REMARKS.....	37
GENERAL CONCLUSIONS .....	37
RECOMMENDATIONS .....	39
General.....	39
Data collection .....	39
Remedies and law-enforcement.....	39
Return process and security concerns.....	40
Minority cultures and media issues.....	40
Language use .....	40
Education .....	41
Participation .....	41
Protection against population changes.....	42
Cross-border contacts.....	42

## EXECUTIVE SUMMARY

Following receipt of the Report submitted by UNMIK on 2 June 2005 (due on 23 February 2005), the Advisory Committee commenced the examination of the implementation of the Framework Convention in Kosovo. In the context of this examination, a delegation of the Advisory Committee visited Kosovo on 11 - 15 October 2005 in order to seek further information. The Advisory Committee adopted its opinion on Kosovo at its 24th meeting on 25 November 2005.

The present Opinion is based on the Agreement concluded between the Council of Europe and UNMIK related to the monitoring of the Framework Convention. This Agreement is an important step in improving the international accountability of the authorities in Kosovo in the area of minority protection.

The implementation and the monitoring of the Framework Convention is a particularly challenging task in Kosovo. The complexity of Kosovo's institutional arrangements means that the respective responsibilities of different international and local authorities are not always clear. Uncertainty as to the future status of Kosovo further complicates the picture.

The implementation of practically all principles of the Framework Convention is made extremely difficult by the fact that inter-ethnic violence has seriously eroded trust between communities.

Various advanced norms, such as the Anti-Discrimination Law, and a commendable standard implementation plan have been introduced to tackle many of the key concerns of minority communities.

However, the reality in Kosovo remains disconcertingly far from these laudable norms and plans. Hostility between Albanians and Serbs is still very tangible, a situation which also harms the protection of other communities in Kosovo, of which the Roma are in an especially difficult situation.

Serbs outside their compact areas of settlement see their basic rights, including freedom of movement and freedom of expression, threatened, and discrimination and intolerance towards persons belonging to minority communities continue. Related security concerns, coupled with limited employment opportunities and problems with repossession of property and other factors, are a real obstacle to the sustainable return of persons displaced as a result of inter-ethnic violence.

There has been some progress in the implementation of the Framework Convention in such fields as education, the use of languages in public and private life, and participation. However, these positive steps remain insufficient in relation to the needs expressed, including by persons belonging to numerically smaller minority communities many of whom do not have a kin state.

It is essential that key institutions build further trust within minority communities, through increasing professionalism and by more effectively addressing inter-ethnic incidents and other concerns of persons belonging to various communities. In certain institutions, such trust has been facilitated by a significant international presence, as has been the case in the Ombudsperson institution.

Effective participation of persons belonging to minority communities is one key area where, despite certain positive guarantees, further progress is particularly important, including as regards the judiciary and other key sectors. This principle should be reflected also in the discussions relating to the future status of Kosovo, which should involve not only Serbs and Albanians but representatives of other communities as well.

## **I. PREPARATION OF THE CURRENT OPINION**

1. The present Opinion is based on the Agreement between the Council of Europe and the United Nations Interim Administration Mission in Kosovo (hereinafter: UNMIK) on the Technical Arrangements Related to the Framework Convention for the Protection of National Minorities, signed on 23 August 2004 (hereinafter: the Agreement).
2. Pursuant to Article 2 of the said Agreement, UNMIK submitted a report on the legislative and other measures taken to give effect to the principles set out in the Framework Convention on 2 June 2005 (hereinafter: “the UNMIK Report”). Article 2 of the Agreement also provides that following receipt of information from UNMIK and an opinion of the Advisory Committee on the Framework Convention, the Committee of Ministers shall consider and adopt its conclusions concerning the adequacy of the measures taken to give effect to the principles of the Framework Convention. It may also adopt recommendations in respect of UNMIK and set a time-limit for the submission of information on their implementation.
3. In the context of the preparation of the present Opinion, a delegation of the Advisory Committee visited Kosovo from 11 to 15 October 2005 in order to obtain supplementary information from representatives of the authorities as well as from NGOs and other independent sources on the implementation of the Framework Convention. In preparing this opinion, the Advisory Committee also consulted a range of written materials from various Council of Europe bodies, other international organisations, NGOs and other independent sources.
4. The Advisory Committee subsequently adopted this opinion at its 24th meeting on 25 November 2005 and decided to transmit it to the Committee of Ministers.
5. In general, the Advisory Committee has attempted to follow the structure and the methodology pursued in the course of the first cycle of monitoring, but it is clear that the specificity of the Kosovo situation and monitoring modalities have affected the process and the resulting Opinion. For example, the Committee found it necessary to have a more extensive section of general comments than has been the case in the regular first cycle Opinions of the Advisory Committee, bearing in mind that many of the general challenges mentioned are at the root of the problems relating to the implementation of specific articles of the Framework Convention.

## II. GENERAL REMARKS

6. At the outset, the Advisory Committee would like to stress that even in the exceptional circumstances that prevail in Kosovo - with international authorities playing a significant role and the question of the future status of Kosovo open - the implementation of the Framework Convention should be seen as a key human rights responsibility of the authorities concerned, not to be undermined by political or institutional considerations.

### **Significance of the Agreement on the monitoring of the Framework Convention**

7. The Agreement concluded between the Council of Europe and UNMIK related to the monitoring of the Framework Convention in Kosovo is of great significance. It is a unique step in improving the international accountability of the authorities in Kosovo in the field of protection of national minorities, which is an area of paramount importance for human rights as well as for peace and stability in Kosovo. The Advisory Committee applauds the pragmatic approach pursued by everyone concerned – including the Committee of Ministers of the Council of Europe, UNMIK, the Provisional Institutions of Self-Government (hereinafter: PISG) and the authorities of Serbia and Montenegro – in reaching this precedent-setting agreement in such a complicated and politically sensitive legal and institutional context.

8. Although the rights and freedoms contained in the Framework Convention have been directly applicable in Kosovo since the promulgation of the Constitutional Framework for Provisional Self-Government on 15 May 2001, the Framework Convention has not been widely used or known by the relevant authorities or the public at large. It is clear that the Agreement and the resulting monitoring process have already helped to increase the importance and awareness of the Framework Convention within institutions in Kosovo, and this trend will hopefully intensify further in the future stages of monitoring. The Agreement also clarified UNMIK's commitment to the Framework Convention by providing that UNMIK will exercise its responsibilities in compliance with the principles contained in the Framework Convention. This is important also in light of the fact that, whereas the Constitutional Framework clearly stipulates that the PISG is to “observe and ensure” the rights and freedoms contained in the Framework Convention and makes them directly applicable, the UNMIK Applicable Law Regulation, as amended,<sup>1</sup> does not include the Framework Convention in its list of human rights standards that “all persons undertaking public duties or holding public office in Kosovo” are required, *in particular*, to observe. While the list is not exhaustive, it implies that the enumerated treaties are considered a priority. It is important that this shortcoming is eventually addressed and observance of the Framework Convention is clearly included as a key obligation of all future authorities, both international and local, dealing with minority issues in Kosovo.

9. The importance of the present monitoring process of the Framework Convention is also clearly recognised in the Kosovo Standards Implementation Plan of 6 July 2004, which includes an explicit commitment to consider and implement the recommendations resulting from the monitoring process of the Framework Convention. Bearing in mind that such

---

<sup>1</sup> UNMIK Regulation No. 1999/24 on the Law Applicable in Kosovo, as amended by Regulation No. 2000/59 of 27 October 2000.

recommendations are only now being formulated, it is essential that this commitment is maintained in any revised standard implementation plan and followed up with vigour. This is all the more important now that the discussions on the status of Kosovo are getting under way. As was rightly stated by Mr Kai Eide, the Special Envoy of the UN Secretary-General in his comprehensive review of the situation in Kosovo in October 2005, it is “of crucial importance that sufficient resources are mobilized to ensure that the implementation of standards continues with undiminished energy and with a stronger sense of commitment”.

### **Functioning of the monitoring process**

10. As regards the input to the monitoring process up until now, the Advisory Committee appreciates the efforts made to draft the UNMIK Report. The Advisory Committee recognises the fact that UNMIK, and in particular its Pillar III which was delegated much of the actual task of compiling the Report, carried out the difficult drafting tasks in unprecedented circumstances. The Advisory Committee recalls that the UNMIK Report under the Framework Convention is not only the first report prepared under an international human rights instrument by the current Kosovo authorities, but also an important precedent in terms of UNMIK and the PISG working jointly on collecting information and assessing the minority rights situation.

11. The Advisory Committee welcomes the fact that the resulting Report, submitted some months late, provides a detailed and useful overview of the main aspects of the legislative framework and contains comprehensive appendices with official statements and documents on minority issues. The quality and depth of the Report is, however, uneven, and it contains only limited information on the actual practice in some of the key fields of minority protection in today’s Kosovo. Furthermore, the Report contains certain inconsistencies, by providing, for example, in some instances, both positive and negative evaluations of the same issue. Such shortcomings appear to be, at least partly, the result of the specific drafting procedure, during which various UNMIK bodies and various ministries of the PISG provided different elements for the Report, and apparently no particular efforts were made to reconcile any inconsistencies between the elements provided.

12. While understanding the difficulties involved in compiling a report in the specific circumstances prevailing in Kosovo, and the limited experience of some of the PISG bodies involved in the task, the Advisory Committee considers that the UNMIK bodies responsible for the final version of the Report should have more clearly indicated whose viewpoints are being presented in various segments of the Report. It also seems that the PISG input was requested by UNMIK only at a relatively late stage of the process, leading to very tight dead-lines for the submission of their contributions. Furthermore, the Advisory Committee considers that wider consultation with organisations of national minorities and other representatives of civil society would have contributed to the quality of the Report and at the same time built up the capacity of civil society actors and their awareness of the Framework Convention. It is to be hoped that such consultation will be intensified in forthcoming steps related to the implementation and monitoring of the Framework Convention.

13. The Advisory Committee received valuable complementary information through a comprehensive “shadow report” on the implementation of the Framework Convention in

Kosovo, drawn up by a working group consisting of representatives of minority communities and received by the Advisory Committee in September 2005. The Advisory Committee commends the work carried out by this multi-ethnic working group and hopes that the PISG and others concerned will increasingly draw on the expertise of this group in their efforts to improve the implementation of the Framework Convention in Kosovo.

14. The Advisory Committee's understanding of the minority situation was markedly improved through the above-mentioned visit to Kosovo. During the visit, the Advisory Committee had meetings not only in Prishtinë/Priština, but also in Fushë Kosovë/Kosovo Polje, Dragash/Dragaš, Gracanicë/Gracanica, Mitrovicë/Mitrovica and Prizren.

