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

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**Second Opinion on Kosovo<sup>1</sup>  
adopted on 5 November 2009**

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<sup>1</sup> All reference to Kosovo, whether to the territory, institutions or population, in this text shall be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo.

## EXECUTIVE SUMMARY

Since the adoption of the Advisory Committee's first Opinion in November 2005, efforts have been made to improve the legislative framework by adopting new legislation pertaining to minority protection. Steps should nonetheless be taken and financial resources allocated to ensure that the existing legislation is fully and effectively implemented. Moreover, serious shortcomings in access to justice and domestic remedies of persons belonging to minority communities need to be addressed as a matter of priority.

Inter-ethnic relations, in particular between persons belonging to the Serbian and Albanian communities, remain tense. Separate education systems and increasingly apparent language barriers aggravate the existing ethnic divisions. Resolute action needs to be taken to improve inter-ethnic dialogue and build trust among persons belonging to all communities, with a particular emphasis on overcoming linguistic divisions and encouraging inter-ethnic activities among young persons.

In spite of some activities implemented to promote inter-ethnic dialogue, including specific action by the police, more efforts need to be made to combat effectively ethnically and religiously motivated crimes. There is also a need to pursue the work on the reconstruction of damaged Serbian Orthodox religious sites.

An Integration Strategy for Roma, Ashkali and Egyptians has been devised with a view to improving the situation of these persons in a number of areas. The Strategy needs to be implemented fully and effectively in practice. The fact that no appropriate solution has been found so far for those living in the lead-contaminated camps in Northern Kosovo is a serious source of concern. Notwithstanding projects initiated to facilitate the reintegration of returnees, further efforts are needed to ensure adequate conditions for safe and sustainable return.

Positive initiatives in the field of minority education have been taken. Particular attention needs to be paid to provide a balanced and pluralistic environment to history teaching. Moreover, opportunities for persons belonging to minority communities to learn the official languages in minority schools should be expanded.

There is a need to identify further ways to ensure the effective participation of persons belonging to minority communities in socio-economic life, including in the economic development, the privatisation processes and the return of property. Their representation in public services should also be improved.

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

### **SECOND OPINION ON KOSOVO**

1. The Advisory Committee adopted the present Opinion in accordance with 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). Pursuant to Article 2 of the said Agreement,<sup>2</sup> the Advisory Committee asked to be informed of the progress made in the implementation of the Framework Convention for the Protection of National Minorities in Kosovo. Upon the request by the Advisory Committee, UNMIK submitted the Progress Report on the Implementation of the Council of Europe Recommendations on the Framework Convention for the Protection of National Minorities in Kosovo (hereinafter: Progress Report) on 10 July 2008.
2. The findings of the Second Opinion are based on information contained in this Progress Report and other written sources and on information obtained by the Advisory Committee from representatives of the authorities<sup>3</sup> as well as from non-governmental organisations during its visit to Kosovo carried out from 27 – 30 April 2009. The Advisory Committee met with representatives of various communities in Kosovo and visited Prishtinë/Priština, Prizren, Northern and Southern Mitrovicë/Mitrovica and Shtrëpcë/Štrpce. The Advisory Committee regrets that, due to the unfavourable security situation, the delegation was not able to visit the lead-contaminated camps located in Northern Kosovo and the University in North Mitrovicë/Mitrovica. However, it is positive that the delegation was able to meet in Southern Mitrovicë/Mitrovica with representatives of the Osterode camp. The Advisory Committee would like to express its gratitude to the UNMIK, the Office of the United Nations High Commissioner for Refugees (UNHCR), the Organisation for Security and Co-operation in Europe (OSCE) and the Council of Europe Office in Prishtinë/Priština as well as the authorities for having facilitated its visit in Kosovo.
3. Section I below contains the Advisory Committee's main findings on key issues pertaining to the implementation of the Framework Convention in Kosovo. These findings reflect the more detailed article-by-article findings contained in Section II, which covers those provisions of the Framework Convention on which the Advisory Committee has substantive issues to raise.
4. Both sections make extensive reference to the follow-up given to the findings of the first cycle of monitoring of the Framework Convention, contained in the Advisory Committee's first Opinion on Kosovo, adopted on 25 November 2009, and in the Committee of Ministers' corresponding Resolution, adopted on 21 June 2006.
5. The concluding remarks, contained in Section III, could serve as the basis for the Committee of Ministers' forthcoming conclusions and recommendations on Kosovo.
6. The Advisory Committee looks forward to continuing its dialogue with the authorities in Kosovo as well as with representatives of minority communities and others involved in the implementation of the Framework Convention. In order to promote an inclusive and transparent process, the Advisory Committee expects that the present Opinion will be made public upon its receipt and subsequently translated into minority languages.

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<sup>2</sup> Article 2(3) of the said Agreement stipulates that UNMIK shall submit to the Committee of Ministers on a periodical basis and whenever the Committee of Ministers so requests any further information of relevance to the implementation of the Framework Convention. The Advisory Committee on the Framework Convention may also request further information from UNMIK and other sources in Kosovo and hold meetings with them for this purpose.

<sup>3</sup> All reference to the authorities or to the constitutional and legal order of Kosovo, in this text shall be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo.

## I. MAIN FINDINGS

### Monitoring process

7. The Advisory Committee notes that the monitoring of the implementation of the Framework Convention is marked by the particular circumstances that prevail in Kosovo where international actors continue to play an important role. Against this background, it wishes to recall that the protection of persons belonging to minority communities under the Framework Convention constitutes an integral part of human rights and should therefore not be undermined by political and institutional considerations.

8. The Advisory Committee appreciates the positive approach by all relevant local and international actors to the Framework Convention's monitoring process. It welcomes the fact that, in June 2006, a follow-up meeting was convened to discuss the results of the first monitoring of the implementation of the Framework Convention in the presence of the relevant stakeholders. The Advisory Committee notes that valuable efforts have been made to raise awareness of the Framework Convention among civil society and civil servants through training sessions organised by the Organisation for Security and Co-operation in Europe (OSCE) and civil society organisations.

9. The Advisory Committee wishes to underline the constructive and open spirit of the discussions it held with the international and local authorities during its visit to Kosovo in April 2009. It notes that the Progress Report, which was mainly prepared by the OSCE Mission in Kosovo, provides detailed and useful information on the legislative, policy and institutional developments in the areas highlighted in the recommendations contained in the first Advisory Committee's Opinion and the subsequent Resolution of the Committee of Ministers. The Advisory Committee highly values the fact that local input has been provided to the Progress Report. Whilst acknowledging the difficulties in organising consultations, the Advisory Committee, however, regrets that persons belonging to minority communities were not consulted on the content of the Progress Report.

10. The current situation in Kosovo is in many respects *sui generis*, and this is also the case regarding the responsibility for the implementation of the Framework Convention. It is therefore important that all authorities concerned are actively involved in the activities relating to the implementation of the Framework Convention and of the recommendations resulting from the present monitoring process.

### General legislative and institutional framework

11. Since the adoption of the first Opinion of the Advisory Committee, efforts have been made to improve the legislative framework by adopting new legislation in a number of fields pertaining to minority protection. The current legislative framework generally reflects the principles of the Framework Convention.

12. However, there is a considerable gap between the legislative basis pertaining to minority protection and the reality when it comes to its implementation. Greater determination is needed to implement effectively the legislation and to build mutual trust and tolerance among different minority communities. The allocation of adequate financial and other resources is essential for the implementation of the various laws and strategies, such as the Strategy for Roma, Ashkali and Egyptians, adopted in 2008.

13. At the institutional level, several institutional actors have competences over the issues relating to minority communities. While recognising the importance given to the minority-related questions in the current institutional framework, the Advisory Committee warns against the risk of excessive fragmentation and an overlap of competences in this field.

14. The setting-up of the UNMIK Advisory Panel on Human Rights (hereinafter: Panel) has contributed to the enhancement of the UNMIK accountability, including in the field of minority protection. However, the Panel's effective functioning is hampered by a lack of adequate resources. More generally, it is of particular importance to establish an accountability mechanism for international bodies active in Kosovo.

### **Population census**

15. Adequate implementation of the rights of persons belonging to minority communities requires the availability of reliable data on the ethnic composition of the population as well as disaggregated data on the socio-economic and educational situation of the persons concerned. At the same time, it is important to recall that census results can only be regarded as one of the indicators of the ethnic composition of the population and that other methods can be used to obtain such information.

16. The preparation of the population census is underway and the adequate participation of persons belonging to some communities, in particular the Serbs and the Roma, remains an important challenge in the planning and implementation of the census. There is therefore a need to raise the awareness and confidence of persons belonging to the minority communities in the census process. Technical and other shortcomings identified during the pilot census projects should be duly remedied and an effective information campaign carried out. The right to self-identification of persons belonging to a minority community must be fully respected and the results of the census should not be misused for political purposes. The legal and practical measures necessary to safeguard effectively the data on individuals' affiliation with a particular minority group still need to be put in place.

### **Access to justice**

17. Serious shortcomings persist as regards the functioning of the judicial system in Kosovo. The absence of effective access to justice and to domestic remedies appears to affect disproportionately persons belonging to minority communities due to various reasons, such as the permanent backlog of cases and the lack of financial, technical and qualified human resources. In spite of the reportedly numerous instances of discrimination, only very few complaints have been lodged so far before the domestic courts. This is due *inter alia* to the lack of awareness and of trust in the judicial system among the population.

### **Situation of Roma, Ashkali and Egyptians**

18. The overall situation of the Roma, Ashkali and Egyptians raises deep concern. Persons belonging to these groups are affected to a much greater extent by poverty and social exclusion than persons belonging to other communities. Many of them continue to face discrimination in access to the labour market, housing and education, and are often confronted with prejudices and hostility. Difficulties in obtaining identity and other documents hinder their access to certain public services and property. The poor quality of education has resulted in high drop-out rates and low attendance of children belonging to these minority communities.

19. No appropriate solution has been found to date for the Roma, Ashkali and Egyptians living in the lead-contaminated camps located in Northern Kosovo. While being aware of the challenges relating to possible solutions, the Advisory Committee considers that a resolute response must be found, as a matter of urgency, to this persisting humanitarian and environmental tragedy.

### **Freedom of movement and return process**

20. While there have been signs of improvement as regards the security situation, persons belonging to some minority communities continue to face difficulties as regards their freedom of movement in various

municipalities all over Kosovo. While perceptions and fears contribute to the limitation of the exercise of the right to freedom of movement of persons belonging to some minority communities, persisting inter-ethnic tensions, shortcomings in the investigation of ethnically and religiously motivated crime and language barriers constitute serious obstacles for persons belonging to certain minority communities to move freely.

21. The absence of adequate conditions for the safe and sustainable return of previously displaced persons remains a deep concern for the Advisory Committee. Despite some efforts made by the authorities to provide adequate conditions for safe and sustainable return, many returnees do not benefit sufficiently from reintegration strategies and programmes. Most of those who were forcibly returned, and among them many Roma, Ashkali and Egyptians, do not benefit from any help. In order for a sustainable return to be successful, there is a need to take more resolute measures in the fields of security, social and health care services, employment and access to education and property. Notwithstanding the responsibility for the decision to implement forced returns lies with the governments of states from where persons have been returned, the authorities in Kosovo should address more vigorously the needs of those concerned considering their vulnerable situation. Finally, the return of persons belonging to the Serbian community to areas outside their enclaves would be almost impossible without providing conditions for access to education in Serbian or to bilingual education.

### **Protection and promotion of minority cultures**

22. A number of positive steps have been recorded in the field of protection and preservation of cultural heritage even though this domain continues to represent a challenge for the authorities. The Reconstruction Implementation Commission continued to function in the period under monitoring. New legislation, such as the Law on the Special Protective Zones, was enacted and reconstruction work on a number of Serbian Orthodox religious sites carried out. There is, however, a need to ensure that cultural heritage sites are protected against thefts and vandalism and that the work of the aforementioned Commission is pursued and reinforced.

23. Difficulties have been encountered by numerically smaller minority communities in accessing funding provided for cultural initiatives. The system of allocation of support to minority organisations lacks transparency and the involvement of minority representatives in decision-making on the funding distribution should be strengthened. The local authorities often rely on the international community to take initiatives in this field.

### **Tolerance and inter-ethnic dialogue**

24. Inter-ethnic relations in Kosovo remain characterised by mutual distrust and divisions along ethnic lines, in particular between persons belonging to the Serbian and the Albanian communities. Intolerance based on ethnic affiliations continues to be present in political discourse on all sides and at all levels which contributes to inter-ethnic tension. The excessive politicisation of minority-related issues is not conducive to promoting a climate of tolerance and inter-ethnic dialogue.

25. There is a disturbing lack of interaction between persons belonging to the Albanian and Serbian communities. A separate education system, and increasingly apparent language barriers, perpetuate even more ethnic divisions. Those willing to co-operate with the other community often face threats. The Advisory Committee therefore regrets the absence of a general strategy for reconciliation and inter-ethnic dialogue and the lack of promotion of multilingualism throughout the territory of Kosovo.

26. Notwithstanding the efforts made to combat and prevent inter-ethnic hostility, perpetrators of ethnically-motivated crimes have rarely been brought to justice. Many such crimes or incidents seem to remain unreported due to the fear of reprisal against victims and the lack of trust in the law-enforcement agencies. There are also concerns regarding the reliability of the data collected on the investigation and prosecution of ethnically-motivated incidents. More resolute measures are required to ensure that

ethnically-motivated crimes are effectively identified, investigated and the perpetrators prosecuted. Increased efforts must be made to raise awareness on ethnically-motivated offences amongst the law-enforcement agencies and the judiciary and the public in general.

### **Freedom of association and religious freedom**

27. Although the legislation regulating freedom of association was amended by the adoption of the Law on Freedom of Association in 2009, the exercise of the right to peaceful assembly continues to be affected by difficulties in the field of the freedom of movement due *inter alia* to the unfavourable security situation faced in particular by persons belonging to the Serbian and the Albanian communities living in Northern Kosovo.

28. The Advisory Committee notes with concern the attempts of the local authorities to change the ownership of property belonging to the Serbian Orthodox Visoki Dečani Monastery in the municipal Deçani/Dečani cadastral records. Worrying proposals to alter the name of the Serbian Orthodox Church were also reported to the Advisory Committee.

### **Access of minority communities to the media**

29. While a number of positive steps were taken in the field of minority broadcast media, difficulties for some minority communities to access the public service broadcasting persist. The lack of reception of public service television persists in some territories traditionally inhabited by minority communities, such as the Bosniacs, Gorani, Turks and Serbs. There is also a need to improve the quality of programmes aimed at minority communities on public television.

30. Whereas a lively minority language media scene exists in Kosovo, there is insufficient support for the media in minority languages. Attention should also be paid to the adequate representation of numerically smaller communities in the public media regulatory bodies and management.

### **Use of minority languages**

31. More efforts need to be made to implement effectively the existing legislative framework. Persons belonging to minority communities often experience difficulties in accessing information in the two official languages, Serbian and Albanian, due to a lack of quality interpretation and translation services. The possibility of using Serbian orally or in writing with the public authorities has reportedly been reduced. Adequate financial resources need to be allocated to guarantee the full implementation of minority language rights in Kosovo. The functioning of the Language Commission, whose role is to supervise the use of minority languages, should be improved.

32. Although efforts have been made in some municipalities inhabited in substantial numbers by persons belonging to minority communities to display bilingual or multilingual topographical signs, shortcomings persist in this field. Bilingual signs have often been defaced and sometimes misspelled, in particular in ethnically mixed municipalities. Multilingual topographical signs have not always been displayed in some minority languages, such as Turkish, Roma and Bosnian.

### **Education**

33. While efforts have been made to ensure the availability of mother-tongue education, persons belonging to some minority communities continue to experience difficulties in receiving quality education in their language. Regrettably, a sustainable solution has not yet been found to meet the educational needs of children belonging to the Gorani community. The Advisory Committee is also particularly concerned about the lack of opportunities for children from a minority background to learn the official languages in minority schools. This limits their possibilities to integrate into society.



Moreover, the authorities should promote learning of the other official language as well as providing opportunities for pupils belonging to the majority community to learn minority languages. The relevance of bilingual educational models should be assessed in this respect.

34. Schools in Kosovo do not use the same curricula given the existence of ‘the parallel education system’. History is interpreted and communities portrayed according to the curriculum followed. While being aware of the difficulties relating to history teaching in post-conflict and still ethnically divided societies, it is essential to provide an objective and balanced environment for history teaching, in consultation with minority communities.

35. Limited interaction amongst students and teachers of different communities, the Albanians and the Serbians in particular, represents a serious concern for the Advisory Committee. Resolute and urgent action must be taken by the authorities to implement initiatives promoting inter-ethnic contacts at schools and among children in general.

### **Participation**

36. Notwithstanding the efforts made by certain public sector bodies, such as the police, to promote minority community recruitment, there are still important areas of public life, including the judiciary, where persons belonging to the different minority communities are under-represented. More efforts are needed to address unequal access to information on employment amongst minority communities, as well as to promote their access to senior positions in the civil service.

