



Strasbourg, 21 August 2003

ACFC/INF/OP/I(2003)007

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

OPINION ON SWITZERLAND
(adopted on 20 February 2003)

EXECUTIVE SUMMARY

Following the receipt of the initial State Report of Switzerland on 16 May 2001 (due on 1 February 2000), the Advisory Committee commenced the examination of the State Report at its 11th meeting, on 10 - 14 September 2001. In the context of this examination, a delegation of the Advisory Committee visited Switzerland, on 11 to 13 November 2002, in order to seek further information on the implementation of the Framework Convention from representatives of the Government as well as from NGOs and other independent sources. The Advisory Committee adopted its opinion on Switzerland at its 16th meeting on 20 February 2003.

As concerns the implementation of the Framework Convention, the Advisory Committee considers that Switzerland has made particularly commendable efforts in a number of fields in respect of its linguistic minorities. The institutional framework enables the French-, Italian- and Romanche-speakers, as well as German-speakers of Cantons Fribourg and Valais, to preserve and develop the essential elements of their identity, in particular their language and their culture. Moreover, a number of institutional arrangements, such as the composition of the Federal authorities and instruments of direct democracy, ensure an extensive political participation of linguistic minorities at all levels.

The legal guarantees as concerns the use of minority languages in relations between persons belonging to minorities and the administrative authorities are very extensive and it is to be welcomed that numerous efforts have been undertaken to reinforce the position of Romanche in recent years. Increased attention could however be given to the principles enshrined in the Framework Convention when it comes to authorising, at the infra-cantonal level, the use of a minority language in the aforementioned relations.

In the field of education, the authorities should ensure that the needs of persons belonging to linguistic minorities as regards instruction in a minority language outside its area of traditional establishment are addressed, in particular as far as Italian- and Romanche-speakers are concerned. In Canton Graubünden, the greatest possible caution should be exercised in examining any change in the language of instruction at the municipal level.

There is scope for improvement in order to make it possible for Travellers to develop the essential elements of their identity. With a view to remedying the main difficulties these persons are faced with, in particular the lack of stopping places and transit sites, further measures, notably legislative ones, should be taken by the authorities. Furthermore, participation mechanisms for Travellers should be strengthened.

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I. PREPARATION OF THE CURRENT OPINION

1. The initial State Report of Switzerland (hereinafter: the State Report), due on 1 February 2000, was received on 16 May 2001. The Advisory Committee commenced the examination of the State Report at its 11th meeting, on 10 - 14 September 2001.

2. In the context of this examination, the Advisory Committee identified a number of points on which it wished to obtain fuller information. A questionnaire was therefore sent to the Swiss authorities on 1 March 2002. The Swiss Government replied to this questionnaire on 10 September 2002.

3. Further to an invitation extended by the Swiss Government, and in accordance with Rule 32 of the Committee of Ministers' Resolution (97)10, a delegation of the Advisory Committee visited Switzerland from 11 to 13 November 2002 in order to obtain supplementary information from representatives of the Government, NGOs and other independent sources on the implementation of the Framework Convention. In preparing this opinion, the Advisory Committee also consulted a range of written materials from various Council of Europe bodies, other international organisations, NGOs and other independent sources.

4. The Advisory Committee subsequently adopted this opinion at its 16th meeting on 20 February 2003 and decided to transmit it to the Committee of Ministers¹.

5. The present opinion is submitted pursuant to Article 26 (1) of the Framework Convention, according to which, in evaluating the adequacy of the measures taken by the Parties to give effect to the principles of the Framework Convention, "the Committee of Ministers shall be assisted by an advisory committee", as well as pursuant to Rule 23 of Resolution No. (97) 10 of the Committee of Ministers, according to which the "Advisory Committee shall consider the state reports and shall transmit its opinion to the Committee of Ministers".

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

II. GENERAL REMARKS

6. While regretting the delay of over fifteen months with which the State Report was submitted, the Advisory Committee notes with satisfaction that it contains very specific information about the existing legislation and relevant practice, even though the situation in the plurilingual cantons could have been presented in a more detailed way, especially as concerns the way in which these cantons have regulated or apply in practice the principle of territoriality at cantonal and municipal level. The Advisory Committee welcomes the fact that the Swiss authorities drew up and published the State Report simultaneously in German, French and Italian.

7. The Advisory Committee notes that it was able to obtain additional, useful clarifications from the written reply provided by the Swiss authorities to its questionnaire and from the meetings organised during the aforementioned visit, not only to Bern, but also to Canton Graubünden. The Advisory Committee considers that the visit organised at the Swiss Government's invitation provided an excellent opportunity to have a direct dialogue with various sources.

8. The Advisory Committee welcomes the in-depth consultation process conducted by the Government, in particular with representatives of minorities and bodies dedicated to the protection of minorities, when the reply to its questionnaire was being prepared. It also notes the spirit of co-operation shown by Switzerland throughout the process which led to the adoption of the current opinion. The Advisory Committee particularly commends the Swiss authorities' decision to authorise publication of their reply to its questionnaire of 1 March 2002. It encourages them to continue their efforts to improve awareness of the Framework Convention, its explanatory report and the rules concerning its monitoring at international level, including through the publication and dissemination of the State Report and other relevant documents. Such efforts could seek, in particular, to inform the groups concerned and the public at large more widely about the relevance of the Framework Convention in the Swiss context, also in the light of the fact that the numerous constitutional and legal provisions protecting minorities directly or indirectly do not rely on the concept of "national minority".