15. The visit provided an excellent opportunity to have a direct dialogue with the relevant actors, including representatives of the PISG, Members of the Assembly of Kosovo, local authorities, minority communities, the Ombudsperson, and various international organisations present in Kosovo. The meetings with UNMIK representatives, notably those working within Pillars II and III, the Office of the Legal Advisor and the Office of Communities, Returns and Minority Affairs, were also very valuable. At the same time, the Advisory Committee regrets that not all the relevant sectors were represented amongst the interlocutors chosen by UNMIK to meet with the delegation of the Advisory Committee. This may reflect limited awareness of the Framework Convention in some parts of the UNMIK structures and the fact that the relevance and links of minority protection to a wide range of sectors is not always fully appreciated. The Advisory Committee would have, for example, appreciated more direct dialogue with representatives of the UNMIK Pillar I (dealing with Police and Justice). The Advisory Committee understands that the visit coincided with a process of reform within UNMIK, which may have affected also the capacity of certain competent sectors of the administration to provide input to the monitoring process.

### **Responsibilities for the implementation of the Framework Convention**

16. The current situation in Kosovo is in many respects *sui generis*, and this is the case also as far as the responsibility for the implementation of the Framework Convention is concerned. The UN Security Council Resolution 1244 (1999) of 10 June 1999, while recognising the sovereignty and territorial integrity of Serbia and Montenegro, establishes the authority of UNMIK, as the international civil presence, to provide an interim administration for Kosovo. The Special Representative of the UN Secretary-General (SRSG) is vested with exceptionally far-reaching powers, including on issues pertaining to minority communities. This means that, in the present circumstances, SRSG, and UNMIK more generally, are in a key position when it comes to ensuring that adequate measures are taken to implement the Framework Convention. At the same time, an increasing number of responsibilities have been transferred to the PISG in education, culture and other fields that are directly or indirectly linked to the implementation of the Framework Convention. In such circumstances, it is clear that the implementation of the Framework Convention and follow up to the recommendations resulting from the present monitoring process require active input from both international and local institutions.

17. At the same time, it is the impression of the Advisory Committee that certain concerns of persons belonging to minority communities in Kosovo are aggravated by the prevailing

uncertainty and state of flux as regards institutional responsibilities for many issues related to the implementation of the Framework Convention. This has in some cases resulted in a situation where the responsibilities are not clearly assumed by any of the authorities involved, and individuals find it difficult to identify an interlocutor who would address their legitimate concerns. The Advisory Committee has noted such tendencies, for example, in the context of the return of persons belonging to minority communities.

18. In this respect, the Advisory Committee, while recognising the need to delegate tasks to the Kosovo institutions and to build local ownership for minority-related initiatives (see also paragraph 22 below), finds it essential that UNMIK fully assumes its responsibilities and takes assertive steps in cases where local authorities have proven to be not yet prepared to fulfil their tasks in a given domain. It is indeed important to recall that, according to Chapter 8 of the Constitutional Framework, the powers and responsibilities reserved to the SRSG include “Full authority to ensure that the rights and interests of Communities are fully protected”. It is important that the need to allocate clear lines of responsibility and competences on minority issues is also kept in mind in the status discussions, together with the fact that measures taken in a wide range of sectors, ranging from education to law-enforcement, affect the implementation of minority rights.

19. Another factor affecting the responsibilities for the implementation of the principles of the Framework Convention is the presence of “parallel structures” in Kosovo. When the Advisory Committee drew up its first Opinion on Serbia and Montenegro in 2003, it noted that it could not examine the situation in Kosovo in detail, as Kosovo was outside the effective control of the said State Party.<sup>2</sup> The Advisory Committee, notes, however in this context that the parallel structures continue to function in practice in Kosovo in areas populated by Serbs, providing educational and other services to Serbs and also to a number persons belonging to other minorities, notably Roma. As these structures are largely financed and directed by the authorities in Belgrade, the authorities in Belgrade also influence, *de facto*, the way in which the standards of the Framework Convention are being taken into account in the relevant areas in Kosovo.

### **Legacy of the recent past**

20. The Advisory Committee stresses that the negative legacy of the Milosevic regime is still widely felt in Kosovo and notably amongst Kosovo Albanians who were the main victims in Kosovo of the policies and practices of the said regime. At the same time, other communities in Kosovo, notably the Serbs and Roma, are still affected by the subsequent violence, in particular the extensive displacement and destruction of houses after the NATO intervention in 1999 and the eruption of Kosovo-wide violence in March 2004. Other events have further eroded inter-ethnic relations and trust. This legacy complicates the task of the present authorities to implement the Framework Convention and necessitates particularly decisive measures aimed at rebuilding inter-ethnic tolerance and true and effective equality. This would constitute a major challenge for any administration, let alone for the institutions of Kosovo that

---

<sup>2</sup> The Advisory Committee on the Framework Convention for the Protection of National Minorities, Opinion on Serbia and Montenegro ACFC/INF/OP/I(2004)002.

are only beginning to take on responsibilities in this domain and in many cases are yet to gain the confidence of the minority communities.

21. While it is understandable that improving relations between the Serbs and Albanians is largely seen as the greatest challenge in today's Kosovo, there is a risk that the situation of other minority communities in Kosovo is not given adequate attention by UNMIK, the PISG and others concerned, in spite of certain important guarantees, such as the existence of reserved seats for minority communities in the Assembly of Kosovo. The Advisory Committee considers that it is of paramount importance that these communities are also included in the design, implementation and evaluation of policies, practices and legislation affecting, directly or indirectly, minority communities. This pertains also to discussions relating to the future status of Kosovo, in which representatives of all minority communities must be given a meaningful role going beyond mere consultation *pro forma*, in order to ensure that the outcome takes into account also their concerns. This would help to ensure that the resulting decisions are fully in line with the Framework Convention in respect of all relevant communities.

22. At the same time, the Advisory Committee is aware that the implementation of legislation, policies and practices is unlikely to succeed as long as the latter are perceived as being "imposed" from outside and are not endorsed by a significant proportion of the general public. This risk is particularly significant in the field of minority protection, where, while it may often be difficult to reach consensus, it is essential that new legislation is endorsed as widely as possible, including at the local level and outside the political arena. Indeed, the Advisory Committee has the impression that the introduction of some of the standards relating to minorities, including the Framework Convention, but also such legislation as the progressive Anti-Discrimination Law of Kosovo, was not coupled with adequate information and awareness raising efforts and that limited knowledge and support for them is one reason why the important provisions at issue have until now been rarely invoked.

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

#### Article 1

23. The Advisory Committee appreciates the fact that the Constitutional Framework provides for the direct applicability of a number of international human rights instruments pertaining to national minorities, including the Framework Convention. Bearing in mind the specific legal situation in Kosovo, the international monitoring mechanisms of these treaties have, however, not been effectively operating in respect of UNMIK-administered Kosovo until now, and this has raised legitimate questions about the accountability of the authorities in place in Kosovo. The present monitoring process is an important step in addressing these concerns, and the Advisory Committee finds it important that it is followed by similar initiatives in respect of other pertinent treaties, although it is clear that each one of them involves specific legal and institutional issues that need to be addressed. In this respect, the Advisory Committee was pleased to learn that UNMIK is planning to report on the implementation of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights to the UN treaty bodies concerned.

24. The Advisory Committee finds it imperative that this issue is also addressed in the forthcoming discussions related to the status of Kosovo in a manner that ensures not only the implementation, and the continuation of the monitoring process, of the Framework Convention in Kosovo, but also increasing implementation and monitoring of other international human rights treaties that deal with issues that touch upon the protection of national minorities.

#### Article 2

25. The Advisory Committee considers that implementation of the principles contained in this article are of particular relevance in Kosovo, where the local institutions with limited experience and expertise have to manifest their determination to implement the provisions of the Framework Convention in good faith in order to build trust between various communities after serious setbacks, such as the events of March 2004.

#### Article 3

##### Scope of application of the Framework Convention

26. The term “national minority” *per se* is not regularly used in the legislation or practice of Kosovo, as the preferred term appears to be “communities”.<sup>3</sup> At the same time, it is widely agreed that the non-Albanian communities of Kosovo are covered by the Framework Convention and this position is reflected also in the UNMIK Report. The Advisory Committee

---

<sup>3</sup> The UNMIK Report states the following: “The Constitutional Framework and the laws of Kosovo do not use the term “national minority” but that of “Communities”, described as inhabitants belonging to the same ethnic or religious or linguistic group. The “Communities” in Kosovo are generally considered to comprise Kosovo Albanians, Kosovo Serbs, Turks, Bosniaks, Gorani, Torbesh, Roma, Ashkaelija, Egyptians, and Kosovo Croats.”

welcomes this pragmatic approach, and agrees that the applicability of the Framework Convention does not necessarily mean that the term “national minority” should be used in the relevant legislation, policies or practices to designate the groups concerned.

27. There are, however, various disagreements and inconsistencies as regards the endorsement of the specific identity of certain communities. This applies in particular to the Egyptian community, which is often treated by the authorities as part of the Roma and/or Ashkali community. Similarly, the Ashkali are often treated together with the Roma, which does not reflect the self-identification practices amongst the Ashkali. Representatives of the international community often refer to the aforementioned groups together as “RAE communities”. While understanding that this term has been devised merely for practical reasons, to facilitate the task of referencing, the Advisory Committee considers that such a designation should be avoided as it may be perceived as a sign of lack of acceptance of the specific identities of the groups concerned.

### **Population and housing census and data collection**

28. The Advisory Committee considers that one of the key initiatives related to the implementation of the Framework Convention is the planned population and housing census. A test census was organised in selected municipalities between 31 October and 15 November 2005<sup>4</sup>, with the understanding that the full census would be carried out in 2006.

29. The Advisory Committee agrees with the need to carry out a census in Kosovo and to improve statistics also as regards the ethnic composition of the population. The existing statistical data are of poor quality. The results of the census of 1991 were incomplete already at the time of their publication, due to limited participation in the census, and since then the situation in Kosovo, including as regards the ethnic composition of the population, has of course undergone drastic changes. The lack of reliable data makes it difficult to develop and implement minority policies, programmes and legislation. Such data are necessary, for example, in order to design and carry out effective and appropriate measures to ensure the effective participation of persons belonging to national minorities in public bodies or to ensure the proper allocation of support for minority languages and cultures in education and other fields. Improved statistical information is also a prerequisite for the effective and objective implementation of the envisaged law on languages, which in its current form contains numerical thresholds for the applicability of many of its key provisions.

30. The Advisory Committee welcomes the fact that the authorities responsible for the preparation of the population and housing census are aware of the need to take into account certain key principles contained in Article 3 of the Framework Convention, including the right to be treated or not to be treated as a person belonging to a national minority, a right which is also guaranteed in the Constitutional Framework. For example, while the Law on the Kosovo Population and Housing Census, adopted by the Assembly of Kosovo and promulgated by the SRSG on 13 December 2004, is regrettably ambiguous on the subject, the census forms designed prior to the test census, as well as the enumerators’ manual issued on 31 October

---

<sup>4</sup> The test census was introduced between 31 October and 15 November in the six Kosovo municipalities of Prishtinë/Priština, Prizren, Gjilan/Gnjilane, Kaçanik/Kaçanik, Novo Brdo/Novobërdë and Skenderaj/Srbica.