37. The setting-up of the Community Consultative Council, a consultative body for minority communities, is a positive step contributing to more effective participation of minority communities in public affairs. The Advisory Committee, however, considers that more efforts should be made to ensure systematic and effective consultation of minority communities, especially on issues directly affecting them. Greater awareness should be raised among persons belonging to minority communities on the Council’s existence and functioning, which should be as inclusive as possible and benefit from adequate financial and human resources.

38. While acknowledging the overall difficult economic situation prevailing in Kosovo, persons belonging to certain minority communities appear to encounter particular difficulties in participating effectively in socio-economic life. Insufficient economic investments and underdeveloped infrastructures in areas inhabited by persons belonging to minority communities in a substantial number were reported to the Advisory Committee. Discriminatory practices in the privatisation processes of former socially owned enterprises and inadequate access to information on business opportunities have resulted in more limited economic opportunities for persons belonging to minority communities. Moreover, progress in property return is essential in order to improve the prospects of persons belonging to minority communities to participate effectively in economic life.

## II. ARTICLE-BY-ARTICLE FINDINGS

### Article 1 of the Framework Convention

#### Human rights and the protection of minorities

##### *Findings of the first cycle*

39. In its first Opinion, the Advisory Committee found it essential that the issue of the direct applicability of the Framework Convention and other human rights instruments pertaining to national minorities as well as their monitoring be addressed in discussions related to the status of Kosovo.

40. The Advisory Committee called on the authorities to ensure that there was sufficient clarity regarding the responsibilities and accountability for the implementation of the Framework Convention.

##### *Present situation*

41. The Advisory Committee welcomes that the Constitution of Kosovo provides in Article 22 for direct applicability of a number of international human rights instruments pertaining to national minorities, including the Framework Convention. The rights of communities and their members are also specifically provided for in Chapter III of the Constitution. It regrets, however, that discussions on issues relating to the protection of minority communities are often highly politicised. Furthermore, minority protection is sometimes perceived as a way of giving advantages to some communities and not as part of human rights. In this context, the Advisory Committee recalls that the protection of national minorities and of the rights and freedoms of persons belonging to those minorities form an integral part of the international protection of human rights as stated in Article 1 of the Framework Convention.

42. The Advisory Committee welcomes the setting-up by the UNMIK Panel to consider complaints from persons or groups of individuals, including those belonging to minority communities, on alleged violations of human rights attributable to UNMIK.<sup>4</sup> It considers that the setting-up of this quasi-judicial body has contributed to the enhancement of the human rights framework in Kosovo. It may also have a positive impact on persons belonging to minority communities by ensuring an increased accountability in the field of minority protection. The Advisory Committee was informed of the Panel's insufficient resources. It is of the opinion that it is essential to provide the Panel with adequate human as well as financial resources to ensure its effective functioning. The Advisory Committee expects that recommendations issued by the Panel, which are of an advisory nature, will be followed by UNMIK. The Advisory Committee notes that other international actors, such as the European Union Rule of Law Mission in Kosovo (EULEX),<sup>5</sup> have also been given responsibilities in the field of minority protection. In this respect, the Advisory Committee considers that there is a need to put in place a mechanism to deal with complaints alleging human rights violations by international actors in Kosovo.

43. In the context of the current institutional arrangements linked to the international presence in Kosovo, the Framework Convention's implementation has suffered from the lack of necessary coordination and co-operation. The Advisory Committee finds it therefore essential that particularly important issues, such as minority protection, receive due attention by all stakeholders.

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<sup>4</sup> See UNMIK Regulation No. 2006/12 on the Establishment of the Human Rights Advisory Panel which provides for exclusive authority and discretion of the Special Representative of the UN Secretary-General (SRSG) to decide whether to act on the findings of the Panel. The Panel is composed of three part-time members, nominated by the President of the European Court of Human Rights and appointed by the SRSG.

<sup>5</sup> The European Union's Rule of Law Mission (EULEX), operational in Kosovo as from December 2008, has acquired competences in the rule of law area, notably in the field of police, judiciary and customs.

44. The Advisory Committee is deeply concerned about serious shortcomings regarding the functioning of the judiciary in Kosovo and the lack, under the current institutional arrangements, of adequate and effective remedies against human rights violations. In this context, it recalls that effective protection against human rights violations, committed by any actor, is a precondition for a society based on the rule of law and human rights. It also stresses that minority rights cannot be effectively implemented in the absence of the rule of law (see also comments in paragraph 93 under Article 4 below).

#### *Recommendations*

45. The authorities should work towards the depoliticisation of issues pertaining to minority protection. More efforts should also be made to increase the understanding that the protection of minority communities and the rights and freedoms of persons belonging to minority communities forms an integral part of the international protection of human rights.

46. The Advisory Committee considers it essential that the changes in the international presence in Kosovo do not have negative consequences on the protection of persons belonging to minority communities and that the continuation of the monitoring process of the Framework Convention is ensured. Adequate and effective remedies against human rights violations must be provided within a solid institutional framework. In this respect, it is important to provide for an accountability mechanism for international bodies active in Kosovo. Moreover, additional human and financial resources need to be provided to the UNMIK Advisory Panel on Human Rights.

### **Article 3 of the Framework Convention**

#### **Personal scope of application**

##### *Findings of the first cycle*

47. In its first Opinion, the Advisory Committee noted disagreements and inconsistencies as regards the specific identities, in particular of the Egyptian and Ashkali communities. The Egyptian community was often treated as part of the Roma and/or Ashkali communities and the Ashkali community as part of the Roma. This did not reflect the self-identification of persons belonging to these groups. The Advisory Committee appealed to the international and local authorities to avoid using such a designation to ensure that each community's specific identity is respected.

##### a) Positive developments

48. The Advisory Committee is pleased to note that the authorities have refrained from including the citizenship criterion in the Law on the Rights of Communities adopted by the Assembly of Kosovo in March 2008. As a result, persons belonging to minority communities living in Kosovo are able to enjoy the rights guaranteed in this law irrespective of their citizenship.<sup>6</sup> The Advisory Committee considers that this is in line with its approach (see also related work of the Venice Commission).<sup>7</sup>

49. The Advisory Committee welcomes that the legislation and other relevant texts, such as the Strategy for the Roma, Ashkali and Egyptian communities, appear to distinguish between the

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<sup>6</sup> Article 1.4. of the Law on the Rights of Communities No. 03/L-047 adopted by the Assembly of Kosovo on 13 March 2008 stipulates that for the purpose of this law, communities are defined as national, ethnic, cultural, linguistic or religious groups traditionally present in the Republic of Kosovo that are not in the majority. These groups are Serb, Turkish, Bosniac, Roma, Ashkali, Egyptian, Gorani and other communities. Members of the community in the majority in the Republic of Kosovo as a whole who are not in the majority in a given municipality shall also be entitled to enjoy the rights listed in this law.

<sup>7</sup> Report on Non-citizens and Minority Rights CDL-AD(2007)001 adopted by the European Commission for Democracy through Law (Venice Commission) adopted on 15-16 December 2006.

aforementioned communities. Moreover, the Advisory Committee notes with satisfaction that the Ashkali, Egyptians and Roma are represented as separate communities in the Community Consultative Council (see also comments in paragraph 240 under Article 15).

b) Outstanding issues

50. The Advisory Committee understands that the abbreviated term 'RAE' is still used in official documents and statistics, in particular by the international organisations, to designate the Roma, Ashkali and Egyptian communities. Moreover, concerns have been expressed by representatives of these communities over the lack of awareness-raising amongst the population as well as the authorities and international organisations on their distinct identities.

51. The Advisory Committee notes that representatives of the Montenegrin community expressed interest in benefiting from the measures taken by the authorities in favour of minority communities. The fact that persons belonging to the Montenegrin community were not referred to either in the 2008 Constitution or in any subsequent legislation, including in the Law on the Rights of Communities, prevents them from enjoying certain specific rights guaranteed in the aforementioned legislation. For example, they are not entitled to reserved seats for representation of minority communities in the elected bodies at central and local levels, as provided for in the Kosovo Constitution.<sup>8</sup> Nevertheless, the Advisory Committee notes with interest that, notwithstanding the lack of recognition of the Montenegrin community under the law, its representative takes part in practice in the work of the Community Consultative Council. Moreover, the Advisory Committee finds it commendable that a working group has been established within the Consultative Council with a view to considering the issues relating to the Montenegrin community (see also comments in paragraph 243 under Article 15).

*Recommendations*

52. The Advisory Committee encourages the Kosovo authorities to maintain their flexible and open approach towards the scope of application of the Framework Convention. Further consideration should be given to the inclusion of persons belonging to the Montenegrin community in its application and the possibility to provide them with opportunities for representation in elected bodies. The authorities are encouraged to continue the dialogue with community representatives on this issue and to pursue and develop existing measures of support for the preservation of the culture and identity of the Montenegrin community.

**Population and housing census**

*Findings of the first cycle*

53. While stressing the importance of a population and housing census for the proper implementation of the Framework Convention, the Advisory Committee recommended in its first Opinion to delay its organisation until a maximum level of participation of all communities could be ensured.

54. Noting that data on individuals' ethnic affiliation is collected in various contexts, including at the municipal level, the Advisory Committee emphasised the need for adequate legal safeguards, notably as regards the protection of personal data.

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<sup>8</sup> Article 64(2) of the Constitution provides for twenty (20) of the one hundred twenty (120) seats to be guaranteed for representation of communities that are not in the majority in Kosovo. The number of seats is divided among the minority communities as follows: the Kosovo Serb community (10); the Roma community (1); the Ashkali community (1); the Egyptian community (1); and 1 additional seat will be awarded to either the Roma, the Ashkali or the Egyptian community with the highest overall votes; the Bosnian community (3); the Turkish community (2); the Gorani community (1), if the number of seats won by each community is less than the number guaranteed.

a) Positive developments

55. The Advisory Committee notes that the preparation of the population and housing census is underway, with the understanding that it is expected to take place in the near future. In this connection, two pilot census projects were carried out in selected municipalities between 2006 and 2008 to evaluate the level of preparation as regards technical and other aspects of the census process. As indicated by the Statistical Office of Kosovo, the questions on ethnic, religious and linguistic affiliation included in the census questionnaire will be optional which is in line with the principles of Article 3 of the Framework Convention. Moreover, the Advisory Committee was informed that the questionnaire will be made available in the Albanian, Serbian and Turkish languages.

b) Outstanding issues

56. The Advisory Committee stresses that in order to implement effectively certain legal and policy measures in the field of minority protection, there is a need for reliable data on the ethnic composition of the population in Kosovo. The population and housing census is the main tool available to obtain such data. At the same time, the Advisory Committee recognises that the participation of sufficient numbers of persons belonging to some communities, in particular the Serbs and a number of Roma, remains an important challenge in the planning and implementation of the census.

57. The Advisory Committee notes that technical and other shortcomings were encountered during the pilot census projects. No proper information campaign nor any other related activities appear to have been carried out in order to raise the confidence of all communities in the census process. In remedying any shortcomings, the recommendations of the United Nations Economic Commission for Europe (UNECE) prepared in co-operation with the Statistical Office of the European Communities (EUROSTAT) should be duly taken into account.<sup>9</sup> There is also a need to conduct a thorough analysis of the reasons behind the refusal of members of some minority communities to participate.

58. The Advisory Committee considers it particularly useful that, in the areas traditionally inhabited by minority communities, enumerators are recruited amongst the persons belonging to them. Careful attention should be paid to the right to self-identification of persons belonging to communities, *inter alia*, by providing for an open list of ethnic affiliations and for a possibility of choosing a multiple identity in the census questionnaire. It should also be ensured that the question on ethnicity is not mandatory. The authorities should also do their utmost to ensure that the results of the census are not misused for political purposes. No disadvantage should result for persons belonging to minority communities from their choice to affiliate with a minority community or for the exercise of any related right.

59. In connection with the population census, the situation of persons belonging to minority communities, who fled Kosovo following the 1999 conflict, in particular the Serbian, Roma, Ashkali and Egyptian communities, has raised specific concerns. Considering the population movements within these groups, there is concern that the census will not properly reflect their numbers and this might have a negative impact on the adoption of policies and measures of support in respect of persons belonging to these communities.

60. The Advisory Committee also understands that there is a risk of excluding those persons belonging to minority communities forcibly returned to Kosovo who are without a place of residence. Measures should therefore be taken to ensure that those concerned are included in the census.

61. The Advisory Committee notes at the same time that the legal and practical measures to safeguard effectively the data on individuals' affiliation have not yet been fully put in place. In this respect, it wishes to remind the authorities that, when information about individuals' ethnic origin is collected,

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<sup>9</sup> See Report of Conference of European Statisticians Recommendations for the 2010 Censuses of Population and Housing prepared by the United Nations Economic Commission for Europe in co-operation with the Statistical Office of the European Communities.

processed and disseminated, this should fully respect personal data protection and comply with the international data protection safeguards which appear *inter alia* in the Committee of Ministers' Recommendation No. (97) 18 concerning the protection of personal data collected and processed for statistical purposes.

#### *Recommendations*

62. In view of the particular importance of a population census, the Advisory Committee urges the authorities to do their utmost to ensure the participation of all persons concerned in the next census, including by persons belonging to minority communities that were forcibly returned to Kosovo. There is a need to raise the confidence of all communities in the census process.

63. Efforts should be made to remedy the technical and other shortcomings identified during the pilot projects before the census is carried out. The right to self-identification of persons belonging to a minority community must be strictly respected, as well as the voluntary nature of any questions relating to such affiliation. In addition, persons belonging to minority communities should be provided with a possibility of expressing their multiple identity in the census questionnaire.

64. The Advisory Committee encourages the authorities to pay due attention to the situation of those persons belonging to minority communities who fled Kosovo and to address this issue in accordance with international standards in this field.

65. Recalling that the collection of data on ethnic affiliation needs to be coupled with adequate safeguards, the Advisory Committee urges the authorities to take legal and practical measures to ensure that existing international data protection standards are fully respected.

### **Article 4 of the Framework Convention**

#### **Anti-discrimination legislation and practice**

##### *Findings of the first cycle*

66. In its first Opinion, while welcoming the adoption of the 2004 Anti-Discrimination Law, the Advisory Committee voiced its concerns about the effectiveness of its implementation in practice. The Advisory Committee noted that *de facto* discrimination of persons belonging to minority communities, in particular Roma and Serbs, persisted in Kosovo.

67. While recognising the important role of the Ombudsperson's Office in dealing with complaints lodged by persons who claim to be victims of discrimination, the Advisory Committee expressed the hope that the Ombudsperson's Office would be able to work as effectively as a local institution, as had been the case under the then international leadership.

##### *Present situation*

###### a) Positive developments

68. The Advisory Committee notes that there is a well-developed legal basis providing for equality before the law and prohibition of discrimination. Besides the anti-discrimination provisions contained in the 2004 Anti-discrimination Law, the 2008 Constitution guarantees equality of all and anti-discrimination, *inter alia*, on grounds of language, religion, national origin, race, colour and relation to any community.<sup>10</sup>

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<sup>10</sup> Article 24 of the Constitution stipulates the following:

1. All are equal before the law. Everyone enjoys the right to equal legal protection without discrimination.

69. The Advisory Committee welcomes that the Kosovo Assembly finally succeeded in appointing the Ombudsperson in June 2009, filling a post that had been vacant for more than three years. The Advisory Committee expects the Ombudsperson to pursue his work independently and effectively, without eroding the trust his Office has built so far amongst minority communities. In the period between 2005 and 2008, about 22% of the complaints received by the Office were lodged by persons belonging to minority communities. They tend to relate predominantly to property issues, malfunctioning of the judiciary and social and economic rights. In this respect, the Advisory Committee appreciates the active approach of the Ombudsperson's Office to raise awareness on its role and competencies amongst the majority as well as minority communities, including through privately-owned media outlets.

70. The Advisory Committee appreciates efforts made by the relevant stakeholders to find a suitable solution to problems of the electricity supply affecting in particular areas substantially inhabited by the Serbian community. As a result, agreements on the redistribution of the electricity supply have been signed with the Kosovo Energy Corporation (KEK) in a number of villages. It is commendable that, in some localities, household debts were frozen and agreements on monthly payments for electricity consumption reached.

#### b) Outstanding issues

71. Despite the valuable work of the Ombudsman's Office and generally its positive image within society, its recommendations sometimes remain unimplemented. In addition, the measures aimed at the reduction of staff within the public administration have also affected the Ombudsman's Office, including its regional offices located in the areas inhabited by persons belonging to minority communities. While noting the general trend towards staff reduction within the public administration, the Advisory Committee considers that any measures in this area should be carried out carefully taking into account the independence of the institution, so as to ensure that they do not have a negative effect on the proper functioning of the Ombudsman's Office, including in the field of minority rights protection.

72. While welcoming the appointment of the Ombudsperson, the Advisory Committee regrets that it had taken excessively long for the Kosovo authorities to appoint the Ombudsperson. At the same time, the Advisory Committee notes that the Deputy Ombudspersons have not yet been appointed. As foreseen in Regulation 2006/6,<sup>11</sup> the Deputy Ombudspersons should be appointed from different communities to reflect the ethnic diversity of Kosovo society.