9. The Advisory Committee recognises that a number of institutional arrangements ensure an extensive political participation of, *inter alia*, linguistic minorities both at federal and cantonal levels. This is seen, *inter alia*, in the composition of the Federal Council and in the bicameral Federal Parliament. Similarly, instruments of direct democracy such as referenda and popular initiatives also play a positive role to the extent that persons belonging to minorities can make use of them. In Switzerland, it is to be stressed that minority issues are dealt with on a consensual basis. In this respect, mention is to be made of the consensus-building process that led to the creation of the Canton Jura in 1978 through different levels of referenda.

10. It should be noted that by virtue, in particular, of the general census carried out every ten years, the federal and cantonal authorities have access to very precise statistics relating to the linguistic and religious affiliation of persons resident in Switzerland. Consequently, the estimates, not only of the number of persons belonging to the French-speaking, Italian-speaking and Romanche-speaking minorities, but also of the German-speaking minority in Cantons Fribourg and Valais, appear to be extremely reliable, as do the estimates of the number of persons belonging to the Jewish community. This enables the authorities to take

effective measures and international monitoring bodies to ascertain whether Switzerland meets its obligations under the Framework Convention. In contrast, as far as Travellers are concerned, limited statistics exist, although the authorities' estimates accord fairly well with those of the Travellers themselves. Consequently, the authorities might examine, in consultation with the Travellers, how to complete the statistical data in this area.

11. The Advisory Committee stresses that, in assessing the implementation of the Framework Convention by Switzerland, it should be borne in mind that the way in which the authorities regulate the use of languages is based on a complex balance, stemming from the relevant constitutional and legislative provisions and the related case-law. Under these provisions and this case-law considerable weight is given to the principle of territoriality. By virtue of this principle, it is for the cantonal authorities to ensure that the traditional confines and the homogeneity of the linguistic regions are maintained. The Advisory Committee notes that in numerous specific cases which could be appraised from the point of view of the Framework Convention, the principle of territoriality is related, in a sometimes contradictory way, to freedom of language. Freedom of language has the status of a fundamental right in Switzerland and is expressly guaranteed by the new Federal Constitution adopted in December 1998. Its content differs depending on whether relations between individuals or relations between individuals and the State are involved. The Advisory Committee notes with interest that the relationship between the principle of territoriality and freedom of language are not static and that there have been significant changes at constitutional level and in the case-law over a number of years in favour of the freedom of language.

12. The Advisory Committee acknowledges that Switzerland has always succeeded in dealing with those issues, in particular through principles based on federalism, in such a way as to preserve linguistic peace (see also related comments under Article 5). It acknowledges that there is a broad degree of consensus in Switzerland about the linguistic autonomy of the cantons, which presupposes that the cantons are best placed to govern the use of the official languages in their territory. That said, and without wishing to call in question the existing balance, the Advisory Committee will return in its specific comments below to a number of particular situations in which the present relationship between the principle of territoriality and freedom of language raises specific difficulties from the point of view of the implementation of the Framework Convention. Indeed, the Advisory Committee is of the opinion that in this respect certain adjustments and more pragmatism could often enable practice to be better reconciled with the obligations flowing from the Framework Convention.

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

III. SPECIFIC COMMENTS IN RESPECT OF ARTICLES 1-19

Article 1

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

Article 2

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

Article 3

16. The Advisory Committee notes that at the time when it deposited the instrument of ratification of the Framework Convention, Switzerland made the following declaration: "Switzerland declares that in Switzerland national minorities in the sense of the framework Convention are groups of individuals numerically inferior to the rest of the population of the country or of a canton, whose members are Swiss nationals, have long-standing, firm and lasting ties with Switzerland and are guided by the will to safeguard together what constitutes their common identity, in particular their culture, their traditions, their religion or their language. Switzerland declares that the provisions of the Framework Convention governing the use of the language in relations between individuals and administrative authorities are applicable without prejudice to the principles observed by the Confederation and the cantons in the determination of official languages."

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

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

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

20. It emerges from the State Report and from the reply to the questionnaire that the Swiss authorities consider that persons belonging to national linguistic minorities, that is to say, the French-, Italian- and Romanche-speaking minorities, are protected by the Framework

Convention². The Swiss authorities further consider that such protection is open to persons belonging to the Jewish community and to Travellers³. In the light in particular of the talks which it had with representatives of those communities during its trip to Switzerland, the Advisory Committee notes the evident interest in such protection shown by the Travellers, of whom the very great majority consider themselves to be of Jewish descent, although some belong to the Sinti or Roma. For their part, the representatives of the Jewish community did not show any such interest, although they did not rule out all possibility of benefiting from protection under the Framework Convention.

21. Furthermore, according to the Swiss authorities, persons belonging to the German-speaking minority residing in certain cantons, such as Fribourg or Valais, may also be protected by the Framework Convention. The Advisory Committee observes that the Swiss legal order confers a high level of autonomy on the cantons, given that Article 3 of the Federal Constitution lays down the principle of cantonal sovereignty. This principle is reflected in particular in the fields of education and culture, where the cantons have very wide powers. The Advisory Committee notes that numerous German-speakers living in those two cantons feel that they belong to a linguistic minority at cantonal level and clearly show a willingness to conserve their culture. Consequently, in view of these various factors, the Advisory Committee is of the opinion that persons belonging to the German-speaking minority resident in Cantons Fribourg and Valais can be given the possibility to rely on the protection provided by the Framework Convention, as far as the issues concerned fall within cantonal competence. Similarly, it is to be stressed that the protection offered by the Framework Convention is also available for other linguistic minorities at cantonal level, for example for the French-speakers of the Canton Bern. The Advisory Committee notes that such an approach is perfectly in keeping with the spirit of the Framework Convention.