2005, clearly state that individuals do not have an obligation to reply to the questions as regards their nationality/ethnicity or to the question on their religious affiliation.

31. There are, however, risks associated with the organisation of a census in the present circumstances in Kosovo. Aside from the capacity problems detected in the Statistics Office of Kosovo (SOK), which is responsible for the gathering, processing and distribution of statistical data, and shortcomings in the crucial guarantees concerning data protection, the census process will face serious legitimacy problems if it does not involve the participation of all communities of Kosovo, including the Serbs, Roma and other minority communities. At present, there are disagreements on certain key aspects of the process, notably as to whether the internally displaced persons (IDPs) and others who have resided outside Kosovo for more than 12 months should be included in the census process. The Advisory Committee considers that this issue merits careful consideration and that the views of representatives of minority communities should be taken into account in this context. While conscious of the various technical, methodological and other problems involved, the Advisory Committee considers that the authorities should seek ways to include in the process of establishing more reliable statistics also those displaced persons who express a desire to return.

32. The Advisory Committee is of the opinion that conducting a census without clear prospects for a wide participation rate within all communities and support also amongst minority communities could have negative implications not only in terms of the quality of the resulting statistics but also as regards the implementation of various principles of the Framework Convention. It appears that such confidence in and support for the process need to be strengthened further, as suggested by the fact that the plans to carry out the test census of October – November 2005 also in the municipality of Leposavić/Leposaviq, with a majority Serb population, could not be implemented.

33. In the light of the foregoing, the Advisory Committee considers that more time is probably needed for the preparation of the full census than what is currently envisaged by the authorities, and it notes that postponement of the census was one of the recommendations issued by the experts of the Council of Europe, European Commission and the United Nations, who carried out an international monitoring mission on the census in Kosovo on 17-20 October 2005.

34. The Advisory Committee notes that, in Kosovo, data on individuals' community affiliation are collected also in various other contexts, ranging from education to employment, including at the municipal level. While agreeing that there is a need to obtain quality data in these fields, the Advisory Committee emphasises that the collection of data on individuals' affiliation with a particular minority community needs to be coupled with adequate legal safeguards, including as regards the protection of personal data. As the importance of data protection has not yet received adequate attention in Kosovo, the Advisory Committee would like to underline the principles identified in the Committee of Ministers' Recommendation (97) 18 concerning the protection of personal data collected and processed for statistical purposes. It is also important to ensure that the right not to be treated as a person belonging to a national minority is protected and that the persons concerned are consistently

informed that the provision of data on one's affiliation with a community is voluntary, in accordance with Chapter 4 of the Constitutional Framework.

#### **Article 4**

##### **Anti-discrimination legislation and remedies**

35. The Advisory Committee notes with satisfaction that the authorities in Kosovo have introduced progressive anti-discrimination legislation, in particular through the Anti-Discrimination Law adopted by the Assembly of Kosovo and promulgated by the SRSG on 20 August 2004 (UNMIK Regulation No. 2004/32). The said law provides far-reaching guarantees against both direct and indirect discrimination in both public and private spheres. The law does not introduce any new specific structures to combat ethnic discrimination, but entrusts the Ombudsperson and courts with the task of receiving, respectively, discrimination complaints and claims in accordance with the existing legislation.

36. The Advisory Committee, while stressing the importance of having such legislation in place to protect persons belonging to national minorities from discrimination, is particularly concerned about problems related to the implementation of such legislation in practice and about the persistence of *de facto* discrimination of persons belonging to minority communities in Kosovo. Such problems appear particularly prevalent in relation to Serbs and Roma, but persons belonging to other minority communities also report certain problems in this regard.

37. Despite the above-mentioned problems, the Anti-Discrimination Law has rarely been invoked by persons belonging to minorities before the judiciary. This state of affairs may partly be due to a lack of awareness, but it also seems to be linked to the significant problems that negatively affect access to justice in Kosovo, including, *inter alia*, shortcomings in the availability of legal aid and heavy backlogs. While many of the problems have implications also for persons belonging to the majority community, their effects are often particularly serious for IDPs and others persons belonging to minority communities. Furthermore, the number of persons belonging to minority communities who work in judicial structures, including as judges and as staff, is disproportionately low. This makes it difficult to build confidence in the judicial system among minority communities. The Advisory Committee welcomes the fact that such problems affecting the judiciary are openly recognised by the authorities, including in the UNMIK Report, and a number of important initiatives have been launched to address them, although it appears that their implementation has faced various obstacles and has produced only limited tangible results.

38. In such circumstances, the Ombudsperson's Office is often the most accessible option for alleged victims of discrimination, and this Office has indeed become an essential and trusted institution for persons belonging to minority communities, not only in respect of discrimination cases, but also as regards the implementation of their rights more generally. One important element of the work of the Ombudsperson has been his capacity to raise issues also with international authorities who are often in a position to take measures to address the identified shortcomings.

39. Against this background, the Advisory Committee considers that it is premature, at this stage, to implement the planned transfer of the Ombudsperson institution, currently under international leadership, into an entirely local institution. The Advisory Committee is of the opinion that such a transfer should not take place before it can be assessed with confidence that the Ombudsperson can function effectively as a fully local institution, without eroding the trust it has built to date amongst minority communities.

### **Freedom of movement**

40. Freedom of movement is not explicitly guaranteed in the Framework Convention, but this principle is implied in the guarantees contained in Article 4 of the Framework Convention, as indicated in the Explanatory Report of the Framework Convention. The importance of freedom of movement is rightly highlighted in the Kosovo Standards Implementation Plan of 6 July 2004, which contains several important undertakings in this regard. This is an area where persons belonging to minority communities continue to face particularly serious problems, stemming from experiences of discrimination, inter-ethnic hostility and other factors. There have been some local improvements in this respect in certain areas, but the overall situation remains disconcerting, involving a large number of persons unable to return to their homes as well as serious obstacles in terms of access to various services, ranging from health services to courts and public transportation.

41. While some commentators have argued that the problems related to freedom of movement are mainly self-imposed and fuelled by misinformation exaggerating the gravity of the problems, the Advisory Committee does not share this view. The recent experiences of the individuals concerned, including the violent events of March 2004, have understandably made it difficult, if not impossible, for many to trust that the progress achieved in terms of improving inter-ethnic relations reflects a lasting trend. Confidence in the sustainability of progress is also harmed by the regular cases of harassment and other incidents directed against certain minority communities as well as by the perception that there is a high degree of impunity surrounding ethnically motivated crime (see also comments under Article 6). Authorities should recognize their responsibility to take more proactive measures. At the same time, the Advisory Committee agrees that the media both in Kosovo and elsewhere in the region have a particularly sensitive role to play in reporting in this sphere.

### **The return process and full and effective equality**

42. The Advisory Committee finds that full and effective equality for persons belonging to minority communities is still far from being achieved in Kosovo in many fields. There is a need to pursue further positive measures for example in the field of employment, drawing, *inter alia*, on the experiences that have been gained in the implementation of the campaign to employ persons belonging to minority communities, initiated by the Kosovo Government in January 2005. Even though the Advisory Committee is aware that the overall economic situation in Kosovo is very difficult and the unemployment rate is disconcertingly high also amongst Albanians, persons belonging to minority communities, including Gorani, Roma, Ashkali, Egyptians and Serb IDPs are often in a particularly difficult situation in this regard (see also related comments under Article 15).

43. The Advisory Committee recalls that this issue is also linked to the return process, as return requires not only security but employment opportunities as well. Bearing in mind that it has been largely the rural population that has considered returning, it is important that effective repossession of and access to their agricultural land is secured. As regards the return process more generally, the Advisory Committee appreciates the fact that it is considered a priority issue by the authorities and that it is a key element of the standard implementation plan. At the same time, the Advisory Committee finds it important that the freedom of choice of residence of the persons concerned is also taken into account in this process, and that the design and implementation of the assistance measures are flexible enough to accommodate the fact that not all persons concerned find it advisable to return to their exact place of original residence, for both objective and subjective reasons, ranging from security concerns to limited employment prospects.

44. Despite various efforts to facilitate the return process, the Advisory Committee is concerned that one issue that has not received adequate attention in this context is the situation of the Ashkali and persons belonging to other minority communities who have been forcibly returned to Kosovo from Western Europe and who have no access to the assistance schemes made available to persons who have returned voluntarily. While it is beyond the scope of the present Opinion to comment on the advisability of implementing such forced returns to Kosovo in the current circumstances, the Advisory Committee regrets that neither UNMIK nor the PISG have introduced systematic assistance or other measures to facilitate the integration of individuals that have been forcibly returned (see also comments under paragraph 17 above on the problems caused by the lack of clarity as regards the allocation of responsibilities). Yet, these persons are often in a dire need of such support, assistance and guidance, bearing in mind that a number of them have resided abroad for years and have no strong links to the municipalities to which they have been returned. Certain initiatives to improve the situation have been proposed, including by the International Organisation for Migration (IOM), but there appears to be no adequate financial support to address this important issue that is directly linked to the full and effective equality of the persons concerned.

### **Roma**

45. The Advisory Committee finds that Roma are in a particularly difficult situation in Kosovo, to the extent that a more strategic approach to deal with their problems would be warranted. Their serious economic and social problems in such fields as housing, education and employment are aggravated by the discrimination they encounter as well as by the anti-Roma sentiment that is often detected in the majority community, limiting freedom of movement and affecting also their exercise of other rights. Roma and their property have also been targeted in the inter-ethnic violence before and during the events of March 2004, and currently their access to property is in many cases seriously hampered by the lack of adequate documentation.

46. The Advisory Committee welcomes the fact that, after years of inaction, the problems of Roma have recently received increased attention from international circles and local authorities. This is the case in particular as regards the alarming situation in Roma camps in the Serb-controlled northern Mitrovicë/Mitrovica and Zvečan/Zvečan. Many of the Roma have lived in

these camps for years following the destruction of the Mahalla (*i.e.* a traditional settlement) of some 8,000 Roma, Ashkali and Egyptians in 1999 on the south bank of the Ibar river in Mitrovicë/Mitrovica. In addition to living in generally sub-standard housing conditions, the residents of these camps, located near the Trepca lead mines and their waste dumps, are exposed, according to the World Health Organisation (WHO), to extraordinary high lead levels. The situation, which constitutes a serious health risk in particular for children and pregnant women, is not compatible with the principles contained in Article 4 of the Framework Convention and merits urgent attention and targeted measures.