73. Many instances of discrimination targeting persons belonging to the minority communities appear to remain unreported. Very few complaints have been lodged before the domestic courts. The reasons behind this unsatisfactory situation are multiple, including lack of awareness of the concept of discrimination and remedies available. Furthermore, some persons belonging to minority communities, in particular Ashkali, Roma and Egyptians, fear reprisals, if they lodge a complaint. There also appears to be a widespread lack of trust amongst the minority communities in the effectiveness of the Kosovo institutions and the judiciary to deal with cases relating to inequality and discrimination on the ground of belonging to a minority community. Although the 2004 Anti-Discrimination Law imposes an obligation

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2. No one shall be discriminated against on grounds of race, colour, gender, language, religion, political or other opinion, national or social origin, relation to any community, property, economic and social condition, sexual orientation, birth, disability or other personal status.
  3. Principles of equal legal protection shall not prevent the imposition of measures necessary to protect and advance the rights of individuals and groups who are in unequal positions. Such measures shall be applied only until the purposes for which they are imposed have been fulfilled.

<sup>11</sup> Section 5 of the UNMIK Regulation No. 2006/6 on the Ombudsperson Institution in Kosovo stipulates that the Ombudsperson Institution shall be composed of the Ombudsperson, a Principal Deputy Ombudsperson, three (3) Deputy Ombudspersons and a professionally competent staff. According to Section 6.7, the individuals appointed as the Ombudspersons shall include at least one (1) person from the Kosovo Albanian community, at least one (1) person from the Kosovo Serb community, and at least one (1) person from the one of the other non-majority communities entitled to be represented in the Assembly of Kosovo.

on the authorities to conduct a public awareness programme on its provisions, no adequate campaign has been carried out in this respect so far.<sup>12</sup>

74. Problems of electricity supply persist in some areas, mainly in villages inhabited by the Serbian community, in spite of positive achievements in this respect. As a result, many households as well as public service institutions, such as hospitals and public administration encounter difficulties daily. This has contributed to increased inter-ethnic tensions in recent years. Representatives of the Serbian community claim that electricity cuts are the result of discriminatory practices, while according to the authorities, they are not specifically intended to target the Serbian community but also affect villages inhabited by the Kosovo Albanian population and are reportedly related to non-payment of electricity bills. The Advisory Committee appeals to both sides to take all possible measures to co-operate to put an end to the power supply disconnections.

75. It appears, according to representatives of some minority communities, that the risk of being discriminated against increases if a person uses the Serbian language in public life. Moreover, the lack of availability of many official documents in minority languages may potentially have a discriminatory effect on persons belonging to certain minority communities in many spheres of life (see also comments in paragraph 172 under Article 10).

#### *Recommendations*

76. It is imperative to ensure the effective and independent functioning of the Ombudsman's Office, including by respecting its independence and by allocating adequate human and financial resources. It is also important to ensure that the recommendations of the Ombudsperson's Office be implemented effectively.

77. The Advisory Committee urges the authorities to conduct awareness-raising activities amongst the population at large on the guarantees and related remedies provided for in the 2004 Anti-discrimination Law. Legal professionals, including judges and prosecutors, should be provided with targeted adequate training in this respect.

78. The Advisory Committee urges all stakeholders concerned to co-operate effectively with a view to finding a solution to power supply disconnections without further delay.

79. The Advisory Committee urges the speedy appointment of the Deputy Ombudspersons.

### **Freedom of movement and return process**

#### *Findings of the first cycle*

80. In spite of local improvements in the field of freedom of movement, the Advisory Committee found the overall situation disconcerting. It noted that a large number of persons belonging to minority communities had been unable to return to their homes due to persisting discrimination and inter-ethnic hostility as well as obstacles as regards access to services.

81. In its first Opinion, the Advisory Committee also expressed its concern about the situation of persons belonging to minority communities forcibly returned to Kosovo from Western Europe. It appeared that they had no access to existing assistance schemes and no adequate financial support had been allocated to facilitate their integration. Furthermore, the assistance measures were to be implemented in a flexible way to accommodate the needs of those returnees for whom it was not advisable to return to their original place of residence.

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<sup>12</sup> Article 13.2. of the 2004 Anti-Discrimination Law states that the Government shall conduct a public awareness programme with regard to the Law immediately upon its promulgation.



*Present situation*

## a) Positive developments

82. According to the information available to the Advisory Committee, it appears that there have been signs of improvement as regards the situation in the field of freedom of movement of persons belonging to minority communities, in particular in certain areas of Kosovo.

83. Several strategies and policy papers relating to sustainable return of refugees and displaced persons have been issued in Kosovo. They provide for an institutional framework for managing returns, including support for returnees whose houses and informal settlements have been destroyed.<sup>13</sup> For example, the Strategy for the Integration of Roma, Ashkali and Egyptians, provides for the return of persons belonging to these communities, who fled Kosovo, to a place of residence according to their wishes.

84. Considering the number of applications already lodged for return assistance, the Advisory Committee appreciates the efforts made by the authorities to initiate projects aimed at facilitating the return and reintegration of returnees in some localities. According to information received from the Ministry of Communities and Returns, 67 families have already benefited from the support allocated for the implementation of 23 return projects in localities such as Llaplaselle/Laplje Selo, Gjilan/Gnjilane and Fushë Kosovë/Kosovo Polje, in the period from October 2008 to April 2009.<sup>14</sup> Preparations for other reintegration projects are reportedly under way.

## b) Outstanding issues

85. In spite of improvements in the security situation, persons belonging to the Serbian and Roma communities face obstacles in their freedom of movement. Furthermore, the Kosovo Albanian community is facing difficulties in moving freely in Northern Kosovo. Some interlocutors, however, consider that this situation is more the result of perceptions and fears amongst the minority communities concerned rather than a real lack of security.

86. While perceptions and fears may well be causes for the limited movement, the Advisory Committee considers that perceived insecurity is particularly important as it is a result of the overall climate. Consequently, it may have a serious impact on the actual movements and inter-ethnic relations. Persisting inter-ethnic tensions, the absence of effective investigation of ethnically-motivated crimes and language barriers constitute serious obstacles to the freedom of movement. Fear to move freely reportedly varies depending on the municipalities and factors such as social status, place of origin or age of persons belonging to minority communities.

87. The Advisory Committee is deeply concerned about the continuous unsatisfactory situation as regards sustainable return of refugees and displaced persons to Kosovo. Many returnees appear not to benefit adequately from reintegration strategies and programmes. Despite the efforts made so far by the authorities to provide for conditions for sustainable return on a voluntary basis, these efforts are insufficient and do not ensure in practice the real possibility for return for those wishing to come back.

88. The Advisory Committee has received information about the situation of an increasing number of persons belonging to the minority communities being forcibly returned, in particular from some Western European countries to Kosovo. In the Prizren municipality alone, 800 cases of forced returns were

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<sup>13</sup> Examples include the Readmission Policy Paper (November 2007), the Strategy for Reintegration of Repatriated Persons (October 2007), the Revised Manual for Sustainable Return (July 2006), the Protocol on Voluntary and Sustainable Return (June 2006) as well as the section on the Return and Reintegration in the Strategy for the Integration of Roma, Ashkali and Egyptians in Kosovo.

<sup>14</sup> The statistical data was provided to the Advisory Committee by the Ministry of Communities and Returns. In addition, more than 500 applications for return assistance were received by the aforementioned Ministry in the period between January and April 2009.

reportedly recorded in the course of 2008. In addition to persons belonging to the Roma communities, who are the main target group, some persons belonging to the Gorani and Bosniac communities have also been affected by forced returns. Since these returnees are often not registered, they are deprived of access to many public services, such as health care, social protection and education. In the absence of any protection and integration measures, many Roma forcibly returned end up in the lead-contaminated camps in Northern Mitrovicë/Mitrovica. In the light of the aforementioned information, the Advisory Committee is deeply concerned about the consequences which forced returns may have on those affected considering their vulnerable situation. Moreover, such forced returns also have a negative impact on the society in general given the limited absorption capacity, difficult socio-economic situation and fragile inter-ethnic relations in Kosovo. While acknowledging that the responsibility for the decision to implement forced returns lies with the governments of the states from where persons have been returned, the Advisory Committee urges the Kosovo authorities to ensure full and equal access of forced returnees to basic rights such as healthcare, housing and education. Such access is a prerequisite condition for their safe and sustainable return and effective integration in society.

89. Assaults on and harassment of returnees of Roma ethnicity have also been brought to the attention of the Advisory Committee. The Advisory Committee is deeply concerned about this situation and considers it essential that necessary conditions in areas such as employment, housing, education, and access to property, are fully met before persons can be returned to Kosovo, in order to ensure their successful integration.

90. Recognising the enormous challenges facing the authorities as regards the reintegration of returnees, the Advisory Committee considers that the return process will be problematic if adequate measures in the fields of security, employment, housing, education and access to property and social schemes are not effectively put in place. In particular, the return of Serbs to areas outside the enclaves would be impossible without providing access to quality education in the Serbian language or bilingually. Considering that the main burden for the integration of returnees has to be borne by the municipalities, adequate financial and other resources should be made available to enable them to implement effectively the reintegration programmes. Furthermore, there is a need for effective coordination between the central and local authorities. This also implies harmonisation of assistance packages, the funding of local provisions and the full support of properly trained municipal staff.

### *Recommendations*

91. More efforts should be made by the authorities to provide conditions for the freedom of movement of persons belonging to minority communities, in particular to the Serbs, Roma and the Kosovo Albanians in a minority situation, by ensuring effective safety and security conditions as well as by addressing the perceptions and fears of these communities through dialogue and inter-community trust-building measures.

92. The authorities are urged to demonstrate stronger commitment to the safe and sustainable return process, in particular by providing for effective access to socio-economic and educational rights for returnees. Particular attention should be paid to those forcibly returned. Adequate financial and human resources need to be allocated centrally and locally to implement properly integration strategies.

## **Access to justice and fair trial issues**

### *Present situation*

93. The Advisory Committee is greatly concerned by the existing obstacles faced by persons belonging to minority communities in accessing justice throughout the territory of Kosovo. The reasons for this situation are numerous, including lack of financial and technical resources, the permanent backlog of cases as well as the shortage of qualified legal professionals. It appears that, according to statistics provided to the Advisory Committee, two hundred and sixty thousand cases are pending to be reviewed by two hundred and ninety three local and twenty two European judges and ninety

prosecutors.<sup>15</sup> A high number of these cases relate to property issues. Moreover, information received by the Advisory Committee suggests that the legal guarantees for prompt and effective review of pre-trial detention and for a trial within a reasonable time have not been always respected, in particular in areas inhabited by minority communities in substantial numbers. Insufficient access to justice within a reasonable time appears therefore to have a disproportionate effect on persons belonging to some minority communities in Kosovo (see also comments paragraph 44 under Article 1 above).

### *Recommendations*

94. The Advisory Committee urges the authorities to take vigorous measures to reduce the backlog of cases, in particular those relating to property issues, and to guarantee prompt and effective access to justice and respect for the right to a fair trial, with particular attention paid to the situation of persons belonging to minority communities.

## **Full and effective equality of Roma, Ashkali and Egyptians**

### *Findings of the first cycle*

95. In its first Opinion, the Advisory Committee called on the authorities to take urgent measures to address the difficult situation faced by the Roma, Ashkali and Egyptians living in lead-contaminated camps in Northern Kosovo. This health crisis affects to a greater extent children and pregnant women belonging to these communities.

96. The Advisory Committee noted that persons belonging to the Roma, Ashkali and Egyptians faced serious economic and social problems in the fields of housing, education and employment. The Advisory Committee considered that a more strategic approach to deal with their problems was needed.

### *Present situation*

#### a) Positive developments

97. The Advisory Committee welcomes that the 2008 Strategy for the Integration of Roma, Ashkali and Egyptians<sup>16</sup> provides a solid framework for actions to be taken to improve their situation in a number of areas. The possibility to adopt measures with a view to achieving full and effective equality is provided for in the 2008 Constitution and the Law on the Rights of Communities.<sup>17</sup>

98. While difficulties as regards the registration of some Roma, Ashkali and Egyptians still persist, the Advisory Committee notes the initiatives taken by non-governmental organisations, often supported by the international community, to register those concerned.

#### b) Outstanding issues

99. While acknowledging the overall poor economic conditions in Kosovo, the Advisory Committee is deeply concerned about the persisting difficult socio-economic situation faced by persons belonging to the Roma, Ashkali and Egyptian communities. These groups are affected to a much greater extent by

<sup>15</sup> For more information see UNDP Assessment Report on Access to Justice in Kosovo of 2008.

<sup>16</sup> See Strategy for the Integration of the Roma, Ashkali and Egyptian Communities of 2004.

<sup>17</sup> Article 24.3 of the Constitution stipulates that principles of equal legal protection shall not prevent the imposition of measures necessary to protect and advance the rights of individuals and groups who are in unequal positions. Such measures shall be applied only until the purposes for which they are imposed have been fulfilled.

Article 3.4. of the Law on the Protection and Promotion of the Rights of Communities and their Members in Kosovo states that such affirmative measures will be taken by the Kosovo authorities as may be necessary to promote full and effective equality in all areas of economic, social, political and cultural life, including education, media, health and other public services. Such action shall be offered equally to all communities and their members based solely on need.

poverty than other communities.<sup>18</sup> They experience an uneven access to the labour market, housing and school facilities, often due to discrimination and anti-Roma sentiments. Hostile attitudes towards these groups amongst the population have reportedly resulted in obstacles to their freedom of movement and affect their exercise of other fundamental rights. Difficulties in obtaining identity and other documents, such as birth certificates, hinder their access to property, health care and social services. Much stronger commitment and urgent action are therefore necessary on the part of the authorities to address the needs of these communities.

100. The Advisory Committee is deeply concerned about the fact that no appropriate solution has been found to date for those Roma, Ashkali and Egyptians who live in the lead-contaminated camps in Northern Kosovo. Their exposure to lead represents a serious and possibly irreversible health risk. It is a positive development that some families have returned to the partly reconstructed Roma Mahala settlement located in Southern Mitrovicë/Mitrovica.<sup>19</sup> However, a considerable number still continue to live in the camps in sub-standard housing conditions, often without proper sanitary facilities and adequate medical care. This situation has prompted the reactions of the Ombudsperson<sup>20</sup> and of the Council of Europe Commissioner for Human Rights<sup>21</sup> who have requested immediate and sustainable relocation of this population to a safe location. Some interlocutors have suggested that their return has been complicated by the unwillingness of municipal authorities within Kosovo to provide Roma with land as well as certain reluctance of some Roma to move South of the Ibar river. This would, in their view, lead to a worsening of their living conditions and of their freedom of movement. In addition, the lack of clarity as to the competent authority in charge of this issue was mentioned as another obstacle to finding an appropriate solution. While being aware of the complexity of the situation, the Advisory Committee considers that a response to this persisting humanitarian and environmental disaster must be found as a matter of urgency. A genuine will of all actors involved coupled with adequate funding is a condition *sine qua non* for an appropriate solution. At the same time, it is encouraging that, following the visit of the Council of Europe Commissioner for Human Rights to Kosovo, initiatives were undertaken to seek a solution to this serious human rights problem.

### *Recommendations*

101. Resolute measures must be taken to assess, monitor and combat discrimination against persons belonging to disadvantaged communities, such as the Roma, Ashkali and Egyptians, in employment, access to housing, social and health services.

102. The Advisory Committee calls on the authorities to provide without further delay identity and other documents to persons belonging to the Roma, Ashkali and Egyptian communities and to provide them with equal access to all relevant rights.

103. The Advisory Committee strongly urges UNMIK and the Kosovo authorities to take resolute measures to find and implement, in consultation with the community representatives concerned and, as a

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<sup>18</sup> For more details see the UNDP Vulnerability Study on the Roma in relation to the Decade of Roma Inclusion 2005, UNDP Vulnerable Groups in Central and South East Europe, Statistical Profiles, <http://vulnerability.undp.sk/> where it shows that over 16% of Roma live in extreme poverty and can spend less than 28 Euros a month and 56% spend less than 58 Euros a month.

<sup>19</sup> The Roma, Ashkali and Egyptian communities were resettled/reallocated in 1999 to the camps near the former mine and toxic wastelands in Trepča following the destruction of their traditional settlement - Roma Mahala – located on the South bank of the Ibar river in Mitrovicë/Mitrovica. A study prepared by the World Health Organisation in 2004 confirmed the high level lead-contamination of children living in the camps.

<sup>20</sup> See letter of 1 April 2009 addressed to the Prime Minister, Mr Hashim Thaqi, *Ex Officio* No. 304/2008.

<sup>21</sup> See letter of the Council of Europe Commissioner for Human Rights, Thomas Hammarberg, addressed to Ambassador Zannier (UNMIK / 6 April 2009), Special Representative of the UN Secretary General [CommDH(2009)20], the response of Ambassador Zannier to the aforementioned letter [CommDH(2009)21/23 April 2009] and the report of Council of Europe Commissioner for Human Rights [CommDH(2009)23/2 July 2009].

matter of utmost urgency, an adequate and sustainable solution for the Roma, Ashkali and Egyptian population of the lead-contaminated camps in Northern Kosovo.