22. The Advisory Committee notes that the declaration made by Switzerland at the time of depositing the instrument of ratification refers to the principles observed by the Confederation and the cantons in determining the official languages. It observes that the territoriality of languages is among those principles. Although it leads to certain restrictions in relationships between individuals and administrative authorities, the territoriality of languages does not result in denying persons belonging to the French-speaking, Italian-speaking or Romanche-speaking minorities living outside their regions of traditional settlement their status of persons belonging to a minority. Consequently, the principle of territoriality does not eliminate all protection under the Framework Convention, which the Advisory Committee welcomes. Insofar as some provisions of the Framework Convention are likely to be helpful in

² According to the 1990 census and the information provided by the Swiss authorities both in the State Report and in their reply to the questionnaire of the Advisory Committee, of a resident population of 6,873,687 persons (of which 1,245,432 were non-citizens), 4,374,694 stated that German was their main language (including 243,667 non-citizens), 1,321,695 French (including 166,012 non-citizens), 524,116 Italian (including 295,026 non-citizens) and 39,632 Romanche (including 1,178 non-citizens). This amounts to 63.7% for German, 19.2% for French, 7.6% for Italian and 0.6% for Romanche (percentages referring to global figures, ie including non-citizens). It appears from the first findings of the 2000 census that the distribution of persons declaring a non-national main language has undergone a profound change in that there has been an increase in the use of those languages in the population with almost 10% of persons covered by the 2000 census declaring a language other than German, French, Italian or Romanche: 1.7% Serbian and/or Croat, 1.4% Albanian, 1.3% Portuguese, 1.1% Spanish, 1.0% English, 0.7 Turkish and 2.3% other languages.

³ According to the 1990 census, persons of the Jewish faith in Switzerland amounted to 0.3% or approximately 20,000 persons. In contrast, there are no official statistics for persons belonging to the community of Travellers, but the authorities estimate them to amount to between 25,000 and 30,000, including 4-5,000 who have kept to a nomadic or semi-nomadic way of life. The estimates of the Travellers themselves are only very slightly in excess of these figures.

determining the scope of the principle of territoriality, the practical implementation of which is not an easy task, the Advisory Committee can only encourage the authorities concerned not to interpret the second sentence of the declaration in question in a too rigid manner.

23. Given that a very high proportion of persons belonging to the Italian- and Romanche-speaking minorities have left their areas of traditional settlement in order to take up openings for training or to find a job and notwithstanding the extensive legislative and other measures already taken to give effect to Article 70, paragraphs 4 and 5 of the Federal Constitution, the Advisory Committee encourages the Swiss authorities to pay special attention to those persons, who may have specific needs, in particular in the field of education (see related comments under Article 13, paragraph 66 and Article 14, paragraph 72).

24. Apart from the groups identified by the Swiss authorities as being covered by the Framework Convention, the Swiss authorities also mention, in answer to the aforementioned questionnaire and in the talks which they had with the Advisory Committee, the existence of other linguistic, ethnic or religious groups which they do not consider to be protected by the Framework Convention on the ground, in particular, that the persons belonging to those groups do not have Swiss nationality and/or do not have firm, long-standing and lasting ties with Switzerland. The Advisory Committee is of the opinion, however, that it would be possible to consider the inclusion of persons belonging to other groups, including non-citizens as appropriate, in the application of the Framework Convention on an article-by-article basis, and takes the view that the Swiss authorities should consider this matter in consultation with those concerned at some appropriate time in the future.

Article 4

25. The Advisory Committee notes that Article 8 of the Federal Constitution guarantees equality before the law and the principle of non-discrimination. In addition, numerous cantonal constitutions expressly prohibit discrimination. For its part, Article 261*bis* of the Swiss Criminal Code prohibits racial discrimination and resulted in some 50 convictions in 1999 and a similar number again in 2000.

26. The Advisory Committee notes with satisfaction the existence of a range of special measures aimed at promoting full and effective equality, especially in favour of Italian- and Romanche-speakers. Such measures have been developed mainly in the fields of language and culture (see related comments under Article 5, paragraph 30), but also in the field of media as evidenced by the financial system of the Swiss Broadcasting Company (SSR) which allocates preferential funding from licence fees for programmes broadcast in minority languages.

27. The Advisory Committee points to some anti-discriminatory provisions in the field of civil and administrative law, in particular Articles 328 and 336 of the Code of Obligations, which protect workers. It notes with interest that despite the regrettable lack of statistics on proceedings brought and judgments given in relation to discrimination, the aforementioned anti-discriminatory provisions have resulted on several occasions in judicial decisions compensating individuals who have been the victim of discriminatory acts. In order to reinforce the existing legislative provisions and notwithstanding that persons belonging to linguistic minorities do not seem to be more affected by discrimination than the rest of the population, the Swiss authorities might consider adopting fuller legislation covering

discrimination in a number of fields⁴. The Advisory Committee further considers that the Swiss authorities might consider collecting statistical data on discrimination more systematically, in particular as regards judicial decisions.

28. The Advisory Committee is deeply concerned about the indirect discrimination which Travellers continue to suffer, in particular in the fields of land-use planning, the regulation of constructions and the regulation of commerce. That discrimination stems from the application of legal provisions which, although they do not lay down discriminatory distinctions, simply fail to take account of the specific characteristics of the Travellers' culture and way of life. Although the Advisory Committee is aware that the necessary elimination of such discrimination may on occasion meet with institutional difficulties connected with federalism, it is nonetheless convinced of the need to adopt additional measures in those specific fields, in particular legislative measures (see related comments under Article 5). The Advisory Committee also notes that particular attention should be given to Traveller women when such measures are implemented. More generally, the Advisory Committee recalls that in designing further measures to promote full and effective equality for the Travellers, the Swiss authorities should take due account of the Committee of Ministers' Recommendation No. (2001) 17 on improving the economic and employment situation of Roma/Gypsies and Travellers in Europe.