47. The serious delays in handling the issue - which is only now, following wide-spread international attention, considered a high priority by UNMIK and other authorities in Kosovo - have harmed the present efforts to take decisive action and made it difficult to gain the trust and support of the Roma concerned as regards the envisaged measures. The current plan of the Kosovo authorities is to relocate Roma to a temporary site up until new houses have been built in the original site of the Mahalla on the south bank of the Ibar river in Mitrovicë/Mitrovica. Roma leaders within the camps concerned have objected to the temporary relocation plans, expressing concern that this temporary site may become a permanent one. Such concerns are intensified by the limited financial support made available by donors and the lack of a realistic timetable for the building of the Mahalla.

48. The Advisory Committee finds it imperative that the undue politicisation of this essentially humanitarian and human rights problem is avoided and that the well-being and health of the Roma at issue is kept as the primary consideration by all concerned. Finally, the Advisory Committee stresses that the authorities must be vigilant in ensuring that the current process of reopening a number of mines in Kosovo is coupled with comprehensive environmental standards that are strictly enforced so as to ensure that minority communities and others are not exposed to similar problems in the future.

## **Article 5**

49. The Kosovo Standards Implementation Plan rightly stresses the importance of the contribution of all communities to the cultural heritage of Kosovo. The Advisory Committee notes that the Ministry of Culture, Youth and Sport has the mandate to promote cultural, sports and youth activities and links with members of all ethnic, religious and linguistic communities. The UNMIK Report contains a list of grass-root projects initiated by minority communities that are supported by the said ministry, although many of them seem to be general sports and other activities of minority communities and not aimed at the promotion of minority cultures as such.

50. It is difficult to estimate the development of the level of support provided to minority cultures in Kosovo over recent years, even leaving aside the situation of Serbs, which has undergone drastic changes and which has also been affected by the existence of parallel structures. The information received by the Advisory Committee suggests, however, that such support is too limited, and, according to certain minority communities, the efforts to support and promote their culture have diminished over the years. Such concerns have been brought to the attention of the Advisory Committee for example by persons belonging to the Turkish community, who refer to problems encountered, *inter alia*, in maintaining cultural institutions

in the field of theatre and music. Certain other communities, including representatives of the Ashkali and Egyptians, also consider that they receive inadequate support for efforts to protect and promote their cultural identity. The promotion of minority cultures has suffered also from the fact that many appreciated cultural figures, including among the Roma, have left Kosovo.

51. Taking into account the above comments concerning the allocation of support for the cultural initiatives of minority communities, the Advisory Committee considers that the involvement of representatives of national minorities in the relevant decision-making process is essential in order to ensure that the limited resources are distributed in an optimum manner. The Advisory Committee encourages the authorities to consider whether the current system, mentioned in the UNMIK Report, of including two experts from the minority communities in the Board responsible for selecting the projects to be funded is sufficient to ensure such involvement.

52. In the implementation of the principles of Article 5 of the Framework Convention in Kosovo, a particular challenge is the fact that cultural and other sites representing the Serb community and the Serb Orthodox Church have been on several occasions targeted in Kosovo. The most disturbing example of this is the destruction of important Orthodox religious sites, including during the events of March 2004. It is encouraging that, after certain delays, the process of restoration of damaged sites is now under way under the auspices of the Reconstruction Implementation Commission for Orthodox Religious Sites in Kosovo (RIC), set up in May 2005 by the Council of Europe, the European Commission and UNMIK. At the same time, disconcerting incidents involving such sites have been reported also recently, including the theft of part of the roof of Bogorodica Ljeviska church in Prizren in 2005.

## **Article 6**

### **Efforts to combat inter-ethnic hostility**

53. The Advisory Committee notes that the normative framework for combating inter-ethnic hatred is advanced in Kosovo, with a specific UNMIK regulation on the prohibition of incitement to national, racial, religious or ethnic discord or intolerance and other norms providing important guarantees in this respect. There is, however, an exceptionally wide gap between the norms and reality in this sphere. According to UNMIK, large-scale violence against persons belonging to minority communities is now on the decrease in Kosovo. The Advisory Committee notes, however, that such violence did occur as late as March 2004, and that serious instances of inter-ethnic hostility are still reported rather frequently (on incidents concerning religious sites, see comments under articles 5 and 8). Furthermore, it is a widely held view that a large proportion of the every-day manifestations of inter-ethnic hostility and harassment are not reported to law-enforcement bodies, often due to a lack of confidence in the institutions and in the effectiveness of the remedies available.

54. The evaluation of developments in this fields is, however, very difficult due to the fact that there exist no comprehensive data on the status of investigation and prosecution of ethnically based incidents since 1999. The Advisory Committee is of the opinion that this is a major shortcoming, especially in a society such as Kosovo, where it is vital to show, in a

transparent manner, how public institutions deal with inter-ethnic incidents and to ensure that the related processes are objective, unbiased and fair. The Advisory Committee urges the UNMIK Office of Communities, Returns and Minority Affairs as well as other relevant authorities to pursue their plans to set up a data base on this issue as a matter of priority.

55. It is clear that the experiences of the events of March 2004, during which the Kosovo Force (KFOR), UNMIK and local police were all incapable of effectively protecting persons belonging to minority communities, seriously harmed the latter's trust in the ability of law-enforcement bodies to deal with inter-ethnic violence. The fact that a number of violent crimes against members of minority communities continue to be unresolved has also contributed to the perception, held by a number of persons within minority communities, that there is a high degree of impunity as regards ethnically motivated crime against persons belonging to minority communities. The Advisory Committee stresses that vigorous investigation and prosecution of serious inter-ethnic crime, including the violent attacks of March 2004, is a *sine qua non* for genuine progress in inter-ethnic relations in Kosovo.

56. In spite of the aforementioned problems, the Advisory Committee acknowledges that some serious efforts have been taken in this domain, not only by the international forces, but also by the Kosovo Police Service (KPS), which is seeking to build up its credibility and trust within minority communities. It is clear that the recruitment of officers from minority communities, which is of paramount importance not only in the areas of compact residency of minority communities but also in other localities, is one of the crucial factors affecting the future success of this institution. At the same time, it is essential that KFOR and other international actors - who remain key elements in the efforts to improve security and freedom of movement of persons belonging to minority communities in selected areas - maintain their presence as long as necessary and that the views of representatives of minority communities are taken into account in the relevant decision-making process.

57. The Advisory Committee finds it instrumental that the authorities in Kosovo at all levels consistently promote tolerance and condemn, promptly and vocally, all cases of inter-ethnic violence and other incidents. This is of utmost importance in Kosovo, where inter-ethnic relations are still extremely tense and fragile. It appears that, after having reacted too slowly to the violence of March 2004, a number of political leaders in the PISG are gradually accepting the importance of such messages, but regrettably, these are not echoed sufficiently widely, including at the municipality level. In this context, the Advisory Committee appreciates that the Government of Kosovo has made some efforts to prompt municipal leaders to condemn ethnically motivated and other types of crime.<sup>5</sup> However, it is hoped that the importance of the good practices in this field is ultimately genuinely endorsed and valued by the political elite and not seen merely as necessary steps in the agreed standard implementation process.

---

<sup>5</sup> See the letter by the Prime Minister of Kosovo, dated 23 January 2005, to the Presidents of Municipal Assemblies, reprinted in the UNMIK Report, Appendix XI.

### **Role of the media**

58. The role of the media is a key factor in the implementation of Article 6 of the Framework Convention. This was again demonstrated during the events of March 2004 during which hostility towards persons belonging to minority communities (mainly Serbs, but also Roma, Ashkali and Egyptians) was fuelled by the way in which the media, in particular certain broadcast media, reported on the events. It is encouraging that steps were subsequently taken by the Temporary Media Commissioner (TMC) to address this concern, and it appears that there has since been progress in this respect. It is imperative that further progress is made, also now that self-regulatory bodies of the Kosovo media are taking on further responsibilities in this domain. The increased role of local bodies should be coupled with monitoring initiatives to follow the developments in this area.

### **Article 7**

59. The Advisory Committee welcomes the fact that the Constitutional Framework provides general guarantees as regards the rights contained in Article 7 of the Framework Convention. At the same time, there is a need to reform legislation in this sphere bearing in mind that certain applicable laws, including the law on public assembly that dates back to 1981, contain outdated notions and do not fully reflect the applicable human rights standards mentioned in the Constitutional Framework.

60. A key element in the legislative reform process is the Law on Freedom of Association, which was adopted by the Assembly of Kosovo in February 2005 and which is currently being reviewed by the SRSG. Bearing in mind that the law will be of great importance also for persons belonging to minority communities, the Advisory Committee urges the authorities to ensure that no undue obstacles are introduced in the registration process and that the grounds for denying registration of non-governmental organisations are not construed too widely. Furthermore, the Advisory Committee stresses that freedom of association should not be perceived as a right applicable only in relation to the registered associations.

61. Representatives of minority communities have not reported to the Advisory Committee significant formal difficulties in exercising their freedom of association or assembly. The Advisory Committee welcomes the fact that there are a large number of non-governmental organisations registered and active in Kosovo. Even though according to the currently applicable regulations,<sup>6</sup> UNMIK may reject the application of an association if its statute is deemed to violate “any UNMIK regulation”, no registration has, according to the UNMIK Report, been rejected since 1999.

62. At the same time, the implementation of the rights under Article 7 is in practice deeply affected by the *de facto* limitations on the freedom of movement and by security problems. Continued problems affecting inter-ethnic relations and societal attitudes towards certain communities may have a freezing effect on the nature and visibility of the activities of some

---

<sup>6</sup> UNMIK Regulation No. 1999/22 on the Registration and Operation of Non-Governmental Organisations in Kosovo.

minority-based associations in certain areas as well as on the exercise of freedom of expression of persons belonging to minority communities (see also related comments under Article 9).

### **Article 8**

63. The implementation of the right to manifest one's religion is particularly challenging in Kosovo. While there are some positive developments in this area as regards certain denominations, the past inter-ethnic violence and rioting have included numerous attacks on Serbian Orthodox religious sites. Such attacks were particularly frequent during the events of March 2004 (see also related comments under Article 5). Aside from the crucial questions of protection and reconstruction of such sites, the Advisory Committee considers it essential that the authorities as well as religious leaders show respect for the religious diversity of Kosovo, and that they consistently work for increasing tolerance and mutual respect in this domain.

64. The Advisory Committee also attaches great importance to the current process of adopting a law on Religious Freedom and Legal Status of Religious Communities as well as to the efforts of the authorities to pursue an inclusive drafting process. It is essential that the resulting law complies fully with the principles of Article 8 of the Framework Convention. In this respect, the Advisory Committee welcomes the reported improvements in the draft and hopes that they will facilitate the inclusion of representatives of the Serb Orthodox Church in the drafting process.

### **Article 9**

65. The Advisory Committee notes that there are no formal restrictions on the use of minority language media in Kosovo, and Chapter 4 of the Constitutional Framework contains commendable provisions on the right of communities and their members to access to information in their own language, on their access to, and representation in, public broadcast media as well as on programming in relevant languages.