## **Article 5 of the Framework Convention**

### **Support to preserve the identity of minority communities**

#### *Findings of the first cycle*

104. In its first Opinion, noting the destruction of and continuing reports of incidents concerning Serbian Orthodox religious sites, the Advisory Committee considered that more efforts were needed to protect such sites, while pursuing the process of reconstructing the damaged ones.

105. The Advisory Committee encouraged the authorities to increase measures to support cultures of minority communities, including numerically smaller ones, and to ensure the participation of persons belonging to minority communities in the relevant decision-making process.

#### *Present situation*

##### a) Positive developments

106. Recognising the importance of cultural heritage for the preservation of the identity of national minorities, the Advisory Committee appreciates the progress made on the reconstruction of damaged Serbian Orthodox religious sites. A number of legislative acts pertaining to the protection and preservation of cultural heritage, such as the Law on Establishing Special Protective Zones and the Law on Cultural Heritage, were passed. The Reconstruction Implementation Commission (RIC) has successfully carried out reconstruction work on a number of Serbian Orthodox religious sites<sup>22</sup> for which the funds have been secured by the authorities with the support of the European Agency for Reconstruction. The Advisory Committee also notes with satisfaction, that despite occasional uncertainties relating to the functioning of the Commission, compromise solutions have generally been reached between the Serbian and Kosovo Albanian representatives for the benefit of all communities in Kosovo. While appreciating the commitment of all partners involved, the Advisory Committee considers it particularly important that reconstruction work continues to receive adequate financial and political support for the rebuilding and renovation of the remaining damaged sites. The pattern of co-operation introduced through the RIC may also be used as a model for co-operation in other fields of common interest pertaining to minority protection.

107. The Advisory Committee notes with satisfaction that, in 2008, the Kosovo Assembly passed a Law on National Holidays, which recognises certain Orthodox, Catholic and Islamic holy days.

##### b) Outstanding issues

108. In spite of the aforementioned positive developments relating to the protection of cultural heritage, the protection and preservation of cultural and religious sites continue to be a particular challenge for the authorities. Thefts and vandalism on religious sites have continued to occur. The Advisory Committee considers it essential that an adequate level of protection of religious sites continues to be provided to prevent such sites from being damaged and that perpetrators of thefts and vandalism should be brought to

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<sup>22</sup> The Reconstruction Implementation Commission for Serbian Orthodox Religious Sites in Kosovo (RIC) is responsible for programming and overseeing the implementation of the reconstruction works of 34 Serbian Orthodox religious sites damaged or destroyed during the events of March 2004. Its mandate is defined by a Memorandum of Understanding between the Ministry of Culture, Youth and Sports and the Serbian Orthodox Church. The RIC is composed of representatives of the Serbian Orthodox Church, the Ministry of Culture, Youth and Sports, the Belgrade Republic Institute for the Protection of Cultural Monuments, the Priština Institute for the Protection of Monuments and a representative of the Council of Europe.

justice. In this respect, it notes that the responsibility for the protection of a number of religious sites has been transferred to the Kosovo Police Service (KPS).

109. While the establishment of “protective zones”<sup>23</sup> around sites classified as cultural heritage is in principle a positive initiative, some representatives of the Roma, Ashkali and Egyptian communities expressed concerns over their impact on those persons belonging to minority communities traditionally living in these areas. It is therefore essential to ensure that any protection measures taken are not detrimental to the exercise of property rights of persons living in these areas.

110. According to information received by the Advisory Committee, the dispute over the construction of a park and monument on the land of the destroyed Serbian Orthodox church in Gjakovë/Đakovica remains unsolved. Their construction was allegedly resumed by the local authorities without prior consultation with representatives of the Serbian Orthodox Church. The Advisory Committee considers that this disputed issue needs to be resolved through a constructive dialogue between the respective parties. It is also important to avoid using such issues for political purposes as this may contribute to inter-ethnic tensions. All measures taken by the local authorities should be conducive to the preservation and promotion of cultures of minority communities, as provided for in Article 5(1) of the Framework Convention.

111. While the public is generally informed of the Roma culture and identity, the Ashkali and Egyptian communities raised the issue of a lack of awareness of their history, culture and identity among the public. Moreover, there seems to be a need to raise awareness of the specific culture and identity of the Montenegrin community (see also comments in paragraph 51 under Article 3).

112. Reports received from representatives of various minority communities indicate difficulties encountered in accessing funding for their cultural initiatives. According to many interlocutors, particular attention has been paid to the situation of the Serbian community while the needs of other minority communities have received less attention. The system of allocation of support to minority organisations lacks transparency and minority representatives do not seem to be sufficiently involved in decision-making on this issue. The local authorities often rely on the international community to take initiatives in this field.

113. Relations between the Albanian and Serbian communities dominate internal debates. Numerically smaller minorities are often considered to be linked with either the Albanian or the Serbian communities. This perception, which does not respect their distinct identities, appears to complicate their relations with other communities. The Advisory Committee is concerned about this issue which raises questions with regard to the implementation of Article 5 of the Framework Convention.

#### *Recommendations*

114. The authorities should continue to finance and support work of the Reconstruction Implementation Commission so as ensure its effective functioning.

115. The authorities should take measures to ensure support for the preservation and development of cultures of minority communities, including the numerically smaller ones. The allocation of financial

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<sup>23</sup> The Law No. 03/L-039 on the Special Protective Zones adopted on 20 February 2008 defines in its Article 2 “special protective zone” as an area by a map, or by a defined area surrounding a monument, building, group of buildings, ensemble, village, or historic town center that is safeguarded from any development or activity which could damage its historical, cultural, architectural or archeological context, natural environment or aesthetic visual setting. As stipulated in Article 3, the objectives of the special protective zones are to provide for the peaceful existence and functioning of the sites and to preserve the monastic way of life of the clergy as well as the character and appearance of the sites. Moreover, adverse development around the sites should be prevented, while ensuring the best possible conditions for harmonious and sustainable development of the communities inhabiting the areas surrounding such sites by regulating development and other activities.

support for the activities of minority community organisations should be made in a transparent and participative manner, both at the central and local level.

116. The Advisory Committee calls on the authorities to ensure that any measures taken, including at the local level, do not negatively influence the rights of persons belonging to minority communities to preserve and promote their identities.

### **Effective implementation of the Framework Convention**

#### *Present situation*

117. The Advisory Committee considers that the current legislative framework pertaining to national minorities, which draws on European and international standards in this field, provides a solid legal basis for the protection of minority communities. It particularly welcomes the adoption, in March 2008, of the Law on the Protection and Promotion of the Rights of Communities and their Members in Kosovo (hereinafter: Law on the Rights of Communities). However, as pointed out by most interlocutors of the Advisory Committee, there is a gap between the existing legislative norms and reality when it comes to their implementation. Often only inadequate financial resources are allocated for their implementation. The Advisory Committee also notes that genuine commitment to the implementation of the legislation in practice needs to be reinforced in order to build trust between various communities and to create a truly multicultural society. In this context, it recalls that the provisions of the Framework Convention shall be applied in good faith, as stated in its Article 2, and it expects that due attention is paid to this principle in the implementation of the Framework Convention in Kosovo.

#### *Recommendations*

118. More vigorous efforts are needed to ensure that the legislative framework pertaining to the protection of minority communities is effectively implemented. Genuine commitment as to the implementation of the Framework Convention should be demonstrated by the authorities in accordance with the principles embodied in Article 2 of the Framework Convention. Adequate budgetary resources should be allocated to the implementation of the legislation and strategies in this field.

### **Article 6 of the Framework Convention**

#### **Inter-ethnic dialogue and tolerance**

#### *Findings of the first cycle*

119. Having noted tense and fragile inter-ethnic relations in Kosovo, the Advisory Committee urged the authorities to promote tolerance and strongly condemn all cases of inter-ethnic violence.

120. The Advisory Committee encouraged the media self-regulatory bodies to make further efforts in the field of promotion of inter-ethnic dialogue.

#### a) Positive developments

121. The Advisory Committee welcomes the establishment of the Press Council of Kosovo (PCK). This print media self-regulatory body is competent to examine complaints for breach of the Press Code of Conduct containing ethical principles to be respected by the media professionals. Furthermore, the Kosovo Provisional Criminal Code provides for sanctions for those who publicly incite or spread hatred, discord or intolerance between national, racial, religious, ethnic or other groups in Kosovo.<sup>24</sup>

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<sup>24</sup> See Article 115 of the Provisional Criminal Code of Kosovo of July 2003.

122. The Advisory Committee notes with satisfaction that the authorities denounced publicly, on several occasions, inter-ethnic violence and hostility. It also notes that some small-scale project initiatives have been implemented by civil society in the field of inter-ethnic dialogue.

b) Outstanding issues

123. Inter-ethnic relations, in particular between the Kosovo Serbian and the Kosovo Albanian communities, remain tense and fragile. They continue to be marked by mutual distrust and divisions along ethnic lines, including after the declaration of independence in 2008. Persons willing to co-operate with the other community often face problems, including threats within their own community. In addition, the Advisory Committee notes that isolation and lack of contacts between persons belonging to the two communities are also the result of shortcomings in the operation of public transport as well as of issues linked to the security situation. However, some interlocutors are of the opinion that economic difficulties tend increasingly to prevail over ethnic dimension.

124. The Advisory Committee finds it particularly worrying that relations between the Kosovo Serb and the Kosovo Albanians continue to be used for political purposes and that this is perpetuating and stirring up inter-ethnic tensions. The Advisory Committee is deeply concerned by this situation and considers that it harms community relations in Kosovo. Intolerance based on ethnic affiliations needs to be strictly avoided in political discourse on all sides and at all levels.

125. A separate education system and increasingly apparent language barriers aggravate the ethnic division between the Albanians and the Serbs. The fact that children belonging to both communities do not learn the language of the other community is a very worrying sign for the future of inter-ethnic relations. In the view of the Advisory Committee, the teaching in/learning of the two official languages by persons belonging to both communities would substantially contribute to improving inter-ethnic dialogue (see also comments in paragraph 194 under Article 12). The Advisory Committee also considers that bilingual education would significantly contribute to enhancing inter-ethnic relations between these communities.

126. The state of relations between persons belonging to the Serbian and the Albanian communities in Kosovo appears to dominate internal debates. By contrast, other communities, such as the Turkish one, feel that their interests and needs are not sufficiently taken into account in the public sphere. The Advisory Committee regrets the absence of a Kosovo-wide strategy for reconciliation and inter-ethnic dialogue. Instead, initiatives in this field have been almost entirely left to civil society and the international community. While the Advisory Committee recognises the importance of small-scale local projects implemented in this field, it is of the opinion that they cannot replace a Kosovo-wide reconciliation process led by the authorities. Subsequently, adequate financial and other resources would be required for the implementation of such a strategy.

127. The media, which can play an essential role in promoting inter-ethnic relations, continue to be divided along ethnic lines. The way in which the media, in particular broadcast media, portray the various communities is reportedly often biased and inaccurate. This is partly attributed to a lack of professionalism amongst journalists. Furthermore, it can be seen that public media continues to provide insufficient coverage of issues of relevance to the minority communities. This contributes to a lack of awareness of various aspects relating to minority communities amongst the population in general. For example, the fact that television programmes in minority community languages are not subtitled makes them inaccessible for many persons from other communities.

*Recommendations*

128. The Advisory Committee urges the authorities to elaborate and implement a comprehensive long-term strategy for reconciliation and inter-ethnic dialogue in consultation with the various communities in Kosovo.



129. Measures need to be taken to combat the dissemination of stereotypes or intolerant speech by the media, while ensuring that these measures do not impinge on the editorial independence of the media. Efforts should be made to raise awareness of aspects of relevance to the minority communities amongst the population in general and to ensure balanced and objective media coverage of inter-ethnic issues.

### **Crime motivated by ethnic hostility**

#### *Findings of the first cycle*

130. While recognising the efforts made to combat inter-ethnic hostility and harassment, the Advisory Committee expressed, in its first Opinion, concern about the perceived impunity as regards ethnically-motivated crimes, many of which remain unreported. Moreover, the lack of comprehensive data on investigation and prosecution of ethnically-based incidents has made it difficult to evaluate developments in this field. The Advisory Committee therefore called on the authorities to address the perceived impunity as regards ethnically-motivated crime by giving it the highest priority within the law-enforcement and other bodies involved.

#### *Present situation*

##### Outstanding issues

131. The Advisory Committee notes that an increased penalty for hate motivated crime is included in several provisions of the Provisional Criminal Code. For example, motivation based on racial, national or religious hatred constitutes, according to Article 147 of the Provisional Criminal Code, a specific aggravating circumstance for murder.<sup>25</sup> However, other relevant grounds, such as ethnic origin and language, are not explicitly included. Moreover, the hate crime legislation is not comprehensive and does not provide for motivation on all relevant grounds to constitute aggravating circumstances applicable to all types of offences. There is also a lack of awareness-raising on the legislation pertaining to hate crime amongst the judiciary and the law-enforcement agencies as well as the public in general.

132. The existing legislation on ethnically and religiously motivated crime has only exceptionally led to convictions. Statistics provided to the Advisory Committee suggest that around 90 cases of ethnically-motivated crimes were recorded in the period between January and April 2009 in Kosovo. However, many such crimes seem to remain unreported due *inter alia* to the fear of reprisals against victims and lack of trust in the law-enforcement agencies. There is also a tendency to minimise ethnic incidents as well as to disregard their ethnic element. It is therefore essential that these crimes be investigated more vigorously and effectively and their perpetrators brought to justice. In this respect, measures need to be taken to prevent, investigate and sanction such incidents as well as to offer adequate protection against retaliation and protection of witnesses.

133. While recognising the efforts made to collect data on the investigation and prosecution of ethnically-motivated incidents by the police, the Advisory Committee notes that there are concerns regarding the reliability of such data. There also seem to be considerable discrepancies between officially and unofficially gathered statistics on inter-ethnic incidents. The data collection system on ethnically-motivated incidents is reportedly purely based on the ethnic belonging of the persons involved and thus does not take into account the perception of victims and witnesses and the possible motivation of perpetrators of these crimes. As a consequence, the significance and the reliability of the collected data in this field may be questioned. In the view of the Advisory Committee, it is therefore important that representatives of the authorities, including police officers, receive adequate training in this sphere.

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<sup>25</sup> Article 147(7) of the Provisional Criminal Code: “A punishment of imprisonment of at least ten years or of long term imprisonment shall be imposed on any person who deprives another person of his or her life for racial, national or religious motives.”

### *Recommendations*

134. The Advisory Committee urges the authorities to take firm measures to improve the system of data collection on the identification, investigation and prosecution of ethnically-based offences in order to obtain more reliable data in this area.

135. The Advisory Committee encourages the authorities to review criminal law provisions with a view to developing comprehensive hate crime legislation.

136. The authorities are urged to take resolute measures to ensure that ethnically and religiously motivated crimes are effectively identified, investigated and the perpetrators prosecuted. Efforts to raise awareness of ethnically-motivated offences amongst the law-enforcement agencies and the judiciary should be increased. It is also important to take measures to increase the trust among the population in the police and the judiciary.

## **Police behaviour**

### *Present situation*

#### a) Positive developments

137. The Advisory Committee acknowledges the commitment by the Kosovo Police Service (KPS) to combat inter-ethnic hostility and to provide human rights training for police officers, including on community-based policing. Initiatives aimed at reinforcing relations between the police and local communities have been implemented, often with the support of the international community. The Progress Report indicates that police officers, whose task is to liaise with the local population, are appointed to each village in Kosovo.

138. A mechanism for monitoring police behaviour has been put in place. The Kosovo Police Inspectorate (KPI), established in 2006, is responsible for the investigation of complaints of serious police misconduct and for criminal investigations of such complaints under the guidance of prosecutors. The investigation of minor offences is carried out by the Professional Standards Unit (PSU).<sup>26</sup> The Advisory Committee expects that particular attention will be paid by these bodies to complaints lodged by persons belonging to minority communities.

#### b) Outstanding issues

139. According to information received by the Advisory Committee, vehicles with licence plates issued in Serbia are frequently stopped by KPS officers. This practice disproportionately affects persons belonging to the Serbian community. Subsequently, Serbian driving licences are often confiscated and fines are enforced. It also appears that some persons belonging to minority communities face obstacles in obtaining Kosovo driving licences. The Advisory Committee is seriously concerned by these practices, which mainly affect persons belonging to the Roma and Serbian communities.

140. In spite of efforts in community-based policing, mistrust persists among some minority communities. Increasing language barriers between the KPS and mainly the Serbian community constitute an additional obstacle to communication. Persisting distrust by the Roma, Ashkali and Egyptian communities of law-enforcement agencies contributes to their reluctance to report any crimes, including ethnically-motivated incidents. This situation is not conducive to the building of trust amongst the various communities.