Article 5

29. As the authorities point out in the State Report, the Swiss Confederation is made up of different communities from the point of view of their language, culture and religion. Switzerland is therefore a pluralist community in which it is difficult to identify minorities unambiguously. Indeed, the structure of minority groups in Switzerland takes on different aspects depending on the viewpoint adopted: language, religion, cultural tradition, etc. The Advisory Committee agrees, however, with the authorities that language is certainly the most readily perceptible identifying criterion and the one most strongly experienced by the population. The Advisory Committee therefore considers that the implementation of the Framework Convention in Switzerland is of particular relevance for the linguistic minorities.

30. Having regard to this pluralist reality, the Federal Constitution does not contain any specific provision which protects minorities as such. The Advisory Committee acknowledges that minorities are nevertheless protected to a large extent by the institutional system and by federalism, which imbues the whole structure of the country (see also related comments under General Remarks). Moreover, the fact that the cantonal frontiers correspond neither to the linguistic and religious frontiers nor to the economic and political ones undeniably creates a degree of balance which also benefits the minorities. That said, the Federal Constitution does however contain important provisions in the linguistic field⁵ and some cantonal constitutions refer explicitly to the concept of minority⁶. Mention should also be made of the Federal Act of 6 October 1995 on Financial Aid for Safeguarding and Promoting the Romanche and Italian languages and culture, under which, in 1999, the Confederation granted Canton Graubünden CHF 4,631,300 and Canton Ticino CHF 2,246,132 to support measures taken by those two cantons.

⁴ See to this effect, the second report on Switzerland of the European Commission Against Racism and Intolerance (ECRI), adopted on 18 June 1999, paragraph 11.

⁵ In particular Article 18 on freedom of language and Article 70 on the rules on the use of the official languages.

⁶ See for example Article 4(1) of the Constitution of Bern, which provides that account must be taken of the needs of linguistic, cultural and regional minorities.

31. The Advisory Committee notes with satisfaction that the aforementioned institutional framework enables the needs of persons belonging to linguistic and religious minorities to be satisfied to a very large extent. As a result, the French-, Italian-, Romanche- and German-speakers of Cantons Fribourg and Valais, and also persons belonging to the Jewish community, may preserve and develop the essential elements of their identity, particularly their language and their culture, in very good conditions.

32. It appears in addition that the preliminary draft Federal Act on National Languages and Understanding between Linguistic Communities, which is intended to fully implement the linguistic mandate conferred by Article 70 of the Federal Constitution on the Confederation and the cantons, will enable quadrilingualism to be reinforced as an essential component of Switzerland, encourage plurilingualism in the use of the languages of the country and safeguard and promote Romanche and Italian. The Advisory Committee notes with interest the new measures proposed in this preliminary draft. However, it considers, as the authorities of Graubünden do, that the position of Romanche – of which there are five idioms – and Italian in Canton Graubünden warrants special treatment in view of the fact that the continuing existence of those languages in the regions concerned is under threat.

33. The situation of the Travellers is a matter of concern insofar as the present institutional and legislative framework makes it difficult for those persons to preserve and develop their culture and the essential elements of their identity. Among these elements are those which flow from the itinerant or semi-itinerant way of life still practised by a number of Travellers and which are of central importance for the entire community. Federal law does not confer any particular status on them and only a few scattered cantonal provisions govern certain issues of concern to them, in particular with regard to land-use planning. The result is that Travellers believe fairly widely that there is a lack of official recognition of their existence as a component part of the Swiss population. This feeling is also rooted in the persecutions which Travellers suffered in Switzerland in the past, in particular as a result of "l'Oeuvre d'Entraide pour les Enfants de la Grande Route" (Action for the Assistance of Children of the Highway), which until its dissolution in 1973 seriously impaired the conditions of existence of a number of Travellers by breaking up numerous families through the enforced settlement of more than 600 people and discriminating against the Travellers' culture. The Advisory Committee expresses satisfaction that the highest authorities and those responsible for the Foundation which created this Action for the Assistance of Children of the Highway publicly apologised and that financial compensation, whose principle was widely supported by the population, was paid to the victims. However, this tragic episode in the past should be borne in mind when new measures are drawn up for Travellers.

34. The main problems facing Travellers today relate essentially to the lack of stopping places and transit sites, administrative obstacles making it difficult to exercise itinerant trades, and children's schooling. Those difficulties are exacerbated by the fact that the institutional and legal framework, which is based on federalism and associates linguistic minorities with a particular territory, does not favour the inter-cantonal mobility which is characteristic of the Travellers' traditional way of life.

35. The Advisory Committee welcomes the recent concerted efforts made by the authorities and Travellers in order to make a precise survey of Travellers' needs with regard to stopping places and transit sites. According to an academic study of this question published in 2001 at the request of the Foundation "Assurer l'avenir des gens du voyage en

Suisse"⁷, 11 stopping places and 48 transit sites exist at present in Switzerland, but some thirty stopping places and the same number of additional transit sites would be needed in order to satisfy all their needs. The same study also shows that a number of existing sites should be improved in terms of their facilities and opening times.