66. As regards practice, the Advisory Committee has taken note of the information contained in the UNMIK Report on the significant number of minority language media. Representatives of a number of minority communities have, however, reported shortcomings in terms of the situation in the field of media. Even though the situation as regards print media is not fully satisfactory, including as regards Gorani, Roma, Ashkali and Egyptians, the main area of concern is the access of minority communities to the broadcast media.

67. As regards the licensing of broadcast media, which is for the time being the responsibility of the Temporary Media Commissioner (TMC), a key concern brought to the attention of the Advisory Committee is the processing of applications for licenses to broadcast in areas that are currently underserved and applications for multi-ethnic stations. The process has involved significant delays, and certain persons belonging to minority communities are still waiting for a reply to their applications submitted after the process was started in December 2003. The Advisory Committee finds it important that the TMC processes the said applications as a matter of priority, and the Committee hopes that licensing decisions improving further the access of persons belonging to minority communities to broadcast media will soon be taken.

68. The Advisory Committee welcomes the fact that the UNMIK Regulation No. 2001/13 on the Establishment of Radio Television Kosovo contains specific guarantees for the provision of minority language programming in public service broadcasting, by providing that not less than 15% of the Radio Television Kosovo (RTK) programming, including prime time news coverage, must be in the language(s) of communities other than the language of the majority community, both on television and on the combined broadcasts of the RTK radio frequencies. The Advisory Committee was pleased to learn that similar guarantees, albeit formulated in a more flexible manner, are included in the draft Law on RTK, which is currently being prepared, and that more general provisions on the issue are included also in the draft law on languages.

69. Pursuant to the above-mentioned obligation, RTK regularly broadcasts minority language programmes, including in Bosnian, Romani, Serbian and Turkish languages. Aside from these positive measures, the Advisory Committee encourages RTK to take into account also the specific needs of other minority communities, such as Ashkali and Egyptian, whose mother tongue is mostly Albanian.

70. There are also certain concerns expressed by persons belonging to minority communities that appear to result from technical difficulties. These include lack of reception of public service TV in certain areas of compact residency of the Gorani and Bosniac communities, where the residents are nevertheless required, pursuant to the UNMIK regulation on the topic, to pay the standard public broadcast fee to support RTK's television and radio operations. While understanding that such reception problems affect also the majority population in certain areas, the Advisory Committee considers that this is an important issue not only in terms of persons' access to media but also in terms of their participation and integration.

## **Article 10**

### **Legal framework concerning the use of minority community languages**

71. The Advisory Committee welcomes the fact that the principles of Article 10, paragraph 2, on the use of minority languages in relations with public authorities, are generally reflected in the Kosovo legal framework, with guarantees scattered across various legal texts, including the Constitutional Framework, UNMIK Regulation No. 2000/45 on Self-Government of Municipalities in Kosovo and the 1977 Law on the Implementation of the Equality of the Languages and Alphabets in the Socialist Autonomous Province of Kosovo (1977 SAP Law on Languages). It follows from the aforementioned norms that Albanian and Serbian shall be used on an equal footing.

72. Legal guarantees concerning the use of the languages of the communities whose language is neither Albanian nor Serbian also exist. These include the possibility for members of these communities to address the Assembly of Kosovo in their own language and to have access to legislation translated in their language. Similar provisions exist at the local level, with persons belonging to these communities having the right to communicate in their own language with municipal bodies and with municipal civil servants.

73. The Advisory Committee considers, however, that the current legal framework is overly complex, and it fails to spell out sufficiently clearly the operative regulations concerning language use. In particular, the existing legislation does not define the conditions attached to the use of languages other than Albanian and Serbian in contacts with authorities or to the possible official status of these languages. The Advisory Committee notes that, in the absence of any threshold contained in the legislation, municipalities are left with considerable discretionary powers in determining the provisions relating to the use of languages of the communities in the municipality at issue. The only guidance provided is in Section 9 of the aforementioned UNMIK Regulation, which underlines the need to take into consideration the ethnic composition of the population in the municipality.

74. The Advisory Committee notes that the situation concerning the use of the Turkish language is particularly unclear. The 1977 SAP Law on Languages - which contains provisions that are still applicable pursuant to UNMIK Regulation 1999/24 - provides for the general equality of the Albanian, Serbo-Croatian and Turkish languages, but goes on to state that Turkish may be used on an equal footing with Albanian and Serbo-Croatian “in areas where members of the Turkish minority live”. The Advisory Committee understands that these provisions have prompted expectations among the Turkish community, including interpretations that the Turkish language should generally be given a status similar to that of the Albanian and Serbian languages in today’s Kosovo, regardless of the numerical importance of the Turkish community living in particular regions. This issue will need to be clarified.

#### **Use of minority communities’ languages in practice**

75. As regards practice, the Advisory Committee notes that there are serious gaps in the implementation of the language rights of persons belonging to minority communities. The Task Force on Language Standards Compliance, established in January 2004, has concluded, as mentioned in the UNMIK Report, that “the free use and respect of the legal requirements of languages continue to be at best lukewarm and at worst ignored”. The Advisory Committee is aware that Kosovo is faced with capacity problems, including inadequate facilities, a lack of qualified translators and limited resources, to implement language standards requirements. These capacity problems have resulted, *inter alia*, in inaccuracies in the translation of laws in the Albanian and Serbian languages, and it is also a reason for the limited number of laws translated into other languages of communities. At the same time, the Advisory Committee understands that the lack of political will in certain areas to implement language provisions also contributes to such a state of affairs. In particular, implementation measures have been limited in those municipalities that are dominated by one community.

76. The Advisory Committee notes that the provisional criminal code guarantees free-of-charge interpreters if the person cannot understand or speak the language of the proceedings in a criminal procedure, which is in line with Article 10, paragraph 3, of the Framework Convention. However, the Advisory Committee finds that the implementation of these guarantees varies greatly, depending on factors such as the language proficiency of the judicial staff, the availability of interpreters as well the jurisdiction in which the proceedings are held. The Advisory Committee has received reports of serious shortcomings in certain courts, including suggestions that persons belonging to minority communities have been requested to

sign documents in criminal proceedings in a language they did not understand. The Advisory Committee urges the competent bodies to closely monitor the courts' compliance with the existing language requirements so as to prevent such incidents from happening in the future.

77. In view of the shortcomings identified above, the Advisory Committee welcomes the process launched by the Ministry of Public Service, with UNMIK oversight, to adopt a comprehensive law on languages. This process aims at bringing clarity, predictability and enforceability to the regulations regarding language use in a number of settings, including in relations with public administration. It also welcomes the fact that this process has included consultation with civil society, including representatives of minority communities. The Advisory Committee considers it to be of paramount importance that the adoption of an improved legal framework is coupled with adequate awareness raising and training measures for civil servants and civil society at large as well as specific measures to inform persons belonging to minority communities of their rights. Adequate language training for civil servants will also need to be provided, in order to build sufficient capacity to implement the new law once it is adopted.

## **Article 11**

### **Public signs and other topographical indications in the languages of the minority communities**

78. The Advisory Committee welcomes the fact that in accordance with UNMIK Regulation No. 2000/45 on Self-Government of Municipalities in Kosovo, official signs indicating the names of localities, street signs and other topographical indications intended for the public must be displayed in both the Albanian and Serbian languages, and that the official designation of the 30 municipalities of Kosovo and the place names under each Kosovo municipality should be designated in both Albanian and Serbian, following the recommendations of the Commission on Place Names.

79. The Advisory Committee notes, however, that in practice the posting of bilingual signs has been slow. While there have been recent improvements in some municipalities, the Advisory Committee is concerned that the detailed existing regulations have often been ignored by municipalities and, in some instances, violated. The Advisory Committee is also aware that a number of signs in Serbian have been defaced. In particular, the Advisory Committee finds it worrying that, as mentioned in the UNMIK Report, certain attempts have been made to "Albanize" the names of certain municipalities. The Advisory Committee finds it essential that, in the Kosovo context, local names, street names and other topographical indications intended for the public duly reflect the multi-ethnic character of the area at issue, and that adequate remedies, including judicial ones, are available in cases where forced changes are illegally being made.

80. The Advisory Committee further notes that Regulation No. 2000/45 provides for the display of names of localities and other indications in the languages of the communities whose language is neither Albanian nor Serbian, in those municipalities where these communities form a substantial part of the population. The Advisory Committee regrets that this provision

has rarely been implemented in the municipalities concerned. There are various pending requests by persons belonging to the Bosniac, Turkish and Roma communities to have more signs in their languages in those municipalities where they live in substantial numbers.

81. The Advisory Committee considers that there is a need to put in place further legal and administrative regulations to govern the display of names and topographical indications in the languages of these communities, and that these would need to take due account of the demand for such indications. The Advisory Committee also considers that central authorities should encourage municipal authorities to implement the present provisions more widely. In this connection, the Advisory Committee notes that the two-third majority that is required at municipal level to adopt a decision to name or rename any road, street or other public space (Section II of the UNMIK Regulation No. 2000/45 on Self-Government of Municipalities in Kosovo) has been an obstacle for the efforts to increase minority language use, at least in the municipality of Prizren, and the said rule may need to be reviewed.

### **Registration of personal names**

82. The Advisory Committee was informed of cases where registration in Albanian of names and surnames of persons belonging to a non-Albanian community has led to distortions. The Advisory Committee is aware of the complexity of the Kosovo situation where different alphabets and scripts are in use, and it considers that the lack of detailed regulations on this issue needs to be addressed. In this connection, the Advisory Committee welcomes the fact that guarantees have been introduced in the draft law on languages to the effect that registration of the name of a person belonging to a community whose mother tongue is not the official language shall be entered in their original form, in the script and according to the tradition and linguistic system of their language. While the implementation of such a provision would undoubtedly constitute a positive development, the Advisory Committee hopes that appropriate measures will also be taken to ensure that persons whose names have been changed in the past have the possibility to have the names restored to their original form and that procedures are in place to that effect.

### **Signs of private nature**

83. The Advisory Committee refers to the related comments made under Article 10 and notes that the aforementioned feeling of insecurity has also contributed to a reluctance to display signs of a private nature in Serbian and other Slavic languages in certain areas in Kosovo. The Advisory Committee finds that this constitutes a serious, *de facto*, limitation to the implementation of Article 11, paragraph 2, of the Framework Convention.

## **Article 12**

### **Intercultural contacts in education**

84. The Advisory Committee considers that the implementation of the principles of Article 12 of the Framework Convention is of central importance in order to ensure that the Kosovo school system is designed in a way that promotes inter-ethnic dialogue and mutual

understanding. Determined action by the authorities is needed in order to address the mistrust and inter-ethnic tension that are still deeply felt in the Kosovo society. The Advisory Committee recognises that the challenges faced by the authorities are immense: they have to deal with the legacy of the past as well as with the post-conflict political atmosphere which risks making education a political battle field.