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<sup>26</sup> See Report to the United Nations Interim Administration in Kosovo (UNMIK) on the visit to Kosovo carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT/Inf (2009)3).

*Recommendations*

141. The Advisory Committee urges the authorities to take vigorous measures to put an end to the practice of targeting cars with Serbian plates spread within KPS road-control activities. Efforts should be made to remove obstacles to obtain the Kosovo driving licences.

**Article 7 of the Framework Convention****Freedom of assembly and association***Findings of the first cycle*

142. In its first Opinion, the Advisory Committee noted that there was a need to reform the outdated legislative framework in this sphere, in particular the Law on Freedom of Association. In this respect, it called on the authorities to ensure that no undue obstacles were introduced in the registration process of non-governmental organisations when the legislative reform was carried out.

*Present situation*

## a) Positive developments

143. The Advisory Committee notes that the legislation regulating freedom of association has been updated. The 2008 Constitution provides in its Article 44 for the right to establish organisations and the relevant Law on Freedom of Association was passed by the Assembly of Kosovo in February 2009. The aforementioned law sets out *inter alia* conditions for the establishment, registration and striking off of non-governmental organisations. The Advisory Committee considers it commendable that the Law prohibits registration of non-governmental organisations whose statutes and programmes promote racial, ethnic, religious and gender inequality.<sup>27</sup> It is important that the new legislation is applied in a proportionate and non-discriminatory manner in compliance with the European Convention of Human Rights and its related case-law.

## b) Outstanding issues

144. The rights under Article 7 of the Framework Convention, in particular the right of peaceful assembly, continue to be affected by limitations on freedom of movement due *inter alia* to the unfavourable security situation faced by some persons belonging to minority communities. The freedom of peaceful assembly, which includes the right to organise and take part in a meeting or a demonstration, is particularly difficult to implement in such circumstances. This affects Kosovo Serbs but also Kosovo Albanians living in Northern Kosovo (see also comments in paragraph 85 under Article 4).

*Recommendations*

145. The authorities should make further efforts to ensure the full implementation of the rights guaranteed in Article 7 of the Framework Convention, in particular by addressing security concerns and by removing obstacles in order to guarantee freedom of movement.

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<sup>27</sup> Law No. 02/L-31 on Freedom of Religion in Kosovo.

## Article 8 of the Framework Convention

### Religious freedom

#### *Findings of the first cycle*

146. In its first Opinion, noting that the exercise of the right to manifest one's religion is particularly difficult in Kosovo, the Advisory Committee encouraged the authorities and religious leaders to show respect for religious diversity and to work for increasing tolerance and mutual respect in this field.

#### *Present situation*

##### a) Positive developments

147. In addition to the Law on Religious Freedom adopted in July 2006, freedom of thought, conscience and religion, including the right to declare one's religious or other beliefs, is guaranteed in Article 38 of the 2008 Constitution. The Law on Religious Freedom, which provides for equal rights and obligations to all religious communities, stipulates that there is no official religion in Kosovo.

##### b) Outstanding issues

148. The Advisory Committee has received disconcerting information as regards the attempts of the municipal authorities to change unilaterally the registered ownership of property belonging to the Serbian Orthodox Visoki Dečani Monastery in Deçan/Dečani in the municipal cadastral records. The Deçan/Dečani municipal authorities consider that part of the land restituted to the monastery by the Serbian government in 1997 is their property. Information received by the Advisory Committee in this respect suggests that a pending judicial procedure on this issue has resulted in delays in the implementation of the UNMIK Executive Decision to restore the monastery's cadastral status to the situation of 1999 by the respective local authorities.

149. The Advisory Committee also notes fears concerning attempts to alter the name of the Serbian Orthodox Church, including in property and land registers as well as on toponyms.<sup>28</sup> In particular, proposals as to the substitution of the word 'Serbian' by 'Kosovo' in the name of the Serbian Orthodox Church was brought to the attention of the Advisory Committee.

150. Cases of vandalism and theft directed against some religious sites, often against reconstructed churches, have been brought to the attention of the Advisory Committee. Notwithstanding the fact that it is often difficult for the police to determine whether these thefts are motivated by religious and ethnic animosity or committed with other criminal intentions, the Advisory Committee is concerned by the fact that many of these cases remain unresolved.

#### *Recommendations*

151. The Advisory Committee calls on the authorities to prevent and combat any acts which could lead to the violation of the right of persons belonging to national minorities to manifest their religion or belief. Consequently, any attempts to impose unjustified changes of ownership of religious property or to alter the names of religious denominations against the will of the religious community in question should be prevented by the authorities.

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<sup>28</sup> The Comprehensive Status Settlement Proposal for Kosovo stipulates in its Annex V that the Kosovo shall recognise the Serbian Orthodox Church in Kosovo, including monasteries, churches and other sites used for religious purposes, as an integral part of the Serbian Orthodox Church seated in Belgrade. Moreover, the name of the Serbian Orthodox Church shall be respected and the movable and immovable property and its other assets is inviolable and not a subject to expropriation.

## Article 9 of the Framework Convention

### Access of minority communities to print and broadcast media

#### *Findings of the first cycle*

152. In its first Opinion, the Advisory Committee noted delays in the processing of applications for licenses to broadcast in areas that were currently underserved and of applications for multi-ethnic stations and considered that such applications for radio and TV licenses needed to be processed rapidly while expanding the scope and diversity of broadcasting for and by minority communities.

153. The Advisory Committee expressed concerns about the lack of reception of public service television in certain areas of compact residency of the Gorani and Bosniac communities. It recommended to take further steps to ensure equal access of all communities to public service broadcasting.

#### a) Positive developments

154. The Constitution guarantees access of persons belonging to national communities to, and special representation in, public broadcast media as well as programming in their languages.<sup>29</sup> In addition, the Law on Radio and Television of Kosovo (hereinafter: Broadcast Law), adopted in 2006, gives a solid legal basis for multi-ethnic and multi-lingual public service broadcasting.

155. The Advisory Committee notes with satisfaction that there is a lively minority language print media-scene with fifty-one minority print outlets. Persons belonging to the Serbian, Bosniac, Turkish, Gorani and Roma communities have managed to establish their own minority and broadcasting media.<sup>30</sup> In addition, the Advisory Committee finds it encouraging that, apart from the public broadcasters, some private broadcasters have decided to include programmes for and about minority communities in their broadcasting scheme.

156. The Advisory Committee is pleased to note that the backlog of applications for broadcast media licenses has been solved. Licences have been issued to a number of low power radio stations for local broadcasters. As stated in the Progress Report, the Independent Media Commission (IMC), the role of which is to regulate the broadcasting sector, has engaged in revising the licensing system of the broadcast frequency spectrum. The Advisory Committee notes with satisfaction that persons belonging to some minority communities have been involved in the work of the Commission, including in its Secretariat.

157. The Advisory Committee welcomes the establishment of the Media Fund, the role of which is to provide financial support to minority, multi-ethnic and disadvantaged media.<sup>31</sup> It appears that 10% of the Media Fund was earmarked for minority and disadvantaged media in 2009. This Media Fund offers an opportunity to strengthen multi-ethnic and multi-cultural media in Kosovo provided that it is properly managed and that adequate funding is allocated.

#### b) Outstanding issues

158. Persons belonging to minority communities continue to face difficulties in having access to public service broadcasting while at the same time paying for it via electricity bills to the Kosovo Energy Corporation (KEK). The lack of reception of public service television persists in some territories traditionally inhabited by national minorities, such as the Bosniacs, Gorani, Turks and Serbs. In practice, the Public Service Broadcaster (RTK) covers 78% of the Kosovo territory as against the 90% required in

<sup>29</sup> Article 59 of the 2008 Constitution provides for rights of Communities and their Members.

<sup>30</sup> According to the statistical data provided by the Independent Media Commission, the Serbian community has an access to a total of 32 radio and television channels, the Bosniac and Turkish communities 3 channels, the Gorani 2 channels and the Roma community 1 channel.

<sup>31</sup> It was envisaged to allocate 5% of the licence fee collected as part of the electricity bill to the Media Fund established within the Office of the Prime Minister.

Article 8(1) of the Broadcast Law. Information received by the Advisory Committee suggests that the lack of coverage may be partly caused by the use of frequencies by KFOR and UNMIK. Notwithstanding the envisaged digitalisation of the media sector in Kosovo and widespread use of satellites, the Advisory Committee considers that the persisting lack of reception of public service broadcast media in some areas impairs the right of persons belonging to minority communities to have access to information, including in their respective languages, as guaranteed in Article 9 of the Framework Convention. In this respect, it is essential that the frequency distribution plan is designed to pay due attention to the needs of persons belonging to minority communities.

159. Persons belonging to certain minority communities, in particular the numerically smaller ones, complained of insufficient time allocated to minority community programmes in the broadcast media. For example, while there is a programme in the Romani language on public broadcast television, no specific programmes for Ashkali and Egyptians have been proposed. Criticism has also been voiced by Roma, Ashkali and Egyptians in relation to the refusal to grant a licence for a Kosovo-wide television channel in the Romani language. The RTK has the legal obligation to broadcast 15% of its broadcasting time in non-Albanian languages.<sup>32</sup> While the RTK claims to comply with this requirement, the threshold has been disputed by the IMC which considers the actual broadcasting time to be about 10%.

160. The Advisory Committee received complaints about the low quality of programmes for minority communities broadcasted on the public service television. The need for additional multi-ethnic programmes aimed *inter alia* to raise awareness of issues relating to minority communities has also been mentioned. No adequate equipment or adequately trained staff appear to be available which negatively affects the quality of programmes designed for persons belonging to minority communities. More generally, there is a need to improve the technical equipment of public media broadcasting as well as to provide journalists with adequate human rights and multicultural training, including training at the university level. The Advisory Committee also considers that the availability of programmes broadcast in the majority language with subtitles in minority languages would improve access of persons belonging to minority communities to these programmes.

161. Persons belonging to numerically smaller minorities have expressed their concerns over the insufficient financial means allocated by the authorities to the print media of minority communities. The current limited and irregular financial support does not contribute sufficiently to ensure sustainability of minority print media. There is therefore a need for the authorities to provide print media outlets with sufficient funding, including through the aforementioned Media Fund.

162. The Advisory Committee received complaints about insufficient representation of the numerically smaller communities in the boards of print and broadcast public media.<sup>33</sup> In this respect, the Advisory Committee recalls that the Framework Convention also implies adequate representation of minority communities in the media. Considering the impact of decisions issued by the boards and supervisory bodies of public media on the right to freedom of expression, due attention should be paid to the independence and competences of its members, whether from minority or majority communities.

### *Recommendations*

163. The authorities should remove obstacles preventing access by persons belonging to minority communities, in particular those living in a substantial number in certain areas, to public broadcast media.

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<sup>32</sup> Article 6(6) of the Law on Radio and Television of Kosovo stipulates that RTK in producing and preparing its programme shall serve and give voice to all ethnic communities in Kosovo by dedicating not less than 10% of its programming budget and not less than 15% of its programme time – including prime-time news coverage – to non-majority communities in their respective languages on a proportionate basis.

<sup>33</sup> The Law on the Radio Television of Kosovo guarantees in its Article 23(3) the representation of at least two members of the RTK Board from non-Albanian communities.

164. The Advisory Committee calls upon the authorities to ensure that the Public Service Broadcaster applies the time allocated to broadcasting for minority communities as stipulated in the Law on Radio Television.

165. The authorities should allocate increased financial, human and technical support to minority media as well as for the production of minority programmes in the mainstream media. Care should be taken to distribute funding by the Media Fund to minority media, which should be done in a transparent manner upon established criteria and in consultation with the minority communities concerned.

166. Increased attention should be paid to the effective representation of persons belonging to minority communities, including numerically smaller ones, in public media boards and media supervisory mechanisms. The political and financial independence of the Independent Media Commission needs to be ensured.

## **Article 10 of the Framework Convention**

### **Use of minority communities languages in the public sphere**

#### *Findings of the first cycle*

167. In its first Opinion, the Advisory Committee noted that the existing legal framework was overly complex and failed to spell out clearly the operative regulations concerning language use and called on the authorities to adopt new language legislation in order to bring clarity and legal certainty in this field.

168. The Advisory Committee noted serious gaps in the implementation of the language rights of minority communities in practice and called on the authorities to ensure that the new language legislation was coupled with appropriate implementation capacity. Adequate remedies, including judicial ones, needed to be put in place in case of non-compliance with language requirements, including any illegal changes of place names.

#### a) Positive developments

169. The Advisory Committee notes that Kosovo has adopted a comprehensive legislative framework as regards the language use in public life. According to the Law on the Use of Languages adopted in July 2006 (hereinafter: Language Law), the Albanian and Serbian languages remain the two official languages in Kosovo.<sup>34</sup> The Turkish, Bosnian and Roma languages have been given the status of 'languages in official use' or 'official languages' in municipalities which fulfil the requirements set forth in Article 2 of the Language Law.<sup>35</sup> As a consequence, users of these languages have the same rights as users of the Albanian and the Serbian languages in the municipalities concerned. The new legislation pertaining to the use of community languages, and in particular the 2006 Language Law, has contributed, in the

<sup>34</sup> The Constitution also stipulates, in its Article 5, that Albanian and Serbian enjoy the status of official language. Moreover, the Turkish, Bosnian and Roma languages were granted the status of official language at the municipal level or will be in official use at all levels as provided by law.

<sup>35</sup> Article 2.3 of the Law on the Use of Languages stipulates that in municipalities inhabited by a community whose mother tongue is not an official language, and which constitutes at least 5% of the total population of the municipality, the language of the community shall have the status of an official language in the municipality and shall be in equal use with the official languages. Notwithstanding the foregoing, exceptionally, in Prizren Municipality the Turkish language shall have the status of an official language.

Article 2.4 states that in municipalities inhabited by a community whose mother tongue is not one of the official languages of Kosovo and which represents more than three (3)% of the total population of the municipality, the language of the community shall have the status of a language in official use in the municipality in accordance with the provisions specified in that municipality. Pursuant to Article 35, municipalities shall adopt detailed regulations on this issue within six months of the promulgation of this law.

Article 2.5 stipulates that the Kosovo institutions will ensure the language rights of persons belonging to communities whose mother tongue is not the official language, in accordance with the provisions of this Law.

Advisory Committee's view, to increasing clarity as regards the linguistic rights of persons belonging to minority communities.

170. In accordance with the aforementioned law, some municipalities have also adopted regulations on the use of minority communities' languages and set up monitoring units. Although the degree of commitment to the implementation of the Language Law varies amongst municipalities, some municipalities, such as Skenderaj/Srbica and Gjilan/Gnjilane have reportedly made efforts to issue all documents in both official languages.

171. The Advisory Committee welcomes the setting-up, in 2007, of the Language Commission, the role of which is to supervise the use of minority languages in Kosovo. The Language Commission is, *inter alia*, entitled to carry out investigations and, consequently, to issue recommendations or written warnings to remedy shortcomings (see also comments under paragraph 177 below).

#### b) Outstanding issues

172. The Language Law provides for equal rights with regard to the use of official languages within the institutions in Kosovo. The Advisory Committee notes, however, that due to the inadequate quality of the interpretation and translation services, persons belonging to some minority communities have experienced difficulties in accessing official information in the other official language. Official documents, including those published on public institution web-sites, are often not provided in the Serbian language. For instance, in the municipalities inhabited in substantial numbers by the Gorani community, it appears that Serbian is used orally in contacts with administration while official documents are mainly available only in Albanian. In addition, the possibility of using Serbian in contacts with central administrative authorities located in Prishtinë/Priština has reportedly been reduced. As to the use of Albanian, additional payments are allegedly requested by public officials when documents have to be translated into Albanian in some areas inhabited in a substantial number by Serbian language speakers. Besides insufficient human and financial resources, the increasing lack of knowledge of Serbian amongst public officials, including the police officers in the KPS, is also given as a reason for the aforementioned shortcomings.

173. Although the aforementioned Law on Languages provides for equal status of the alphabets<sup>36</sup> of the two official languages, the alphabet based on the Cyrillic script is reportedly only rarely used in writing in public life.

174. In spite of some positive initiatives, the implementation of the Language Law remains problematic in many municipalities as regards the use of those minority community languages that have been granted the 'status of official languages' or 'language in official use', such as Gjilan/Gnjilane, Mitrovicë/Mitrovica, Prishtine/Priština and Vushtrria/Vučitrn. Regrettably, it appears that the Romani language has not been given the aforementioned status in any municipality, including in those where it fulfils the conditions stipulated in Article 2 of the Language Law.<sup>37</sup> Information received by the Advisory Committee suggests that Turkish can be used only to a limited extent in oral and written communication with the authorities in Prishtine/Priština but also in Prizren and Bosnian in Dragash/Dragaš and Pejë/Peć. The persons concerned felt that there was a lack of commitment to comply with requirements set forth in the Language Law on the part of public authorities. While the Advisory Committee is aware of the financial implications relating to the implementation of the Language Law, it recalls that minority rights are part of the commitments undertaken under the Framework Convention and that efforts should be made at all levels to meet them. Adequate financial resources need therefore to be allocated in order to guarantee the language rights of minority communities in Kosovo.