36. The Advisory Committee observes that the findings set out in this study constitute valuable indications as to what measures should be taken in the years to come. It considers that not only the federal authorities, but also the cantonal authorities, should pay the greatest attention to achieving the objectives set out in this study, since the lack of transit sites and stopping places prevents Travellers from living their traditional way of life to the full. Accordingly, the Advisory Committee considers that the cantonal and municipal authorities should be careful to consult the representatives of the community of Travellers to a greater extent and to associate them more closely in the relevant decision-making (see also related comments under Article 5). It seems in fact there is still not enough dialogue in certain cantons and that Travellers are not always treated with due respect.

37. At the legislative level, the Advisory Committee encourages the Federal authorities to examine in greater detail, in the context of Federal power confined to the principles in the field of land-use planning, the possibility of requiring the cantons to adopt adequate planning measures or even to introduce a specific provision in the Federal Act on Land-Use Planning⁸. At the same time, the Advisory Committee notes with satisfaction that some cantons have already amended their legislation so as to embody the principle that short-term stopping of Travellers' caravans is not subject to planning permission, and encourages the other cantons to draw inspiration from this. However, in several cantons, legislation and land-use plans make no provision for the possibility of creating transit sites and, as a result, the existing sites are at best tolerated by the authorities. The Advisory Committee therefore takes the view that the cantons concerned should review their legislation on land-use planning and building in order to remedy these shortcomings, in particular in the context of the Conference of Cantonal Directors of Public Works, which could secure adequate coordination between themselves (see also related comments under Article 4).

38. As regards the practice of itinerant trades, which is part and parcel of the way of life of many Travellers, the Advisory Committee welcomes the recent entry into force on 1 January 2003 of the new Federal Act on Itinerant Trading and its implementing ordinance. This new Act will enable persons engaged in itinerant trades to ply their trade throughout the national territory. Insofar as this Act harmonises the different cantonal legislation hitherto in force, including with regard to licences and emoluments, it should significantly simplify the administrative procedures with which Travellers have to comply in order to exercise their trade in more than one canton. The Advisory Committee encourages the authorities in the years to come to evaluate the implementation of this Act together with Travellers' representatives in order to ensure that it is effective (see also related comments under Article 15).

Article 6

39. In the light of the contacts which it had during its visit to Switzerland and based on the information at its disposal, the Advisory Committee notes with satisfaction that a large

⁷ "Gens du voyage et développement territorial", Vögeli AG, Langnau 2001

⁸ See to this effect the legal opinion published by the Federal Office of Justice in *Jurisprudence des autorités administratives de la Confédération*, JAAC 2002 III 66.50, item 4.3.2 at page 605.

measure of tolerance is characteristic of relations between German-, French-, Italian- and Romanche-speakers. The Advisory Committee however recalls that the personal scope of Article 6 of the Framework Convention is wide and that it also includes persons belonging to other groups that have not been traditionally residing in the country concerned, including non-citizens, refugees and asylum-seekers.

40. The Advisory Committee notes that manifestations of anti-Semitism, which underwent a certain resurgence in the late 1990s against the background of claims for the restitution of funds in dormant bank accounts belonging in particular to Jews who were victims of the Shoah, appear today rather isolated. The Advisory Committee takes note of the numerous measures which have already been taken by the authorities to combat these manifestations and encourages them to remain vigilant in this regard.

41. The Advisory Committee notes with concern that Travellers are not yet regarded by the population as being an integral part of Switzerland. This manifests itself by widespread ignorance of the – albeit centuries old – tradition of their presence in the country and of the essential elements of their identity. Numerous representatives of the Travellers assert that there is a lack of official recognition of their existence and that all too often there is a lack of respect for them on the part of some authorities. They also point out that they are the subject of negative stereotypes in some of the media. The Advisory Committee deplores the persistence of stereotypes and other clichés when municipal referenda are held on the establishment of stopping places. If these stereotypes are not vigorously fought against by the authorities, all too often they result in a refusal to create such places, as witness recent instances in French-speaking Switzerland.

42. Against this background, the Advisory Committee considers that the Swiss authorities, in consultation with those concerned, should design and launch new measures, in particular in the field of education and with regard to public information in general. Such measures should make the population aware that the Travellers constitute an integral part of Switzerland and that they too, through their culture and history, contribute to the cultural wealth of the country.

43. As far as public opinion is concerned, there is a tendency to associate asylum seekers with crime and, more specifically with drug trafficking, and to overestimate the financial burden which they represent. This type of erroneous perception is occasionally strengthened by certain statements made by politicians⁹. While noting that there is a significant proportion of asylum-seekers in Switzerland, the Advisory Committee takes the view that the authorities should further their measures designed to secure balanced information of the public about all matters connected with asylum, as they did recently in connection with the vote of 24 November 2002 on the last popular initiative in this field.

44. As regards combating racism and intolerance, the Advisory Committee notes with satisfaction the positive role played by the Federal Commission against Racism and the recent creation of a Service for Combating Racism, attached to the Federal Department of Home Affairs. It urges the authorities to give all necessary support to those bodies and to consider with due attention the proposals that they make in order to step up the fight against racism and intolerance. The authorities should also step up their efforts to raise awareness so

⁹ See to this effect the second report on Switzerland of the European Commission Against Racism and Intolerance (ECRI), adopted on 18 June 1999, paragraph 24.

as to combat prejudice about persons different from the majority population, in particular non-citizens and asylum seekers.