85. The continuous operation of “parallel schools”, financed by the Serbian Ministry of Education and Sports and following the Serbian curriculum, means the *de facto* existence of a separate school system. While perpetuating the distance of Serbian pupils from the majority community, the existence of the parallel school system also reflects the lack of trust and the security concerns within the Serbian community vis-à-vis the Kosovo educational institutions. This poses a serious challenge to the prospect of achieving a unified education system.

86. In today’s Kosovo, notwithstanding the existence of some shared school initiatives, the possibility for Serb and Albanian pupils to interact in the context of the school system is often non-existent and their mere co-existence in the same school is also difficult to achieve. Indeed, the Advisory Committee finds that there is still a widespread perception that attending shared schools is not safe. This feeling was aggravated by the events of March 2004, during which Serb schools were also targeted. The above-mentioned security concerns have prompted Serb students to travel to enclaves in order to receive education, despite difficult transportation conditions. In view of the above, the Advisory Committee finds that the authorities should give strong support to the design of a comprehensive plan which would endeavour to remove the existing barriers between Albanian and Serbian pupils, including by paying increased attention to this issue in the context of the Kosovo Standards Implementation Plan.

### **Multicultural content of education**

87. Education has a key role to play in the reconciliation process. Determined efforts by the competent authorities are needed to ensure that tolerance and diversity are duly reflected in all components of the education system. In this connection, the Advisory Committee welcomes the fact that a new unified curriculum, which is applicable also for pupils from minority communities, was developed in 2002 according to European standards. The Advisory Committee notes that this curriculum includes specific elements designed for Bosniac and Turkish communities respectively and that work is being done to adapt it to the needs of Serbian pupils in selected grades.

88. While this is a positive development, the Advisory Committee finds it essential that increased efforts are made to provide updated pedagogical materials that take into account the contribution of all communities to the Kosovo society (see also Article 14). In this connection, the Advisory Committee notes that members of the Ashkali and Egyptian communities have complained that their respective cultures and traditions are not reflected in the revised curriculum or in textbooks. The Advisory Committee encourages the competent authorities to duly take into account these comments in their future efforts to enhance the quality of education in Kosovo and to make sure that sufficient consultation of representatives of all communities is included in initiatives in the education field.

### **The educational situation of Roma, Ashkali and Egyptians**

89. The Advisory Committee is particularly concerned with the situation of Roma, Ashkali and Egyptian pupils with regard to their access to education. The educational situation of these communities is characterised by extremely low enrolment rates and a high drop-out rate. The schooling situation is particularly alarming among girls belonging to these communities. The Advisory Committee understands that there is a constellation of factors explaining their poor educational situation, including the vulnerable socio-economic conditions in which these communities are living. With regard to the Roma, the lack of awareness among the community itself of the importance of education is also an obstacle as is the related absence of awareness among parents of the need to register their children in order to have access to a number of services, including education. The Advisory Committee is aware that some positive initiatives are being implemented by NGOs from these communities in liaison with pupils' parents to remove these obstacles. Such initiatives are commendable and should be encouraged and provided with adequate support.

90. The Advisory Committee notes that a large number of Roma, Ashkali and Egyptians have been outside the school system for the last years and need to be re-integrated into the education system. The Advisory Committee welcomes the efforts made by the Ministry of Education, Science and Technology (MEST) with the support of the OSCE and international NGOs to address this problem by providing catch-up classes for children from these communities in order to help them integrate into regular schools. The Advisory Committee finds it encouraging that the first results of this intensive programme have been assessed positively, including by members of these communities. The Advisory Committee considers that it is important that the sustainability of such a programme is ensured, not only by allocating sufficient financial means but also by ensuring that adequate teaching staff is assigned to this programme in order to ensure its quality. The Advisory Committee was also informed that Roma girls appear to have insufficiently benefited from this programme and recommends therefore that specific attention be paid to this issue.

91. The Advisory Committee finds it positive that the placing of Roma in "special schools" is apparently not a practice that exists in Kosovo. The Advisory Committee is, however, concerned about reported problems of harassment, intimidation and stigmatization among pupils belonging to this community as well as among pupils from the Ashkali and Egyptian communities. Such phenomena are reportedly rarely addressed by the school authorities. The Advisory Committee stresses that educational institutions have a specific duty to react with vigour to such phenomena. Further action should be taken by the authorities to improve the position of these communities in the education system, drawing on the principles contained in the Committee of Ministers' Recommendation No. (2000) 4 on the education of Roma/Gypsy children in Europe. More generally, the Advisory Committee finds that while there are valuable sectoral and local initiatives, a Kosovo-wide comprehensive strategy covering the education of these communities needs to be designed in order to assist them in successfully integrating and staying in schools while maintaining their specific identities.

### **Access to higher education**

92. With regard to access to higher education, the Advisory Committee notes that UNMIK Regulation No. 2003/14 on the Promulgation of a Law adopted by the Assembly of Kosovo on Higher Education in Kosovo provides that higher education carried out by licensed providers in Kosovo “shall be accessible to all persons in the territory of Kosovo (...) without direct or indirect discrimination on any actual or presumed ground such as national, ethnic (...) origin, association with a national community”. The Advisory Committee notes that while a system of quotas for minority communities is now in place in the University of Prishtinë/Priština since 2004 in order to increase their participation in higher education, education in this university is delivered only in Albanian with the possibility of taking exams in Serbian. This however does not respond to the needs of the Serbian or Bosnian speaking communities. These communities can receive higher education in their language only through parallel structures (see below paragraph 94) or at the Business School in Pejë/Peć or the Faculty of Pedagogy of the University of Prizren, which deliver education in the Bosnian language.

93. The Advisory Committee notes that access to higher education for members of minority communities is further complicated by the implementation of the educational reforms, adopted by Kosovo in 2002. The reforms pursue the commendable goal of adapting the system to European education standards. However, as a result, the system in Kosovo differs from those educational systems of the region that have not yet undergone similar reforms. This has created additional obstacles for members of the Slavic speaking communities in receiving higher education in the universities outside Kosovo in Serbia and Montenegro and elsewhere in the region. In particular, the Gorani community is under pressure to adapt to this new system, which does not necessarily correspond to the educational needs of all pupils belonging to this community. While annual exemptions from the applicability of the new system have been granted by the MEST up until this year, it appears that the authorities are no longer willing to show such flexibility. The Advisory Committee finds it important that, pending wider implementation of the educational reforms in the region, the MEST shows flexibility regarding this issue and finds a solution, through the possible continuation of the exemption system, so that the education process of those members of the Gorani community who have not yet integrated into the new education system, is not disrupted as is presently the case.

94. The Advisory Committee notes that, further to UNMIK Regulation No. 2003/14 on the Promulgation of a Law adopted by the Assembly of Kosovo on Higher Education in Kosovo, the University of Northern Mitrovicë/Mitrovica was effectively legalised. This University, which is managed by the Serbian authorities, is the sole University providing higher education in the Serbian language within Kosovo. Pupils from this University include not only Serbs but also Bosniacs, Gorani and others who are not able to follow university education in Albanian. The Advisory Committee was informed about allegations according to which students graduating from Northern Mitrovicë/ Mitrovica University, whose diplomas are recognised *de jure* (notwithstanding current difficulties), may encounter difficulties in finding employment in mixed areas and/or entering Albanian-run university programmes because the documents issued by parallel structures are not valued in practice. The Advisory Committee considers that while these problems are linked to the general question of the status of Serbian university

education in Kosovo, they should be tackled in an appropriate manner pending the resolution of the overall issue.

95. The Advisory Committee considers that the availability of higher education in one's mother tongue can be a key factor in deciding whether to stay in Kosovo. Together with access to primary and secondary levels of education in one's mother tongue (see also related comments under Article 14), the availability of higher education is influencing the return decisions of IDPs and refugees. This should be reflected in the policies and practices developed in this field. Furthermore, the Advisory Committee wishes to underline that the important role assigned to the Serbian language in official bodies and other contexts in Kosovo, reflected *inter alia* in the Constitutional Framework and in the draft law on languages, implies that there is a need to ensure adequate language skills and capacity within various public sectors. This also needs to be taken into account in the design and implementation of educational legislation and policies, including in higher education.

### **Article 13**

96. The Advisory Committee notes that the right of persons belonging to national minorities to set up their own private educational and training establishments is guaranteed in Chapter IV of the Constitutional Framework, which also stipulates that financial assistance may be provided, including from public funds, in accordance with applicable law.

97. According to the figures contained in the UNMIK Report, enrolment in private educational institutions by minority communities is relatively low. The Advisory Committee is not aware of any request made by members of these communities to establish such institutions, and it therefore considers that implementation of this article does not give rise to any further specific observations.

### **Article 14**

#### **Legal framework**

98. The Advisory Committee welcomes the fact that the right of persons belonging to a community to receive education in his/her own language is guaranteed in the Constitutional Framework. The Advisory Committee notes that there is no provision in the existing legislation identifying the minimum number of pupils required to open a class with instruction in a minority language although it appears that a policy of a minimum of 15 pupils has developed in practice. This threshold appears reasonable in a number of contexts, but it raises problems for certain numerically small communities, such as the Bosniacs who are often not able to meet the threshold. The Advisory Committee finds that the situation as regards the threshold should be clarified, including through the adoption of a specific regulation that would also allow for flexibility to accommodate, to the extent possible, requests made by smaller groups.

### **Teacher training, textbooks, physical access to educational facilities**

99. As regards practice, the Advisory Committee notes that while the implementation of this constitutional right, and problems encountered, varies according to the communities concerned, certain problems, such as the shortage of textbooks and professional staff for instruction in mother tongue, are common for all minority communities. While noting that there is valuable co-operation on producing textbooks with Turkey and Bosnia and Herzegovina, the Advisory Committee stresses that imported textbooks may not adequately reflect the experiences of communities living in Kosovo. The Advisory Committee considers that increased attention should be paid to supporting the publication of textbooks in the languages of minority communities and that a plan should be drawn up in consultation with the communities concerned in this respect. The Advisory Committee considers that there is a need to increase support, also from international sources, for the working conditions and training of minority language teachers, including teachers of the Bosnian language.

100. Physical access to educational facilities with mother tongue teaching is identified as a recurrent problem by representatives of various communities, including the Bosniac, Turkish and Gorani communities, despite the calls that have repeatedly been made in the last years to UNMIK and MEST to develop a comprehensive plan to ensure safe transport for minority communities. This concerns also the Serb community whose limited freedom of movement poses great challenges in accessing education outside the areas where persons belonging to this community live compactly. The Advisory Committee considers that there is an urgent need to make progress in this respect, given that the absence of such transportation harms access to mother tongue education of persons belonging to a number of minority communities.

### **Parallel schools**

101. As regards the parallel school system attended by Serbian pupils as well as by pupils belonging to certain other communities, specific problems have been identified in terms of monitoring the implementation of Article 14. While these parallel schools may be considered, in the current circumstances, to be an attempt to cater for the educational needs of these communities in the absence of matching services offered by the Kosovo institutions, the Advisory Committee finds it essential that they are placed under effective supervision regarding the content and quality of the education they provide.