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<sup>36</sup> According to Article 2.1. of the Law on the Use of Languages, Albanian and Serbian and their alphabets are official languages of Kosovo and have equal status in Kosovo institutions.

<sup>37</sup> See Report on the Implementation of the Law on the Use of Languages by Kosovo municipalities issued in June 2008 by the Monitoring Department of the Organisation for Security and Co-operation in Europe Mission in Kosovo.



175. Representatives of the Turkish community expressed their wish to have identity cards issued also in the Turkish language. The Advisory Committee notes that the Law on Identity Cards, adopted in October 2008, provides *inter alia* for identity cards to be printed in the official languages of municipalities.<sup>38</sup> It invites the authorities to examine the existing situation, in consultation with the Turkish community, in the light of the aforementioned Law.

176. Information received from representatives of minority communities suggests that their right to use their language in courts protected by Article 12 of the Language Law has not been fully guaranteed.<sup>39</sup> Documents issued in relation to civil and criminal judicial proceedings have reportedly been provided exclusively in the Albanian language.

177. During its visit, the Advisory Committee noted that persons belonging to minority communities have not been informed either of their language rights or of complaint procedures put in place under the aforementioned Language Law. Official sources indicated to the Advisory Committee that only two complaints have been lodged within the Language Commission so far. However, the Advisory Committee has not been informed of any action, including recommendations, taken by the Language Commission, in this respect. There is an urgent need to improve the functioning of the Language Commission, including by allocating sufficient human and financial resources and by providing adequate training to its staff.

#### *Recommendations*

178. The Advisory Committee urges the authorities to allocate adequate financial and human resources to ensure the effective implementation of the Language Law at both central and municipal levels regarding the use of minority languages. Appropriate language training should be made available to civil servants to improve their language capacity.

179. Adequate financial and other resources need to be made available to the Language Commission to ensure its effective functioning. In this respect, more efforts should be made to make sure that persons belonging to minority communities are aware of their rights and of available complaint procedures, as guaranteed in the Language Law.

180. Recalling that the alphabet constitutes an integral part of a minority language, the Kosovo authorities should make sure that there are no restrictions on the use of the Cyrillic script in the Serbian language.

181. Referring to Article 10(3) of the Framework Convention, the Advisory Committee calls on the authorities to guarantee that the rights of persons belonging to minority communities to use their minority language in criminal proceedings are respected in practice. In addition, it is important to provide translation and interpretation into the official languages for other judicial proceedings, as well as required by Article 2 of the Language Law.

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<sup>38</sup> The Law on Identity Cards guarantees, in its Article 9, that forms and the identity cards are printed in the Latin alphabet in the official languages and in the official languages of municipalities of Kosovo.

<sup>39</sup> Article 12 of the Language Law stipulates that official languages shall be used on an equal basis in judicial proceedings. Courts and prosecution bodies, as well as other authorities involved in a criminal procedure shall, in any proceedings before them, ensure that any person participating in criminal or any other judicial proceedings may use the official language of his or her choice.

## Article 11 of the Framework Convention

### Public signs and other topographical indications

#### *Findings of the first cycle*

182. The Advisory Committee considered that measures were needed, in particular at the municipal level, to ensure that topographical signs were also displayed in minority community languages. Moreover, it encouraged the authorities to adopt further legal and administrative regulations in this field.

#### *Present situation*

##### a) Positive developments

183. The Advisory Committee notes with satisfaction that the right to use minority community languages in topographical indications is guaranteed in Article 9 of the Language Law. As a result, topographical signs are to be displayed, where appropriate, in the two official languages and in the languages that have the status of the official language in the municipalities concerned.

184. In practice, considerable efforts have been made to install bilingual topographical signs in the two official languages on the roads under the responsibility of the central authorities as well as in some municipalities.

##### b) Outstanding issues

185. Although efforts have been made in some municipalities inhabited in substantial numbers by persons belonging to a minority community to display bilingual or multilingual topographical signs, shortcomings still persist in this respect. The Advisory Committee notes that bilingual signs have often been misspelled and defaced, in particular in ethnically mixed municipalities. This is the case, for example, in the Shtërpçë/Štrpçe municipality where the topographical signs in Serbian were defaced in the areas inhabited by the Albanian community and, *vice versa*, signs in Albanian were defaced in the areas inhabited by the Serbian community. Topographical signs in the languages having the status of official languages at a local level, such as Turkish, Roma and Bosnian, have not always been displayed in the locations concerned.

186. In spite of the fact that the 2008 Constitution stipulates that the multi-ethnic and multilingual character of Kosovo needs to be respected in topographical indications, the selection of street names and other topographical places in some areas does not often reflect the existence of minority communities.<sup>40</sup> Moreover, the Advisory Committee is concerned by the reports it has received regarding continuing attempts to 'Albanise' topographical names by some municipal authorities.

#### *Recommendations*

187. Measures should be taken by the central authorities to promote awareness, amongst the municipal authorities concerned, of the legal requirements laid down in the 2006 Language Law and their responsibility to implement them in a manner that reflects the multi-ethnic and multilingual character of Kosovo and that complies with the principles guaranteed in Article 11 of the Framework Convention.

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<sup>40</sup> Article 59.9. of the Constitution states that members of communities shall have the right, individually or in community, to have local names, street names and other topographical indications which reflect and are sensitive to the multi-ethnic and multi-linguistic character of the area at issue.

## **Registration of personal names**

### *Findings of the first cycle*

188. In its first Opinion, the Advisory Committee noted that it had been informed of cases where registration in Albanian of names and surnames of persons belonging to a non-Albanian community had led to distortions. Recognising the complexity of the Kosovo situation, where different alphabets are in use, the Advisory Committee considered that there was a need for specific regulations on this issue. It also encouraged the authorities to take measures to enable those persons whose names had been distorted in the past, to have their names restored to their original form.

#### a) Positive developments

189. The Advisory Committee notes with satisfaction that a number of legislative acts, including the 2008 Constitution, contain provisions concerning the recording of personal names. The 2008 Law on Personal Names provides for the registration of personal names in one's native language and institutes procedures for correcting and changing personal names.<sup>41</sup> In particular, the right to keep personal names as used in the original language, when recording them in one of the official languages, and the ways of correcting personal names are defined in Articles 6 and 11 of the aforementioned Law.

#### b) Outstanding issues

190. Instances of incorrect transcription of names and surnames of persons belonging to minority communities have been reported to the Advisory Committee, especially by representatives of the Bosniac and Turkish communities. In particular, certain letters of the Turkish alphabet have been systematically misspelled in official documents by the authorities. Certain civil registry offices have allegedly transcribed names and surnames of persons belonging to the Bosniac community following the pronunciation rules applicable for the Albanian language.

### *Recommendations*

191. The Advisory Committee calls on the authorities to take measures to remedy the shortcomings relating to the transliteration and misspelling of names and surnames of persons belonging to minority communities, in conformity with the legislation in force so that the rights contained in Article 11 of the Framework Convention are fully guaranteed.

## **Article 12 of the Framework Convention**

### **Inter-ethnic interaction in education**

#### *Findings of the first cycle*

192. In its first Opinion, the Advisory Committee found that the possibility for Serbian and Albanian pupils to interact in the context of the school system was non-existent. The Advisory Committee called on the authorities to design a comprehensive plan to create opportunities for interaction between pupils from the communities and take measures aimed at reducing the demand for a parallel educational system.

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<sup>41</sup> Article 11 of the Law No. 02/L-118 on Personal Names stipulates that in cases when mistakes have been made in civil registries while registering the personal name, the citizen is entitled to correct the name at his/her/birth place where the civil registry is kept. (...) Correction may not change the meaning and content of the personal name.

*Present situation*

Outstanding issues

193. The Advisory Committee notes that the ‘parallel educational system’ continues to exist, in particular in the areas where persons belonging to the Serbian community live in substantial numbers, and in Northern Kosovo. According to information received by the Advisory Committee, pupils from both majority and minority communities, in particular the Serbian and Albanian communities, rarely meet. The interaction between the Roma, Ashkali and Egyptian communities and other communities is also limited. Even more worrying is the fact that, in areas where they have a possibility to meet, it would appear that they are given very limited opportunities to do so. The Advisory Committee considers that this situation is not conducive to the establishment of an integrated and cohesive society and that, on the contrary, it perpetuates divisions between the communities.<sup>42</sup> The Advisory Committee has not been informed of any tangible initiatives, such as pilot projects, or a comprehensive strategy for intercultural and multicultural education or measures aimed at facilitating contacts between pupils from different communities.

194. The lack of adequate knowledge of the Albanian and/or Serbian languages amongst the respective communities contributes to their very limited interaction. This is particularly relevant for the young generation. While integration can be facilitated if pupils belonging to both communities master each others language, it appears that it is no longer compulsory for the Albanian pupils to learn the Serbian language. There is therefore a need to provide the Serbian community with the opportunity to learn Albanian and for Albanian pupils to learn Serbian.

*Recommendations*

195. The Advisory Committee urges the authorities to step up their efforts to implement initiatives promoting interaction between pupils from different linguistic communities, in particular the Serbian and Albanian ones. A comprehensive and realistic strategy needs to be designed, in consultation with all relevant communities, with a view to removing barriers, including linguistic ones, to interaction between pupils from different communities. The relevance of bilingual education models should be assessed with a view to their adequate implementation, where appropriate.

**Intercultural content of education**

*Findings of the first cycle*

196. In its first Opinion, the Advisory Committee noted the importance of including the contribution of all communities to the Kosovo society into school textbooks and encouraged the competent authorities to ensure that teaching comprises multicultural elements reflecting the diversity of society in Kosovo.

*Present situation*

a) Positive developments

197. The Advisory Committee welcomes legislation providing for a multicultural content in curricula. In particular, the Law on Communities stipulates that curricula covers the history, culture and other attributes of communities traditionally present in Kosovo.<sup>43</sup> Moreover, within the on-going history teaching reform, the authorities envisage creating new curricula and history textbooks. It is also commendable that an independent commission has been set up to improve the curriculum in the Serbian language. The Advisory Committee takes note of the authorities’ involvement in the Council of Europe

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<sup>42</sup> See the report of the Organisation for Security and Co-operation in Europe, Mission in Kosovo entitled Kosovo Non-majority Communities within the Primary and Secondary Educational Systems issued in April 2009.

<sup>43</sup> See Article 8.12 of the Law on the Promotion and Protection of the Rights of Communities and their Members in Kosovo.

and the European Commission Joint Programme, the aim of which is to set up sustainable conditions for strengthening intercultural understanding among all communities in Kosovo.<sup>44</sup>

#### b) Outstanding issues

198. Schools in Kosovo do not use the same curriculum. The majority community as well as persons belonging to certain minority communities, follow the Kosovo-wide curriculum developed by the Ministry of Education, Science and Technology (MEST). In the meantime, all subjects taught in ‘the parallel education system’ follow the curriculum developed in Serbia. As a result, history is interpreted and the communities portrayed differently according to the curriculum followed. It is regrettable that the aforementioned commission has not yet started its work. The Advisory Committee therefore expects that the issue of the curriculum in the Serbian language will be resolved in a speedy manner.

199. Information received by the Advisory Committee suggests that textbooks in use on the basis of the Kosovo-wide curriculum insufficiently reflect the specific features and history of some minority communities, such as the Bosniac, Roma, Ashkali and Egyptian ones. No mention of cultural, language and identity specificities of the Roma, Ashkali and Egyptian communities is made in the school textbooks. Some textbooks for education in the Turkish and Bosnian languages have been imported from Turkey and Bosnia and Herzegovina, respectively. As a consequence, they do not always reflect appropriately the diversity and specificity of society in Kosovo.

200. The Advisory Committee is aware of the major challenges relating to history teaching in post-conflict and still ethnically divided societies. It considers, however, that more efforts should be made by the authorities to provide an objective and balanced environment for history teaching, in consultation with experts from the minority communities. This implies, *inter alia*, the production of new textbooks, training of history and social science teachers, as well as of authors of textbooks.

#### *Recommendations*

201. The Advisory Committee urges the authorities to step up their efforts to develop, in consultation with persons belonging to minority communities, objective and balanced curricula and history textbooks and to include the perspectives of minority communities.

202. The Advisory Committee calls upon the authorities to take resolute steps to promote knowledge and understanding of minority communities through education. Textbooks and teaching materials should pay adequate and accurate attention to the cultures and identities of the different communities, including the numerically smaller ones, and teaching staff should receive training adapted to the goals of multicultural and intercultural education.

### **Situation of Roma, Ashkali and Egyptians in education**

#### *Findings of the first cycle*

203. In its first Opinion, the Advisory Committee identified a number of difficulties faced by the Roma, Ashkali and Egyptian pupils in the field of education. The problems included extremely low enrolment and high drop-out rates which largely affect girls belonging to these communities. The Advisory Committee called on the authorities to take measures to address the educational needs of these persons, including by ensuring the sustainability of the programmes designed to help pupils to integrate and stay in the education system.

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<sup>44</sup> See Joint Council of Europe/European Commission Programme on Education in Kosovo: Inter-culturalism and the Bologna Process (2008/157-924). The Joint Programme provides for *inter alia* training for curricula authors and teachers, including mediators belonging to the Roma, Ashkali and Egyptian communities ([www.ibp-kosovo.org](http://www.ibp-kosovo.org)).

*Present situation*

## a) Positive developments

204. The Advisory Committee recognises that some efforts have been made to tackle the disturbing unsatisfactory situation of the Roma, Ashkali and Egyptians in the field of education. For example, the Strategy for the Integration of Roma, Ashkali and Egyptians in Kosovo envisages concrete measures to be implemented by MEST in the field of primary and higher education. Moreover, a specific strategy has been developed by MEST in the Education Component of the Strategy for Integration of these communities, covering the period between 2007 and 2017.

205. Some initiatives have been taken to increase the low level of enrolment of pupils from these communities. The Ministry of Return and Communities has granted scholarships to some students having enrolled in secondary education.<sup>45</sup> The Advisory Committee also welcomes the programmes implemented mainly by non-governmental organisations to tackle the high drop-out rates by running catch-up classes.<sup>46</sup>

## b) Outstanding issues

206. In spite of the aforementioned efforts, the Roma, Ashkali and Egyptians continue to face severe difficulties in access to quality education. The Advisory Committee is deeply concerned by the low level of attendance in educational establishments at all levels which particularly affects girls belonging to these communities. The lack of kindergartens contributes to the low enrolment in pre-school education amongst these economically disadvantaged communities. Explanations given to the Advisory Committee for the high drop-outs include failure in the entrance exams and the absence of support measures, such as reserved places, for accessing secondary education. There are only few Roma, Ashkali and Egyptians studying in higher educational institutions. Teachers often lack qualifications and specific training to work in educational facilities attended by persons belonging to the Roma, Ashkali and Egyptian communities. As a consequence, the illiteracy rate is much higher amongst the Roma in comparison with the majority population.<sup>47</sup> Criticism has been voiced concerning insufficient support provided by the authorities to implement the strategies aiming at improving the situation of disadvantaged pupils. Most educational programmes have been so far run by non-governmental and international organisations.

207. Given that no curriculum has yet been developed in the Romani language, pupils belonging to the Roma community attend school with Albanian, Bosnian, Serbian or Turkish as the languages of instruction. The integration of the forced and voluntary returnee children belonging to these communities into the education system also seems problematic considering that many of them do not master the languages of instruction. In this context, the Advisory Committee draws the attention of the authorities to the Curriculum Framework for Romani developed by the Council of Europe.<sup>48</sup>

*Recommendations*

208. The Advisory Committee urges the authorities to take resolute steps to facilitate the access to education at all levels of pupils belonging to the Roma, Ashkali and Egyptian communities, including by

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<sup>45</sup> See the aforementioned Report of the Organisation for Security and Co-operation in Europe, Mission in Kosovo on Kosovo Non-majority Communities within the Primary and Secondary Educational Systems.

<sup>46</sup> For example, the non-governmental organisation 'Balkan Sunflowers' has carried out a project entitled Learning Centers Network the aim of which is to include children belonging to the Roma, Ashkali and Egyptian communities in daily learning activities.

<sup>47</sup> UNDP Vulnerable Groups in Central and South East Europe, Statistical Profiles Kosovo shows that only 63% eligible Roma are enrolled in primary schools and 6% Roma girls and 22% Roma boys in secondary schools. Furthermore, 44% of the Roma women and 25% of Roma men aged 15-24 are illiterate (<http://vulnerability.undp.sk/>).

<sup>48</sup> See A Curriculum Framework for Romani developed by the Language Policy Division of the Council of Europe in co-operation with the European Roma and Travellers Forum in 2008.

allocating sufficient financial and other resources for the implementation of the strategies developed in this field. In particular, measures should be taken to tackle their low enrolment and high drop-out.

209. The authorities should provide specific training to teachers working in schools predominantly attended by pupils belonging to the Ashkali, Roma and Egyptian communities. Opportunities for pupils belonging to minority communities wishing to learn the Romani language should be increased. Due attention should be paid to the Council of Europe Recommendation on the education of Roma and Travellers in Europe in this context.<sup>49</sup>

210. Prompt attention should be paid by the authorities to ensuring the integration of children of forced and voluntary returnees belonging to the Ashkali, Roma and Egyptian communities into the educational system in Kosovo.