45. The Advisory Committee welcomes the fact that the Federal Government has presented to Parliament a draft for the revision of the Nationality Act¹⁰, which would provide for a right of appeal against arbitrary or discriminatory decisions on naturalisation, and the fact that the said draft has been favourably received by the competent parliamentary committee. The Advisory Committee expresses the hope that this right of appeal will rapidly enter into force, and considers that the competent authorities, at all levels, should seek to improve the functioning of naturalisation procedures in Switzerland without delay. The present situation gives indeed rise to concerns from the point of view of Article 6(2) of the Framework Convention: generalised refusals to grant naturalisation to applicants from certain countries have been reported in recent years at the time of ballots held in certain municipalities. Such instances can but seriously affect the spirit of tolerance, intercultural dialogue and mutual respect and understanding. They are also problematic from the point of view of the prohibition of discrimination, since an applicant who considers that his or her request for ordinary naturalisation has been rejected in a discriminatory or arbitrary manner has, in the very great majority of cantons (and consequently before the Federal Tribunal as well), no legal remedy permitting the respect for his or her fundamental rights to be reviewed.

Article 7

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

Article 8

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

Article 9

48. The Advisory Committee expresses satisfaction at the existence of a considerable number of radio and television programmes in German, French and Italian which can be received throughout the country. It notes with satisfaction that the weekly airtime of television programmes in the Romanche language averages 70 minutes and that the public radio broadcasting service broadcasts approximately two hours of programmes in Romanche every day in Graubünden.

49. As far as the press is concerned, the Advisory Committee welcomes the wide variety of titles existing in the four languages of the country. However, according to the representatives of the Romanche-speaking minority, it seems that the only Romanche daily newspaper is in a difficult financial situation. The Advisory Committee therefore encourages the authorities to examine, in consultation with the Romanche minority, the various possibilities for securing sufficient funding for this daily newspaper, although it is aware that substantial public subsidies are already granted to the Romanche press agency.

¹⁰ See the draft and its explanatory report in: FF 2002 p. 1815

50. Based on the information available to the Advisory Committee, it seems that only one local Zürich radio station regularly broadcasts a programme in Roma language and, as far as the press is concerned, the Jenish people have only one title. The Advisory Committee encourages the authorities to examine, in consultation with Travellers' representatives, whether the present situation corresponds to their needs and, if necessary, to consider other support measures in the field of the media.

Article 10

51. As far as the use of minority languages in relations between persons belonging to minorities and the administrative authorities is concerned, the Advisory Committee notes that this question is governed differently at the Federal and cantonal levels.

52. Under Article 70(1) of the Federal Constitution, the official languages of the Confederation are German, French and Italian. Romanche is also an official language for relations between the Confederation and persons of Romanche tongue. It follows that, having regard to the freedom of language guaranteed by Article 18 of the Federal Constitution, each individual has the right to communicate with the Federal authorities in the language of his or her choice, provided that that language is an official language. This right is not subject to any territorial limitation.

53. The Advisory Committee expresses satisfaction at this system which is particularly respectful of the rights of persons belonging to linguistic minorities in Switzerland. However, its attention has been drawn to the fact that written applications made in Italian to certain federal offices are sometimes replied to in German. The Advisory Committee encourages the Federal authorities further to raise the awareness of Federal administration staff to the need to reply systematically in Italian to requests submitted in that language, in accordance with the linguistic regime stemming from the aforementioned constitutional provisions.

54. Under Article 70(2) of the Federal Constitution, the cantons are responsible for determining their official languages. The linguistic autonomy of the cantons in this regard is, however, not unlimited. The limits arise mainly from freedom of language and the requirement for cantons to take account of autochthonous linguistic minorities. Most of the 26 cantons have only one official language. All the officially plurilingual cantons, namely Bern (German/French), Fribourg (French/German), Graubünden (German/Romanche/Italian) and Valais (French/German) have adopted constitutional provisions relating to their official languages as well as numerous legislative provisions of linguistic nature. The use of official languages generally respects the principle of territoriality, even though that principle is not applied in exactly the same way and does not enjoy the same legal protection in those cantons.

55. The Advisory Committee is pleased to note that relations between persons belonging to linguistic minorities and cantonal authorities in Cantons Bern, Fribourg, Graubünden and Valais do not, generally speaking, raise any problem. This is largely due to the fact that the cantonal administration in those cantons is bilingual (even trilingual in the case of Graubünden). Everyone can therefore address themselves in one or other of the official languages to the competent administrative authorities for the whole of the canton and receive a reply in the same language.

56. At the infra-cantonal level, in contrast, the various linguistic areas each have their official language(s). Relations with infra-cantonal administrative authorities take place therefore in the official language(s) of the district or municipality in question. The Advisory Committee notes that, in practice, it is in the context of those relationships that certain difficulties arise. Accordingly, in the multilingual cantons, the monolingual or bilingual character of certain municipalities located along the linguistic frontier is occasionally contested. Leaving it to practice and case-law to determine linguistic affiliation on a case-by-case basis may moreover create a measure of legal uncertainty in this regard. In such a situation, the Advisory Committee can only encourage the authorities concerned to take account of the Framework Convention when they have to rule on the linguistic affiliation of such municipalities and, in particular, to consider whether there is sufficient demand within the meaning of Article 10(2) to authorise the use of the minority language in official relations.

57. As far as Canton Graubünden is concerned, the Advisory Committee notes with satisfaction the numerous efforts undertaken to reinforce the position of Romanche in recent years and, by the same token, is pleased that Article 3(1) of the draft for a new Constitution of Graubünden, which will be put to a referendum in May 2003, provides that German, Romanche and Italian are declared to be official languages of equal value. It notes that certain municipalities that keep the minutes of their municipal assemblies in Romanche and are situated at the linguistic border are considering switching to German, and expresses the hope that the competent authorities will do their utmost to maintain the Romanche character of those municipalities.