### **Education in Romani language**

102. The Advisory Committee notes that, at present, there is only limited opportunities for the Roma to learn their language, and that these have been largely developed by non-governmental organisations. Given that education in Romani language is not generally available in Kosovo, Roma children usually attend education in the language that is spoken by the majority in the locality where they live, often encountering the problems noted under Article 12.

103. The Advisory Committee was informed that requests have been made at local level to introduce Romani language, history and culture in schools, but that these have not been followed up by the authorities. The Advisory Committee is aware that this unsatisfactory situation was already discussed back in 2003, when discussions between MEST, the OSCE and civil society actors resulted in a recommendation that introduction of Romani language, history and culture should be made possible together with the development of adequate education materials. The Advisory Committee considers that practical steps should now be taken to transform these recommendations into real opportunities for Roma to develop their linguistic and cultural identities and that requests in this respect should be properly followed up. In addition, consideration should be given to the training of Roma teachers who are currently teaching in languages other than Romani as well as to the training of other qualified candidates to enable them to develop specific skills in Romani language teaching.

104. The Advisory Committee notes that education in Bosnian and Turkish is offered in schools where education is provided in two languages or more, which is commendable from the point of view of Articles 12 and 14. The Advisory Committee was however made aware of the concerns expressed by members of the Turkish communities that they are not adequately represented in the school boards of the schools concerned. The Advisory Committee finds that a participatory approach in the running of the schools should be ensured, and that the ethnic diversity of the schools should be adequately reflected in their decision-making structures.

105. As concerns the specific situation of the Gorani and their access to higher education (see comments under Article 12), the Advisory Committee stresses that the need for flexibility on this issue is important also from the point of view of the implementation of Article 14 of the Framework Convention. The Advisory Committee understands that efforts are being made to provide textbooks in accordance with the new curriculum and urges the authorities to pursue these efforts in order to facilitate the eventual integration of pupils of the Gorani community into the new system.

### **The prospect for bilingual/multilingual education**

106. The Advisory Committee notes that, according to Regulation No. 2002/19 on the Promulgation of a Law adopted by the Assembly of Kosovo on Primary and Secondary Education in Kosovo, pupils receiving education in a minority language learn the Albanian language as a non-native language as part of the unified education system (two classes a week, according to the UNMIK Report). While not being aware of the existence of detailed regulations regarding the teaching of Albanian, the Advisory Committee considers that the authorities should ensure that a balanced approach is adopted and implemented in this respect in order to allow for the preservation of minority languages as part of the identity of persons belonging to minority communities on the one hand, and the integration of minority communities through the learning of Albanian on the other hand.

107. The Advisory Committee is concerned about the linguistic barrier that exists between the Serbian and Albanian communities. The Advisory Committee finds it encouraging that some local initiatives exist to enable Albanians to learn Serbian, and it considers that such good examples should be expanded, including in the context of the public education system.

This would be important in view of developing inter-ethnic communication (see also Article 12).

### **Article 15**

108. The Advisory Committee regrets the fact that the UNMIK Report provides only very limited information on the implementation of Article 15 in Kosovo. This limited reporting suggests that the significance and the scope of this article are not fully appreciated by the reporting authorities.

#### **Participation in the status talks**

109. The Advisory Committee is of the opinion that one of the most crucial issues related to the participation of minority communities is the way in which they will be involved in the talks on the future status of Kosovo. Taking into account that the talks are likely to cover many issues affecting the future status and protection of minority communities in Kosovo, the Advisory Committee agrees with the representatives of minority communities who have stressed that the effective involvement of all communities of Kosovo, and not only the Albanian and Serbian communities, must be ensured in this process. This is instrumental not only in light of the principles contained in Article 15 of the Framework Convention, but also to ensure that the outcome takes into account the concerns of all communities and attracts the widest possible support within the society. The Advisory Committee considers that this issue - the importance of which was acknowledged by several international and local interlocutors during the visit - should be one of the main elements in the follow-up to the findings of the monitoring of the Framework Convention, including by the representatives of the international community.

#### **Participation in public bodies**

110. More generally, participation of persons belonging to minority communities in public decision-making is one of the most important issues in today's Kosovo, and a key to the implementation not only of Article 15 but also of other principles of the Framework Convention. The Constitutional Framework contains commendable provisions on the representation of minority communities in the Assembly of Kosovo, notably 20 reserved seats for minority communities. However, representatives of the Serb community, who are entitled to 10 out of the 20 reserved seats, have used only to a limited extent their possibilities to participate in the Assembly and in other PISG structures, including in the Government of Kosovo. It is clear that this state of affairs substantially impairs their influence in the decision-making processes at the central level.

111. Within the Assembly, one of the key instruments to address issues of concern for minority communities is the Committee on Rights and Interests of Communities. The Advisory Committee regrets that, according to the information provided by members of the said Committee, the Ministers of the Government of Kosovo have not shown adequate interest in taking part in the meetings of the Committee nor in entering into a direct dialogue with its

members on the matters falling within the Committee's mandate. Members of this Committee also consider that their recommendations have not been given adequate attention.

112. At the local level, the degree of participation of minority communities in political bodies varies significantly. Whereas in their compact areas of residency, certain minority communities have in a number of cases gained a high level of influence in local municipal bodies, in other areas, and for numerically smaller minorities, the situation is very different. For example, it appears that there are no Roma amongst the members of municipal assemblies of Kosovo. In such circumstances, a principal mechanism for ensuring minority communities' involvement in municipal decision-making processes, is the system of "communities committees". Pursuant to the UNMIK Regulation 2000/45 on Self-Government of Municipalities in Kosovo, all municipalities are obliged to set up a communities committee, in which each community residing in the municipality at issue should be represented. The responsibilities of the communities committees include important tasks relating to the promotion of the rights of minority communities, including prevention of ethnic discrimination by public officials, and some promising initiatives, such as field visits to minority communities, have been introduced. However, the capacity, effectiveness and representativeness of the said committees have been questioned by a number of persons belonging to minority communities. It appears that, whereas some communities committees operate well, in a number of municipalities the committees are not in a position to take proactive measures to protect the most vulnerable minority communities and the process of selecting members of these committees contains shortcomings. UNMIK should increase its efforts to improve this situation. The Advisory Committee suggests that the selection process and other modalities relating to the functioning of such committees be reviewed so as to ensure that the committees can carry out their important tasks effectively and enjoy a maximum level of support within the communities they are tasked to protect.

113. The Advisory Committee underlines that the process of decentralisation and local self-government reform have clear relevance for the participation of persons belonging to minorities and for the implementation of the principles of Article 15 more generally. The Advisory Committee understands that there are substantial disagreements over the scope and the content of the planned reform, and that this has affected the way in which pilot projects have been implemented. The Advisory Committee finds it essential that the process is implemented in a manner that ensures effective participation of persons belonging to minority communities in the decision-making processes, but at the same time takes into account the situation of persons residing, *de facto*, in a "minority-in-a-minority" situation.

### **Employment and participation in economic life**

114. The Advisory Committee appreciates the increased attention given to the employment of persons belonging to minority communities in the municipal civil service and in the PISG structures at the central level, which reflects the priority given to this issue in the Kosovo Standards Implementation Plan. The targeted advertisement campaigns and other measures seem to have yielded certain improvements, but the participation of minority communities is still disconcertingly low in many sectors. The Advisory Committee would like to highlight in particular the need to make further progress in relation to the judiciary, where the number of

persons belonging to minority communities is remarkably low, despite the improved efforts made to address this issue. The Advisory Committee welcomes the progress achieved in recruiting police officers from minority communities, and encourages the authorities to look into the remaining concerns expressed by minority communities in this respect. These include security problems, which discourage Serbs in particular from applying for posts in law-enforcement and other structures in a number of areas, but also language and other obstacles that representatives of the Turkish community have reported in terms of their access to the Police Academy.

115. The Advisory Committee would like to stress that the process of privatisation has long-term implications for the participation of persons belonging to minority communities, in particular as regards their participation in economic life. The Advisory Committee therefore considers it necessary that the implications and impact of the process for minority communities are carefully evaluated and monitored, and its transparency guaranteed, with a view to ensuring that persons belonging to minority communities have fair and equal access to the process and that all communities benefit from it. Careful monitoring should aim to ensure that the privatisation process and its outcome involve no direct or indirect discrimination.

116. The Advisory Committee considers that the successful settlement of property claims is also directly linked to the implementation of the Framework Convention. In this respect, the Advisory Committee welcomes the measures taken to address the residential property claims, of both Albanians and persons belonging to minority communities, relating to the period between 1989 and 1999, through the work of the Housing and Property Directorate. However, there is now a pressing need to start tackling agricultural and commercial property claims through a process that is non-discriminatory and ensures effective repossession. This is essential in order to improve prospects for the effective participation of persons belonging to minority communities in economic life and to encourage sustainable minority return. Finally, it is imperative that measures are adopted to process efficiently the compensation claims concerning property damaged during the events of March 2004, the judicial processing of which has reportedly been suspended by the UNMIK Department of Justice.

## **Article 16**

### **Population changes**

117. The Advisory Committee notes that the implementation of Article 16 of the Framework Convention is considerably complicated by the 1999 conflict, which led a large number of persons to flee Kosovo and caused considerable internal displacements, as well as by the violent events of March 2004, which also forced many to flee. As a result, the proportion of persons belonging to various communities living in the different parts of Kosovo has undergone substantial changes, although no reliable data is available (see also comments under Article 3).

118. The Advisory Committee is fully aware that the decisions to return are linked with the fulfilment of a number of pre-conditions such as security, guarantees for property rights and socio-economic prospects (including employment, and the availability of education), and that

there remain serious problems in respect of all of these issues in Kosovo. In this connection, the Advisory Committee welcomes the political commitment expressed by the PISG in ensuring a sustainable return process, although concrete results have so far been modest. Adapting the assisted return programmes so that they would give returnees more freedom in deciding where in Kosovo to settle would be likely to contribute to this process (see also related comments under Article 4). The Advisory Committee considers however that it is of the utmost importance that the return process is protected from any political manipulation that would be incompatible with the principles of Article 16.

### **Decentralisation**

119. Decentralisation is an ambitious project affecting the future of Kosovo and the rights of persons belonging to various communities. Experience with the existing pilot projects on decentralisation shows that adequate consultation with members of all minority communities is needed in the design of any plans in this area. The Advisory Committee notes that addressing decentralisation in “a wider framework (...) which would include a number of new municipalities where in particular the Kosovo Serbs would have a comfortable majority” was recommended by Mr Kai Eide, the Special Envoy of the UN Secretary-General to Kosovo in his comprehensive review of Kosovo published in October 2005. The Advisory Committee calls on the authorities to take due account of the principles of Article 16 in the preparation of decentralisation arrangements, including by relying on the international community’s expertise in this field.