### **Access to higher education**

#### *Findings of the first cycle*

211. In its first Opinion, the Advisory Committee noted that the higher education system did not meet the needs of certain minority communities, especially Serbs and Bosniacs, and recommended that authorities take steps to remedy this situation.

#### *Present situation*

##### a) Positive developments

212. The Advisory Committee notes with satisfaction that some higher education establishments provide for education in the Turkish and Bosnian languages.<sup>50</sup> The number of students of the Bosniac community appears to have increased lately.

213. Students belonging to some minority communities continue to have the possibility to enrol in the Prishtinë/Priština University through a system of quotas. The minority community students can sit the entrance exams in their minority language and subsequently benefit from the adapted exams providing for lower requirements in the Albanian language.

##### b) Outstanding issues

214. The Advisory Committee notes that a considerable number of young persons belonging to minority communities, such as Serbs and Turks, leave Kosovo to pursue their higher education elsewhere. The reasons for this situation are numerous, including the low quality of higher education available in Kosovo. Unlike other minority communities, there are no quotas provided to the Serbian community at Prishtinë/Priština University. Students belonging to the Serbian community enrol at the University of Mitrovicë/Mitrovica managed by the Serbian Ministry of Education, if they wish to study in Kosovo. The Advisory Committee is concerned about this situation which leads to a brain-drain of young educated people from Kosovo. In this context, the Advisory Committee recalls the obligation, under Article 12 of the Framework Convention, to promote equal opportunities for access to quality education at all levels of persons belonging to minority communities.

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<sup>49</sup> See Council of Europe Recommendation CM/Rec(2009)4 of the Committee of Ministers to Member States on the Education of Roma and Travellers in Europe of 17 June 2009.

<sup>50</sup> According to the Progress Report, there are two study programmes in the Bosnian language (at the Faculty of Business in Pejë/Peć and at the Faculty of Education in Prizren) and one study programme in the Turkish language (at the Faculty of Education in Prizren). The University of Prishtinë/Priština also provides a course of the Turkish language philology.

*Recommendations*

215. The Advisory Committee calls upon the authorities to provide equal opportunities for access to quality higher education for all, including persons belonging to minority communities. Specific measures should be taken to tackle the issue of the brain-drain of young people belonging to minority communities.

**Article 14 of the Framework Convention**

**Instruction in and of minority languages**

*Findings of the first cycle*

216. In its first Opinion, the Advisory Committee identified some difficulties faced by certain numerically smaller communities, especially Bosniacs, in accessing education in their minority languages. The Advisory Committee called on the authorities to take steps in order to improve this situation, including by clarifying the threshold for opening a class with instruction in a minority language. Measures were encouraged to provide adequate textbooks and qualified teachers for instruction in the mother tongue. Moreover, flexibility was recommended when the educational reforms in schools attended by pupils belonging to the Gorani community were carried out.

217. Noting the problems relating to physical access to educational facilities, the Advisory Committee considered that the issue of safe transport of pupils from minority communities to educational facilities needed to be addressed as a matter of urgency.

*Present situation*

a) Positive developments

218. The existing legislation guarantees the right for persons belonging to minority communities to receive education in one of the official languages of their choice as well as in a minority language, even if the latter is not an official one.<sup>51</sup> Efforts have been made to expand the availability of education in minority languages, in particular as regards the Bosniac and Turkish communities, and to meet the demand for more textbooks in minority languages.

219. The Advisory Committee notes that transportation services continue to be provided by the authorities in some locations inhabited by minority communities by means of mini-buses and takes note of the humanitarian bus project, as mentioned in the Progress Report.

b) Outstanding issues

220. There is a lack of supply of textbooks for certain minority languages. The need for textbooks in Turkish and Bosnian, in particular secondary education textbooks, is addressed by import from Turkey and Bosnia and Herzegovina. Textbooks in minority languages are often inadequately translated. The availability of qualified teachers for minority schools is also problematic. The lack of adequately trained teachers, and textbooks, discourages some parents belonging to minority communities to enrol their children in minority language education (see comments in paragraph 199 under Article 12).

221. Representatives of some minority communities complained of insufficient opportunities for their children to learn the official languages in minority schools. This worrying development limits their possibility to integrate into society. According to information provided by the MEST, the Albanian

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<sup>51</sup> The Law on the Rights of Communities and their members in Kosovo provides in its Article 8 for all persons belonging to communities the right to receive public education at all levels in one of the official languages of Kosovo of their choice. Persons belonging to communities are entitled to pre-school, primary, secondary public education in their own language, even if it is not an official language.



language is taught two hours per week from the third to the fourteenth grades in schools attended by minority communities.

222. While recognising the complexity of the situation prevailing in Kosovo, the Advisory Committee regrets that a sustainable solution concerning the education of pupils belonging to the Gorani community has not yet been found. Some Gorani children receive education in Albanian while others are enrolled in the Serbian parallel educational system. Even more worrying is the fact that some Gorani children do not go to school at all. The Advisory Committee considers it important that the situation be solved in a spirit of dialogue with all sides concerned whilst pursuing a flexible approach. The fact that no common Kosovo curriculum for instruction in the Serbian language has been developed complicates even more the education opportunities of this community.

223. While transportation services have generally been supplied to pupils belonging to the Serbian minority, this is apparently not the case for pupils belonging to the Roma, Ashkali and Egyptian communities with their particular needs in this regard. The lack of transport limits their possibility to enjoy an equal access to education.

### *Recommendations*

224. The Advisory Committee calls on the authorities to provide minority schools with adequate quality textbooks and teachers with training.

225. In accordance with the principles embodied in Article 14(3) of the Framework Convention, the Advisory Committee considers that the authorities should increase their efforts to provide opportunities for pupils belonging to minority communities to learn the official languages.<sup>52</sup> At the same time, the authorities should promote learning of the other official language as well as providing opportunities for pupils belonging to the majority community to learn minority languages.

226. The Advisory Committee calls on the authorities to take a flexible approach to accommodate the needs of the Gorani community to receive education in their language. The authorities should pursue a dialogue with representatives of the Gorani community with a view to finding suitable solution. More efforts should also be made by all concerned to depoliticise this issue.

## **Article 15 of the Framework Convention**

### **Participation in public life**

#### *Findings of the first cycle*

227. In its first opinion, the Advisory Committee considered that, in order to attract the widest possible support within society, it was essential to ensure meaningful participation and input of persons belonging to all communities in the talks on the status of Kosovo.

228. The Advisory Committee recommended that regular dialogue between the relevant Government Ministries and the Committee on Rights and Interests of Communities of the Assembly of Kosovo be established.

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<sup>52</sup> Article 14 (2) and 14(3) stipulates that in areas inhabited by persons belonging to national minorities traditionally or in substantial numbers, if there is sufficient demand, the Parties shall endeavour to ensure, as far as possible and within the framework of their education systems, that persons belonging to those minorities have adequate opportunities for being taught the minority language or for receiving instruction in this language. Paragraph 2 shall be implemented without prejudice to the learning of the official language or the teaching in this language.

*Present situation*

a) Positive developments

229. The Advisory Committee welcomes that the guarantee for the representation of minority communities in the Kosovo Assembly through a reserved seat system, as it had been provided for in the then Constitutional Framework, was confirmed in the 2008 Constitution. As a result, twenty of the one hundred and twenty Kosovo Assembly seats are guaranteed for elected representatives of minority communities.<sup>53</sup>

230. The 2008 Constitution institutionalises the Committee on Rights and Interests of Communities in the Kosovo Assembly. This Committee may be consulted with respect to draft legislation falling under its competences. It may also initiate laws and other measures to address the concerns of communities. The Advisory Committee considers it commendable that the decisions within the Committee are taken by consensus.

231. The Advisory Committee notes that several institutional actors have competences over minority communities-related issues. The Advisory Committee considers the setting-up of specialised offices dealing with minority protection within the Prime Minister's Office as a symbolically important step.

232. The Advisory Committee also welcomes the setting-up of Human Rights Units at the central government ministries and at the municipal level. It considers this to be a positive step towards the mainstreaming of human and minority rights into all policies.

233. The UNMIK Regulation 2007/30 on Self-Government of Municipalities in Kosovo<sup>54</sup> requires that community committees are set up at a local level. Their composition needs to reflect the ethnic diversity within the municipalities. In addition, the Regulation provides for the setting-up of mediation committees whose role is to examine alleged cases of violations of the rights of communities and their members. In the view of the Advisory Committee, these provisions strengthen the participation of minority communities at a local level.

234. The Advisory Committee notes that debates on the decentralisation process have started. The decentralisation reform, if implemented, would provide municipalities inhabited in substantial numbers by the Serbian community with enhanced competences in the field of education, healthcare and cultural affairs. While stressing the need for the effective participation of all communities throughout Kosovo, the Advisory Committee considers that, such forms of decentralisation can play an important role in creating necessary conditions for the effective participation of persons concerned. Adequate consultation of minority communities on the modalities relating to the decentralisation is essential for it to be successful.<sup>55</sup>

b) Outstanding issues

235. The Advisory Committee deeply regrets that apart from the Albanian and Serbian community representatives, other numerically smaller minority communities in Kosovo did not participate formally in the talks on the future status of Kosovo and that their voice was not effectively taken into account.<sup>56</sup>

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<sup>53</sup> See footnote No. 8 above.

<sup>54</sup> UNMIK Regulation 2007/30 promulgated on 16 October 2007 amended UNMIK Regulation 2000/45 on Self-Government of Municipalities in Kosovo.

<sup>55</sup> See Advisory Committee on the Framework Convention for the Protection of National Minorities: *Commentary on the Effective Participation of Persons belonging to National Minorities in Cultural, Social and Economic Life and in Public Affairs*, Strasbourg (2008), paragraph 130.

<sup>56</sup> According to the Progress Report, only senior Albanian and Serbian politicians in Kosovo had been involved in the talks on the future status of Kosovo, p. 44.

236. While recognising the importance given to minority-related questions, notably by setting up several offices with competences over community issues within the institutional framework of Kosovo, the Advisory Committee warns against the danger of an excessive fragmentation of competences in this field. This may weaken minority protection. It is therefore essential to ensure effective and regular coordination and consultation among the relevant offices and ministries. In addition, the established consultative body of minority communities, the Community Consultative Council, should be effectively consulted on policies pertaining to minority issues (see also comments in the paragraphs 240-249 below).

237. While welcoming efforts made in respect of decentralisation reforms, the Advisory Committee recalls that appropriate resources need to be allocated to all municipalities to enable them to carry out their tasks effectively.<sup>57</sup>

### *Recommendations*

238. Proper coordination of measures pertaining to minority issues should be carried out among the stakeholders with competences in this field. The Community Consultative Council should be duly and effectively consulted when decisions on legislative and policy measures pertaining to minority protection are taken.

239. In the context of the decentralisation process, adequate resources need to be provided to the municipalities to enable them to carry out their competences effectively, in consultation with all relevant communities.

## **Consultation of minority communities**

### *Present situation*

240. The Advisory Committee welcomes the setting-up of the Community Consultative Council established in 2008 under the aegis of the Presidential Administration.<sup>58</sup> The Council's Statute provides for rules governing its membership and functioning, including its involvement in the legislative process. The Advisory Committee considers that clearly defined rules of procedure, which are reportedly under preparation by the Council, are essential for its proper functioning.

241. The Council is a mixed body, which includes representatives of public administration, political parties of national minorities and non-governmental organisations of the Serb, Bosniac, Turkish, Gorani, Roma, Ashkali, Egyptian and Montenegrin communities. The Advisory Committee regrets that out of nineteen community representatives appointed as members of the Council, only three are women. It considers it important to take steps to ensure that women belonging to national minorities are effectively involved in the work of this consultative body.

242. The Advisory Committee appreciates efforts made to ensure the transparent and inclusive selection procedure. Prior to the appointment of the Council's members for one year, a consultation process with active community non-governmental organisations and political parties was carried out. Nevertheless, according to certain sources, this consultation was rather short and not as inclusive as it should have been.

243. The Advisory Committee appreciates that, even though the Montenegrin community is not recognised as such in the 2008 constitutional order, a representative of this community has been included in the Council. Representatives of the Montenegrin community, however, expressed concerns about what

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<sup>57</sup> See the aforementioned Advisory Committee on the Framework Convention for the Protection of National Minorities: *Commentary on the Effective Participation of Persons belonging to National Minorities in Cultural, Social and Economic Life and in Public Affairs*, Strasbourg (2008), paragraph 130.

<sup>58</sup> See Decree No. CCC-001-2008 on the Establishment of the Community Consultative Council of 15 September 2008.

they consider inadequate representation in the Council as well as about the lack of legal guarantees providing for their effective participation in this body. The Advisory Committee therefore recalls the importance of a population census in this respect. It notes with satisfaction that a special working group on the Montenegrin community was set up within the Council to examine the issues relating to the situation of this community in Kosovo (see comments in paragraph 51 under Article 3).

244. The Advisory Committee understands that the Council has met so far only rarely and on an irregular basis. Many persons belonging to minority communities do not seem to be even aware of its existence. The Council disposes neither of budgetary resources nor of other financial means allocated for its activities. Although it is premature for the Advisory Committee to assess the functioning of the Council, the information at its disposal shows that more efforts are needed to ensure the effective consultation of minority communities in various areas of interest to them. For example, consultation of minority communities on the distribution of financial resources by the Media Fund may be envisaged.

245. The Advisory Committee welcomes that representatives of the Roma, Ashkali and Egyptian communities were consulted on the draft Strategy for the Roma, Ashkali and Egyptians elaborated by the authorities. However, criticism was raised by some representatives of these communities as to the way in which the consultation process had been carried out. They felt that their concerns were not sufficiently taken into account in the adopted Strategy.

#### *Recommendations*

246. While the Advisory Committee is aware of the lack of data on the actual composition of the population in Kosovo, it considers that the authorities should periodically review the Community Consultative Council's appointment procedures to make sure that it is as inclusive as possible. Practical steps should be taken to ensure that women belonging to national minorities are adequately involved in consultative bodies.

247. More efforts should be made to ensure that the consultation process is effective, especially on issues that directly or indirectly affect minority communities. Moreover, the authorities are encouraged to raise awareness amongst minority communities on the existence of the Council and its working methods.

248. The Advisory Committee urges the authorities to provide the Council with adequate financial and human resources for its effective functioning and ensure that its meetings are held regularly.

249. It is important that the Roma, Ashkali and Egyptian communities participate effectively through their representatives in the implementation, monitoring and evaluation of the Strategy for the Roma, Ashkali and Egyptians.

### **Representation in public administration and in the judiciary**

#### *Findings of the first cycle*

250. The Advisory Committee called on the authorities to promote improved participation of persons belonging to minority communities in public administration.

#### *Present situation*

##### a) Positive developments

251. The Advisory Committee welcomes the efforts made by the authorities to increase the number of persons belonging to minority communities being employed at municipal and central levels, including in the police and in the judiciary. In particular, efforts made to reintegrate suspended Serb police officers, who had left their jobs in 2008 in protest against the declaration of Kosovo's independence, into the Kosovo Police Service are welcomed by the Advisory Committee. Statistics provided by the international

community to the Advisory Committee suggest that around 10% of judges and 7% of prosecutors from the minority communities were employed in the judiciary.

#### b) Outstanding issues

252. Notwithstanding the aforementioned efforts, difficulties have been encountered at all levels with regard to recruitment of persons belonging to the Serbian and numerically smaller communities, such as the Ashkali and Egyptians.<sup>59</sup> While being aware that some difficulties concerning the recruitment of persons belonging to the Serbian community are related to their reluctance to work for the Kosovo Albanian-led administration, unequal access to information on job opportunities seems to create an additional obstacle in their access to employment. Job vacancies, even though published in both official languages, are reportedly advertised predominantly in the Albanian language newspapers. In light of the above considerations, the Advisory Committee is of the opinion that efforts should be intensified to ensure the effective participation and adequate representation of non-Albanian communities in public services by providing for their equal access to job opportunities. However, measures formulated solely to reach a rigid, mathematical proportionality in the representation of various groups, often resulting from multiplication of posts, should be avoided.<sup>60</sup>

253. The Advisory Committee notes that persons belonging to minority communities rarely occupy senior positions in the civil service. This is even more the case with regard to women with a minority community background. Moreover, some representatives of numerically smaller minority communities expressed their concern about inadequate representation in advisory and supervisory bodies, such as the Language Commission. A lack of their adequate representation on the board of publicly-owned enterprises was raised by some minority communities.

254. Noting the lack of availability of data on the representation of minority communities in the public service gathered by the authorities, the Advisory Committee stresses the importance of collecting reliable data disaggregated by age, gender, ethnic belonging and geographical distribution on a regular basis to obtain an accurate picture of the representation of minority communities in the administration while respecting the right to self-identification and fully guaranteeing the protection of personal data.