Article 11

58. The Advisory Committee recalls that, under Article 11(2) of the Framework Convention, every person belonging to a national minority has the right to display in his or her minority language, signs, inscriptions and other information of a private nature visible to the public. Accordingly, the prohibition on a tradesman putting up a luminous sign in Italian on the basis of a municipal building regulation providing for the exclusive use of Romanche in a municipality in Graubünden with a Romanche majority seems problematic from this point of view¹¹. The Advisory Committee is aware that such limitations remain exceptional in Switzerland, concern only a few municipalities in Graubünden and respond to the legitimate concern to preserve the Romanche language, whose survival is under threat in some regions. Nevertheless, it considers that Romanche could be protected just as well by an obligation to put up bilingual private signs, and encourages the competent authorities to look into this possibility.

59. The Advisory Committee welcomes the fact that Article 11(3) of the Framework Convention is very widely achieved in practice, also as regards topographical indications in Romanche in Graubünden.

Article 12

60. The Advisory Committee welcomes the numerous measures taken to foster knowledge of the culture, history and language of persons belonging to linguistic minorities as well as the majority. It notes that pilot projects for bilingual teaching enable contacts to be facilitated

¹¹ See the ruling of the Swiss Federal Tribunal reported in ATF 116 Ia 345.

between pupils and teachers of different communities, and encourages the authorities to develop this type of teaching more (see also related comments under Article 14).

61. It appears that for some years the question of the role of English vis-à-vis the national languages has been the subject of a wide-ranging debate in Switzerland. In several cantons, obligatory teaching of English now begins earlier than the teaching of a second national language. The Advisory Committee notes that a parliamentary initiative under which cantons would be required to teach an official language of the Confederation as a second language is currently being examined. The Advisory Committee notes in this regard the legitimate concern, expressed by a considerable number of persons belonging to the linguistic minorities, that the introduction of English teaching at an early stage should not be to the detriment of the teaching of the national languages. It therefore encourages the authorities to ensure that the reforms underway in the field of language teaching will leave sufficient room for plurilingualism, as moreover the preliminary draft Federal Act on National Languages seems to provide.

62. The Advisory Committee encourages the competent authorities to make efforts to have teaching programmes reflect more the history and concerns of the Jewish community in Switzerland, and take account of phenomena connected with anti-Semitism.

63. The Advisory Committee notes with satisfaction that, for some time, the Federal Office of Culture has initiated discussions with representatives of the community of Travellers with a view to securing better knowledge of their linguistic and cultural needs. It encourages the authorities to step up their efforts in this area in particular as regards the production of a glossary and an inventory of the literature. The same applies to works on the origin, history and meaning of their vocabulary. More generally, the Advisory Committee recalls that the educational system should also take account of the language and culture of the Travellers, in accordance with the principles laid down in the Committee of Ministers' Recommendation No. (2000) 4 on the education of Roma/Gypsy children in Europe.

64. Certain difficulties have been identified with regard to access to education for the children of Travellers with an itinerant or semi-itinerant way of life. The Advisory Committee considers that the authorities should examine, in consultation with the Travellers, whether new measures, in particular of a legislative nature, are necessary to remedy those difficulties.

Article 13

65. Whilst the right to set up a private school is guaranteed in part by Article 27 of the Federal Constitution on economic freedom, the scope of the freedom to set up and manage a private school of a minority language depends on cantonal law. All the cantons recognise the freedom to set up and manage private schools, either expressly or implicitly. The Advisory Committee notes, however, that the legislation of certain cantons sets out limits as to the language of instruction in private schools. This is for example the case in Canton Bern, where Section 66(1) of the Act on Compulsory Education provides that the choice of the language of instruction in private schools offering compulsory education is governed by the principle of the territoriality of languages and that, exceptionally, teaching may be provided in the other official language.

66. The Advisory Committee considers that such limitations are problematic from the point of view of Article 13 of the Framework Convention insofar as they seem to prevent the

establishment of private schools providing instruction in a minority language outside its area of traditional establishment. While noting that the Federal authorities have indicated to it that they had no knowledge of cases where the setting up of private schools of a minority language has been refused, the Advisory Committee urges the competent authorities to ensure that the legal provisions of the cantons concerned do not constitute a barrier to satisfying any needs in this respect, in particular for Italian-speakers living in large cities such as Bern.

Article 14

67. The Advisory Committee notes with satisfaction that all persons belonging to a linguistic minority have the possibility of learning their language in primary and secondary education, regardless of the canton in which they reside. Indeed, it is possible to learn an official language of the Confederation as one's second or third language in all schools in the country.

68. Whereas both the legal order and the existing network of schools allows persons belonging to a linguistic minority to receive full primary education in their language, it appears that the principle of territoriality limits this possibility in practice. Where the cantons determine the language of instruction of the public schools, they base themselves in general on the official language(s) of the region in which those schools are located. Canton Fribourg, which to date has left it to practice and the courts to decide on the linguistic affiliation of the municipalities, provides for example in its Education Act that education shall be given in French in scholastic schooling circles in which the official language is French and in German in schooling circles in which the official language is German. The Advisory Committee notes with interest, however, that the relationship between freedom of language and the principle of territoriality is at present being re-examined in the context of the discussion on the preliminary draft for a new constitution of Fribourg. For its part, Canton Graubünden has decided to leave the question of the determination of the language of instruction to the competence of the municipalities.