#### **Article 17**

120. The Advisory Committee notes that the right of persons belonging to minority communities to enjoy unhindered contacts with persons belonging to their respective communities is guaranteed by the Constitutional Framework of Kosovo, although implementation of this right is, in many respects, complicated by the *de facto* restrictions on the freedom of movement of some persons belonging to minority communities.

121. The Advisory Committee notes that efforts have been taken to address difficulties linked with the non-recognition of UNMIK travel documents by countries of the region (notably Bosnia and Herzegovina), and it supports UNMIK efforts to ensure a wide recognition of these travel documents and to remove all remaining obstacles, including those related to the acceptance of licence plates issued by UNMIK, in order to guarantee cross-border contacts for persons belonging to minority communities.

#### **Article 18**

122. The Advisory Committee notes that UNMIK has entered into a number of agreements of relevance for the protection of the minority communities. These include agreements with international organisations including the Agreement with the Council of Europe on the Framework Convention (see also General remarks) as well as agreements with countries of the region in fields of importance for minority communities, such as culture and education. The

ACFC/OP/I(2005)004

Advisory Committee encourages efforts to promote the use of these instruments to further the protection of persons belonging to minority communities.

#### **IV. CONCLUDING REMARKS**

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

#### **GENERAL CONCLUSIONS**

124. Protection of national minorities is an area of paramount importance for human rights as well as for peace and stability in Kosovo, and the Agreement concluded between the Council of Europe and UNMIK related to the monitoring of the Framework Convention is an important step in improving the international accountability of the authorities in Kosovo in this area.

125. The monitoring process coincides with the decision to commence the crucial status talks on the future of Kosovo, the results of which will also have an impact on the way in which the findings of the present monitoring process are to be followed up. The present complex and ambiguous institutional arrangements, coupled with uncertainty as regards the future status of Kosovo, have at times obscured the respective authorities' responsibilities and accountability for the implementation of the Framework Convention, to the detriment of persons belonging to minority communities. Therefore, whatever the outcome of the status talks, it is essential that the authorities that are effectively in charge in Kosovo, be they international and/or local, clearly assume their responsibilities for the implementation of this treaty.

126. At the same time, it is clear that, regardless of the institutional arrangements, the implementation of the principles of the Framework Convention remains exceptionally difficult in Kosovo, where inter-ethnic violence has seriously eroded trust between communities.

127. Various advanced norms, such as the Anti-Discrimination Law, and a commendable Kosovo Standards Implementation Plan have been introduced to tackle many of the key concerns of minority communities.

128. But the reality in Kosovo remains disconcertingly far from these laudable norms and plans. Hostility between Albanians and Serbs is still very tangible, and this is harming also the protection of other communities in Kosovo.

129. Serbs outside their compact areas of settlement see their basic rights, such as freedom of movement and freedom of expression, threatened, and discrimination and intolerance towards persons belonging to minority communities continue. Related security concerns, coupled with limited employment opportunities and problems with repossession of property and other factors, are a real obstacle to sustainable return. Security concerns also affect the implementation of the Framework Convention in such fields as education, use of languages and participation. This concerns not only Serbs but also persons belonging to certain other communities, in particular Roma.

130. In these difficult circumstances certain initiatives that are valuable as such, such as the planned population and housing census, must be pursued with extreme caution and in close consultation with all minority communities.

131. Sustainable progress towards full and effective equality would require true commitment from the institutions to tackle the problems detected. Some steps forward have been noted in this respect, but shortcomings remain serious as regards both the capacity and the will of local institutions to tackle these issues. At the same time, UNMIK has been at times too slow to react, and, for example, the health emergency in Roma camps in Northern Kosovo has only recently been treated as a priority. Furthermore, the fact that on some issues neither UNMIK nor local authorities have assumed clear responsibility has caused significant difficulties, for example, for Ashkali and Egyptians who have been forcibly returned to Kosovo.

132. The perceived impunity of actors of violent crime against Serbs, Roma and others, including in relation to the violence of March 2004, is a particularly serious problem that needs to be addressed as a high priority. This requires more assertive efforts, including by local and international bodies involved in law-enforcement.

133. The judiciary, with its huge backlog and limited minority representation, is one extremely weak element in the current institutional framework, and this has a negative impact on the efforts of persons belonging to minority communities to exercise the right to property restitution and other rights. For many of them, the international Ombudsperson remains the only trusted and accessible remedy.

134. There are certain positive examples of the regular use of languages of minority communities in official bodies. At the same time, lack of political will and capacity has limited the possibility of persons belonging to minority communities to use their languages in relations with public administration in a number of localities. Also, progress reported on the use of topographical indications in minority languages is still too slow.

135. While commendable initiatives exist, there is no comprehensive approach to the issue of minority education, and this has had a negative impact on numerically smaller communities, including the Bosniac and Turkish communities. The specific needs of pupils from the Roma, Ashkali and Egyptian communities are still to be addressed in a consistent manner. In addition, the on-going educational reforms have created new obstacles to the access to education for some Gorani pupils.

136. The fact that Albanian and Serbian pupils generally receive their education in separate schools poses great and long term challenges to the building of trust and reconciliation between the two communities. Apart from some limited initiatives of shared schools, there is presently a lack of interaction between these communities within the school system, which reinforces the divided nature of Kosovo society.

137. The Constitutional Framework contains certain commendable provisions on the participation of persons belonging to minority communities in decision-making processes, but serious obstacles remain in this area at various levels. The participation of communities other

than Albanians and Serbs in the status talks is one acute concern in this respect, and another key question is the planned local government reform.

138. Participation of persons belonging to minority communities in economic and social life is another area where the stated political commitment needs to be more consistently reflected in practice, and the impact of privatisation and other key processes must be carefully monitored.

## **RECOMMENDATIONS**

139. In addition to taking into account the various comments made in the preceding sections of the present Opinion, the authorities in Kosovo, both international and local, are urged to take the following measures with a view to improving the implementation of the Framework Convention in Kosovo.

### **General**

140. Ensure that there is sufficient clarity as regards the responsibilities and accountability for the implementation of various articles of the Framework Convention and that no competences are prematurely delegated to local institutions in the relevant sectors.

141. Improve the awareness within the relevant bodies, both international and local, of the principles contained in Article 15 and other articles of the Framework Convention.

### **Data collection**

142. Delay the organisation of the population and housing census until a maximum level of participation of all communities can be ensured.

143. Take measures to ensure effective protection of personal data relating to community affiliation.

144. Set up a permanent system for collecting data on the investigation and prosecution of ethnically-based incidents.

### **Remedies and law-enforcement**

145. Step up efforts to improve the functioning of the judiciary and to build the confidence of minority communities in the courts, *inter alia*, by further recruiting persons belonging to minorities and by improving the speed with which cases are dealt with.

146. Keep the Ombudsperson institution under international leadership until it can be assessed with confidence that the said institution can function effectively as a fully local institution, without eroding the trust it has built to date amongst minority communities.

147. Address the perceived impunity as regards ethnically motivated crime by giving such crime the highest priority within the law-enforcement and other bodies involved, and take steps to encourage reporting of everyday manifestations of intolerance.

### **Return process and security concerns**

148. Take vigorous practical measures to remove the obstacles to return by seriously addressing security concerns, but also by ensuring the repossession of, and unhindered access to, agricultural and other property and by designing further targeted income generating activities.

149. Pursue plans to make the assistance schemes more flexible so as to better guarantee the freedom of choice of place of residence in Kosovo for persons belonging to minority communities.

150. Introduce assistance measures, and clearer allocation of institutional responsibilities, to ensure improved integration of those persons belonging to minority communities who have been forcibly returned to Kosovo.

151. Take urgent measures to address the alarming health situation of Roma in the lead-contaminated camps in Northern Kosovo, keeping the well-being and health of the Roma at issue as the primary consideration, and take decisive measures to accommodate the return of the Roma and to prevent such health crises in the future.

### **Minority cultures and media issues**

152. Expand efforts to protect religious sites from any incidents, while pursuing the crucial process of reconstructing the damaged sites.

153. Increase measures to support cultures of minority communities, including numerically smaller ones, and ensure the participation of persons belonging to minority communities in the relevant decision-making process.

154. Process rapidly the delayed application for radio and TV licenses, with a view to expanding the scope and diversity of broadcasting for and by minority communities, and take further steps to ensure that all communities have equal access to public service broadcasting.

### **Language use**

155. Adopt new language legislation in order to bring clarity and legal certainty as regards the use of languages, including in relations with administrative authorities, topographical indications, and registration of personal names, and closely monitor compliance with language requirements in the relevant sectors, including in the judiciary.

156. Ensure that the adoption of new language legislation is coupled with adequate implementation capacity and that procedures, including judicial ones, are in place in case of non-compliance with language requirements, including for any illegal changes of place names.

157. Ensure that tangible results are achieved in the efforts to put an end to the feeling of insecurity that prevents Serbs and Roma and persons belonging to certain other minority communities, from using their language in public places.

### **Education**

158. Consider ways to create opportunities for interaction between pupils from Serbian and Albanian communities and design a comprehensive plan that would progressively remove barriers, including linguistic ones, between pupils from different communities.

159. Accommodate minority concerns and introduce incentives that could reduce the demand for maintaining a parallel educational system.

160. Address as a matter of urgency the issue of safe transport of pupils from minority communities to educational facilities.

161. Address the existing needs for education in the languages of the minority communities, including by clarifying the threshold for opening a class with instruction in a minority language while aiming to accommodate the requests made by numerically smaller communities and take measure to provide adequate textbooks and qualified teachers for instruction in mother tongue.

162. Ensure that decisive steps are taken to address the educational needs of Roma, Ashkali and Egyptian communities, including by ensuring the sustainability of the programmes designed to help pupils from these communities to integrate and stay in the education system.

163. Allow for flexibility in the implementation of the educational reforms in relation to those pupils from the Gorani community who have not yet integrated into the new education system.

### **Participation**

164. Ensure the meaningful participation and input of persons belonging to all communities in the talks concerning the future status of Kosovo.

165. Pursue further efforts to ensure improved participation of persons belonging to minority communities in the PISG structures and processes.

166. Introduce regular dialogue between the relevant Government Ministries and the Committee on Rights and Interests of Communities of the Assembly of Kosovo.

167. Consider ways to improve the representativeness and effectiveness of the communities committees in municipalities.

168. Step up efforts to ensure that persons belonging to all communities can effectively take part in the economic and social life of Kosovo, including by monitoring how the privatisation process and its outcome impacts on, and involves, minority communities.

**Protection against population changes**

169. Ensure that the return process, while guaranteeing the choice of the place of return in Kosovo, is organised in a manner that prevents political manipulations.

170. Ensure that any proposed decentralisation plan allows for substantial consultation of members of all minority communities and fully respects the principles of Article 16 of the Framework Convention.

**Cross-border contacts**

171. Pursue efforts to address the difficulties linked with the non-recognition of UNMIK travel documents, including those related to the acceptance of licence plates issued by UNMIK.