255. While recognising the efforts made to employ judges and prosecutors from minority communities, the Advisory Committee notes that it continues to be extremely difficult to attract judges of Serbian origin to work in the Kosovo judicial service. As no pensions or other social allowances are guaranteed, many Serbian judges prefer to work in Serbia where they benefit from better social security protection. In this context, the Advisory Committee finds it worrying that no students with a minority background have reportedly been enrolled in the Law Faculty at the Prishtinë/Priština University.<sup>61</sup> It is also regrettable that the Kosovo Judicial Council, which is responsible for the appointment of new judges, is not yet fully operational.

#### *Recommendations*

256. Considering the importance of establishing a multi-ethnic public service in Kosovo, increased attention should be paid by the authorities to promoting and facilitating effective recruitment and retention of persons belonging to minority communities in order to ensure their adequate representation in public service and other public bodies at all levels, including in senior positions.

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<sup>59</sup> Statistics provided by the Ministry of Local Government Administration show that the Ashkali and Egyptians have their representatives only in three municipalities.

<sup>60</sup> See the aforementioned Advisory Committee on the Framework Convention for the Protection of National Minorities: *Commentary on the Effective Participation of Persons belonging to National Minorities in Cultural, Social and Economic Life and in Public Affairs*, Strasbourg (2008).

<sup>61</sup> See Report of the Kosovo Judges Association on "Participation of Women and Representatives of Minorities in the Justice System in Kosovo" of 2009.

257. The Advisory Committee calls upon the authorities to collect reliable data on the minority communities' representation in civil service, while fully guaranteeing the protection of such personal data and, if necessary, to take appropriate measures to promote adequate minority representation in this field.

258. Specific measures need to be taken to strengthen the employment opportunities in the judiciary for persons belonging to minority communities, notably for the Serbs.

### **Socio-economic participation of minority communities**

#### *Findings of the first cycle*

259. In its first Opinion, the Advisory Committee noted that persons belonging to certain minorities had been in a particularly difficult situation concerning access to employment and encouraged the authorities to pursue positive measures in this regard.

260. Noting the disconcertingly low participation of minority communities in social and economic life, the Advisory Committee considered that more efforts were needed to promote their effective participation in this field, including by monitoring the impact of the privatisation process on minority communities.

#### *Outstanding issues*

261. While recognising that the poor economic situation and poverty affect all communities in Kosovo,<sup>62</sup> the Advisory Committee is particularly concerned by complaints it has received from representatives of the Serbian, Bosniac, Ashkali and Egyptian communities regarding the difficulties they encounter in accessing economic opportunities. Insufficient economic investments, including into underdeveloped infrastructures, in areas inhabited by persons belonging to minority communities limit their opportunities to participate effectively in social and economic life. Some interlocutors belonging to the Serbian community raised the issue of their inadequate access to information on business opportunities, including on foreign investment projects. In addition, the recent reduction in the significant additional funding of 'parallel structures' has had an impact on the economic situation of some persons belonging to the Serbian community. Certain limitations were also encountered with regard to the business opportunities of private enterprises. In particular, locally-based companies owned by Serbian or Albanian entrepreneurs experience difficulties in establishing mutual business relations. The Advisory Committee considers that the effective participation of minority communities in socio-economic life is closely linked to their equal access to economic opportunities. A clear strategy on the economic development in Kosovo, which would include persons belonging to minority communities, may help to strengthen their effective participation in socio-economic life and co-operation between all communities.

262. Some minority community representatives raised the issue of discriminatory practices against minority communities in the privatisation processes of former socially-owned enterprises. Such practices resulted in limitations of persons belonging to minority communities, especially of internally displaced persons and returnees, in their effective participation in socio-economic life. In particular, as stated in the report of the United Nations Committee on Economic, Social and Cultural Rights in 2008, discriminatory deadlines preclude many internally displaced persons and returnees from applying for inclusion in the list of former employees eligible to participate in the distribution of the proceeds from the sale of privatised enterprises.<sup>63</sup> The Advisory Committee considers that appropriate measures should be taken to avoid

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<sup>62</sup> According to the International Monetary Fund (IMF), GDP per capita was 1,726 Euros in 2008 (see Concluding Statement on IMF Staff Visit to Kosovo issued on 16 September 2009). This is reportedly one of the lowest GDP per capita in Europe.

<sup>63</sup> See Concluding Observations of the Committee on Economic, Social and Cultural Rights on the document submitted by the United Nations Interim Administration Mission in Kosovo (UNMIK) of 1 December 2008 (E/C.12/UNK/CO/1).

direct or indirect discriminatory practices in order to ensure that persons belonging to minority communities have fair and equal access to the privatisation process.

263. Persons belonging to minority communities, and in particular women and young persons, appear to be disproportionately affected by unemployment. The Advisory Committee considers it important to put in place measures, including in the field of job training and other targeted support, to promote, and facilitate the recruitment of persons belonging to minority communities.

264. The Advisory Committee recalls that the successful settlement of property claims is directly linked to the implementation of principles embodied in Article 15 of the Framework Convention. In this respect, the Advisory Committee welcomes the efforts made by the Kosovo Property Agency (KPA) to resolve outstanding property-related issues.<sup>64</sup> The safe and sustainable return of refugees and internally displaced persons is closely related to successful property restitution. As pointed out by the KPA, internally displaced persons of Serbian origin<sup>65</sup> are mostly affected by the property claims. Roma, Ashkali and Egyptians, who are also affected by property issues, appear to be insufficiently informed of the property return process. Shortcomings have been encountered with regard to the judicial protection of property and access to property ownership documents.<sup>66</sup> The Advisory Committee considers that the progress in property return is essential to improve prospects for persons belonging to minority communities to participate effectively in economic life.

#### *Recommendations*

265. The authorities should intensify their efforts in the socio-economic sphere to improve participation of persons belonging to minority communities, by *inter alia* the drawing up of a labour strategy. Particular attention should be paid to persons belonging to marginalised communities as well as to young persons and women with a minority background. Within the drawing up of a labour strategy and specific plans, due attention should be paid to the allocation of adequate financial resources to ensure its implementation.

266. The Advisory Committee urges the authorities to take measures to ensure the repossession and unhindered access to owned property through a fair and non-discriminatory process.

267. The Advisory Committee urges the authorities to take measures to ensure equal access of persons belonging to minority communities to privatisation processes.

### **Article 16 of the Framework Convention**

#### **Protection against population changes**

##### *Findings of the first cycle*

268. In its first Opinion, the Advisory Committee called on the authorities to ensure that the process for a sustainable return was organised in a manner that respects the choice of the place of return in Kosovo.

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<sup>64</sup> The Kosovo Property Agency (KPA) established by UNMIK Regulations 2006/10 and 2006/50 on the Resolution of Claims relating to Private Immovable Property, including Agricultural and Commercial Property.

<sup>65</sup> According to the Kosovo Property Agency, 88% persons belonging to the Serbian community, 6,7% persons belonging to the Albanian community, 3% persons belonging to the Roma, Ashkali and Egyptian communities, 0,8% persons belonging to the Bosniac community, 0,7% persons belonging to the Gorani community and 0,02% persons belonging to other communities have lodged property claims before this institution.

<sup>66</sup> See Report on the Litigating Ownership of Immovable Property in Kosovo of the Department of Human Rights and Communities of the Organisation for Security and Co-operation in Europe issued in March 2009.

269. It also called on the authorities to take due account of the principles enshrined in Article 16 of the Framework Convention and of views of all minority communities in the context of the process of decentralisation.

*Present situation*

270. The Advisory Committee notes that the implementation of Article 16 of the Framework Convention continues to be considerably complicated by the internal displacements of minority communities during the 1999 conflict and the violent events of 2004. Sustainable return of persons belonging to the communities concerned is made difficult in the absence of conditions necessary for increasing employment and educational opportunities and security.

271. According to information received from the Bosniac and Gorani communities, some Southern municipalities have experienced population changes as a result of property transactions which occurred during the privatisation of former socially-owned companies. In addition, improper and insufficient regulations on sales of immovable property have reportedly led to a considerable number of illegal constructions in certain municipalities inhabited by persons belonging to minority communities. This may potentially have a negative effect on the proportions of the population in certain municipalities.

272. While recognising that decentralisation is an ambitious project affecting persons belonging to minority communities, the Advisory Committee notes that discussions about decentralisation arrangements continued during the period under monitoring.

*Recommendations*

273. It is essential to ensure that measures taken, in the current processes, including those related to return and decentralisation, are not used to change substantially the proportion of the population in certain areas inhabited by persons belonging to minority communities before the conflict, including in Northern Kosovo.

274. All efforts should be made to facilitate safe and sustainable returns that respect the returnees' choice of residence including where circumstances prevent persons belonging to minority communities from returning to their places of residence before the conflict. This includes those returning to Southern and to Northern Kosovo.



### III. CONCLUDING REMARKS

275. The Advisory Committee considers that the present concluding remarks could serve as a basis for the conclusions and recommendations to be adopted by the Committee of Ministers.

#### **Positive developments**

276. Since the adoption of the Advisory Committee's first Opinion in November 2005, the authorities in Kosovo have continued to pay attention to the protection of minority communities and have adopted legislation which constitutes a solid legal basis for minority protection.

277. Efforts have been made to combat discrimination and to promote full and effective equality in respect of persons belonging to national minorities, including steps to address the longstanding problems in electricity supply affecting disproportionately areas substantially inhabited by persons belonging to the Serbian community. The possibility to adopt special measures with a view to promoting full and effective equality is provided for in the legislation. The Ombudsperson was finally appointed in June 2009, filling a post that had been vacant for more than three years.

278. Projects have been initiated and strategies put in place to facilitate the return and reintegration of returnees to some localities. Some families have already benefited from the support allocated for their return.

279. The Strategy for the Integration of the Roma, Ashkali and Egyptian communities, adopted in 2008, provides a framework for actions to be taken to improve the situation of persons belonging to these groups in a number of areas.

280. Progress has been made with regard to the reconstruction of a number of damaged Serbian Orthodox religious sites through the Reconstruction Implementation Commission. It is also positive that, despite occasional uncertainties relating to the Commission's functioning, compromise solutions have been found so far between the Serbian and the Albanian representatives in order to pursue its work.

281. Some steps have been taken to combat inter-ethnic hostility and to train police officers on community-based policing.

282. There is a lively minority language print media scene and licenses have been issued to a number of low power radio stations for local minority language broadcasters. Certain private broadcasters have included programmes for and about minority communities in their broadcasting scheme.

283. The 2006 Language Law provides increased clarity on the use of minority languages. Commendable efforts have been made to display bilingual topographical signs.

284. Efforts have also been made to expand the availability of education in some minority languages, including in higher education. The setting-up of a commission to improve the curriculum in the Serbian language is a positive step. Efforts have also been made to improve the enrolment of minority community students in university education.

285. Reserved seats are guaranteed for elected representatives of minority communities in the Kosovo Assembly. The Committee on Rights and Interests of Communities of the Kosovo Assembly is consulted with respect to draft legislation and may initiate legal and other measures pertaining to minority protection.

286. A Community Consultative Council has been set up and efforts have been made to ensure a transparent and inclusive selection procedure of its members. Moreover, steps have also been taken to strengthen equal opportunities for access to the civil service as well as in the police and in the judiciary.

### Issues of concern

287. Notwithstanding the aforementioned positive developments, shortcomings persist in the implementation of the existing legislation. Financial resources allocated for the implementation of the laws are often inadequate.

288. Serious shortcomings have been reported as regards the functioning of the judicial system and the lack, under the current institutional arrangements in Kosovo, of adequate and effective remedies against human rights violations. The lack of access to justice appears to affect disproportionately persons belonging to minority communities. Numerous instances of discrimination seem to remain unreported, due *inter alia* to the lack of awareness and of trust in the judicial system among the population.

289. Creating conditions for the adequate participation of persons belonging to certain communities, especially the Serbs and the Roma, in the population census remains an important challenge for the authorities. Technical and other shortcomings have been identified during the pilot census projects and the data protection safeguards have not yet been fully put in place.

290. The situation of persons belonging to the Roma, Ashkali and Egyptian communities raises deep concerns. Many of them continue to face discrimination in access to the labour market, housing and education, and are often confronted with prejudices and hostility. The Advisory Committee is also deeply concerned by the fact that no appropriate solution has been found for many years for the Roma, Ashkali and Egyptians living in the lead-contaminated camps in Northern Kosovo.

291. As regards the process of reintegration of returnees, more resolute measures are needed to address their security concerns, and increased efforts must be made in areas such as employment, housing, education and, access to property, to ensure adequate conditions for safe and sustainable returns. Persons belonging to minority communities, who have been forcibly returned, are in a particularly vulnerable situation given the difficult socio-economic conditions they live in, often without access to healthcare and social services, employment and education. Notwithstanding the responsibility for the decision to implement forced returns lies with the governments of states from where persons have been returned, the authorities in Kosovo should address more vigorously the needs of those concerned considering their vulnerable situation.

292. The system of support for the preservation and development of minority cultures and the financial resources allocated do not meet the minority communities' expectations. The system of allocation of such resources lacks transparency and minority representatives are not effectively involved in decision-making on this issue.

293. Inter-ethnic relations, in particular between persons belonging to the Serbian and the Albanian communities, remain tense and marked by mutual distrust and divisions along ethnic lines. The existing physical separation between different ethnic groups in many fields, including in education, and the increasingly apparent language barriers risk perpetuating these divisions. Persons willing to co-operate with the other community often face problems and threats within their own community. Debates on minority-related issues are excessively politicised. It is of the utmost importance to avoid intolerance based on ethnic affiliations in political discourse on all sides and at all levels.

294. Perpetrators of ethnically and religiously motivated crime are rarely brought to justice. Thefts and vandalism on religious sites have continued to occur. Attempts to alter the name of the Serbian Orthodox Church as well as the ownership of its property should be addressed.

295. Some minority communities continue to be deprived of access to public service broadcasting due to the lack of reception of public service television. There are also concerns over the low quality of programmes for minority communities broadcasted on the public service television and the insufficient funding allocated to print media.

296. The Language Law has not always been properly implemented. Difficulties have been encountered in accessing official information, including documents needed in civil and criminal judicial proceedings, in the official languages as well as in some minority languages. Topographical and other public signs do not always reflect the multi-ethnic and multilingual character of Kosovo.

297. The separate education system is not conducive to interaction among pupils, in particular those belonging to the Albanian and the Serbian communities. History is interpreted and communities portrayed according to the curriculum followed by the different communities. Moreover, opportunities to learn the official languages in minority schools are insufficient, which reduce considerably the possibility for integration of persons belonging to minority communities into society. This also applies to pupils belonging to the majority community who have limited opportunity to learn the other official language as well as minority languages at school. More generally, the quality of minority education is also a source of concern. In particular, insufficient support is provided by the authorities to meet the educational needs of the Roma, Ashkali and Egyptians.

298. The representation of persons belonging to minority communities in public services, in particular the Serbs and numerically smaller minorities, remains unsatisfactory. Their participation in social and economic life, including in the privatisation processes and property return, is also insufficient.

### **Recommendations**

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

- Take resolute steps to implement effectively the existing legislative framework pertaining to the protection of minority communities, *inter alia* by allocating adequate budgetary resources;
- Take vigorous measures to ensure effective access to justice and domestic remedies for persons belonging to minority communities;
- Ensure adequate conditions to enable a maximum level of participation of persons belonging to minority communities in the forthcoming population census;
- Identify and implement, as a matter of urgency, an adequate and sustainable solution for the Roma, Ashkali and Egyptians living in the lead-contaminated camps in Northern Kosovo, in close consultation with the representatives of the communities concerned; ensure that adequate financial and human resources are allocated and utilised for the effective implementation of the Strategy for the Roma, Ashkali and Egyptian communities;
- Ensure that the conditions for safe and sustainable returns of persons belonging to minority communities, notably in areas such as security, housing, social protection, education and access to property, are put in place without delay;
- Provide further support to the preservation and development of the cultures of minority communities, including in the field of the media; pay specific attention to the needs of numerically smaller minorities; ensure adequate consultation of the communities' representatives on the allocation of relevant funds;
- Take resolute measures to strengthen inter-ethnic dialogue and mutual understanding, including in areas where persons belonging to the majority are in a minority position; elaborate and implement a comprehensive strategy for reconciliation and inter-ethnic dialogue;
- Ensure that ethnically and religiously motivated crime is effectively investigated, the perpetrators prosecuted and sanctioned and improve the system of data collection in this field;

- Continue to provide education in minority languages and increase efforts to ensure equal access to education for all persons belonging to minority communities; take measures to provide a balanced and pluralistic approach to the teaching of history with due attention paid to the adequate and effective involvement of minority representatives in the preparation of textbooks;
- Increase and strengthen opportunities for persons belonging to minority communities to learn the official languages in order to promote their integration into society;
- Take steps to ensure equal access of persons belonging to all communities to public service broadcasting;
- Take measures to ensure that persons belonging to minority communities can effectively take part in economic and social life, including by drawing up a strategy on economic development and by ensuring their unhindered access to the privatisation processes and to property; pursue further efforts to ensure participation of persons belonging to minority communities in public administration.