69. The question of the choice of the language of instruction by pupils' parents has been the subject of several judicial decisions in Cantons Bern, Fribourg and Graubünden. The Advisory Committee notes with interest that the relevant case-law of the Swiss Federal Tribunal has evolved in recent years¹². The Court now seems to give more weight to freedom of language as compared with cantonal autonomy in the linguistic field and the public interest connected with strictly safeguarding the linguistic homogeneity of the regions. Accordingly, in several cases, pupils were authorised to take their instruction in the minority language offered by a neighbouring municipality where their parents were prepared to bear all the resulting educational costs. The Advisory Committee is well aware that there are in Switzerland subtle equilibria as between freedom of language and the principle of territoriality and that the cantons continue to have a wide autonomy in this field, which enables them to come up with subtle responses to specific situations. Nevertheless, the Advisory Committee considers that, in this field, the most recent case-law of the Swiss Federal Tribunal accords better with the requirements of Article 14(2) of the Framework Convention. It therefore encourages the authorities concerned, when they have to rule on the enrolment of pupils in schools with instruction in the minority language offered by a neighbouring municipality, to take account of the Framework Convention and, in particular,

¹² See for example the following judgments of the Swiss Federal Tribunal: ATF 122 I 236; RFJ 2001 p.366.

to consider whether there is sufficient demand within the meaning of the aforementioned provision.

70. The Advisory Committee notes that, unlike Cantons Fribourg, Bern and Valais, the situation prevailing in Canton Graubünden is a special one insofar as the Romanche language is in danger of disappearing in certain municipalities, although traditionally they belong to that linguistic area. In view of this precarious situation of Romanche, the freedom accorded to Graubünden municipalities to decide on the language of instruction used in public primary schools may present some risks owing to the lack of clear criteria as to the language of instruction, which in the past led some municipalities to switch from Romanche to German¹³. Such risks exist also for certain municipalities offering teaching in Italian.

71. The Advisory Committee notes that the proportion of Romanche-speaking pupils attending primary school in Canton Graubünden decreased from 25.1% to 17.3% between 1970 and 2000, and is of the opinion that the greatest possible caution should be exercised in examining any change in the language of instruction at the municipal level, particularly along the linguistic border. In this context, the Advisory Committee is pleased that the draft for the new Graubünden Constitution, which will be put to a referendum in May 2003, provides in Article 3(3) that the municipalities shall determine the official language and the language of instruction in co-operation with the canton and that, in so doing, they shall take account of the traditional linguistic composition and of autochthonous linguistic minorities. The Advisory Committee expresses the hope that this new article will enable the position of Romanche schools in municipalities at the linguistic border to be strengthened, even though it does not contain any real guarantee in this respect.

72. The Advisory Committee stresses that in recent years pilot experiments in bilingual teaching have been developed at the municipal level in a number of cantons and that generally these experiments have not been impeded by application of the principle of territoriality. This is the case in the municipality of Chur (the capital of Graubünden), which, though located in the German linguistic area, has been offering for three years a bilingual German-Italian section and a similar German-Romanche section. It appears that this bilingual education is a considerable success, which suggests that there are serious needs for education in Italian and – although to a lesser extent – in Romanche outside the traditional area of those languages. The Advisory Committee welcomes the establishment of such bilingual sections and urges the other cantons to follow suit, in particular in large cities of the country, where there is no risk to the maintenance of linguistic balance and where numerous persons belonging to linguistic minorities live with no possibility of receiving instruction in their language, in particular at primary level (see also the comments on Article 12).

73. As regards the situation of the Travellers and the possibilities to support further research on the Yenish language, the Advisory Committee encourages the continuation of a dialogue between the authorities and the persons concerned (see related comments under paragraph 61, Article 12).

¹³ See on this point the Report adopted on Switzerland on 1 June 2001 by the Committee of Experts of the European Charter for Regional or Minority Languages, §§ 60-66.

Article 15

74. The Advisory Committee notes with satisfaction that the institutional framework, as it ensues in particular from Federal Constitutional law and principles derived from federalism, enables minorities in Switzerland to participate in political life to a very high degree. This finding applies quite particularly to persons belonging to linguistic minorities at the level of both the Confederation and the cantons. It also emerges from the data contained in the State Report and in the reply to the questionnaire that persons belonging to linguistic minorities are fairly represented in the federal administration.

75. In contrast, the Advisory Committee finds that the participation of persons belonging to linguistic minorities in economic and social matters, in particular French- and Italian-speakers, is not so good. Not only are the unemployment rates in French-speaking Switzerland and Ticino higher on average than those in the German-speaking cantons, but also companies are increasingly tending to re-deploy their decision-making centres to large cities, most often in German-speaking Switzerland. This phenomenon affects more certain peripheral regions, such as the Jura mountains, with the result that it particularly affects the French-speaking minority in Canton Bern. The Advisory Committee acknowledges that some legislative and other measures, such as the establishment of an inter-cantonal system of financing to achieve an equitable balance (*“péréquation financière”*), have already been taken by the Federal authorities to limit these regional socio-economic disparities. While recognising that there are limits to the action that a State can take in this matter, the Advisory Committee considers that the authorities should pay more attention to this phenomenon and endeavour to develop further measures capable of limiting its effects, such as measures aimed at encouraging the development of economic activities in the cantons/regions concerned.

76. The Advisory Committee is concerned that participation mechanisms for Travellers are still inadequate. It appears that dialogue and co-operation with the Federal authorities were developed only fairly recently and that this consultation process is due to be stepped up in the future. The Advisory Committee considers that the Confederation's creation in 1997 of the Foundation "Assurer l'avenir des gens du voyage suisses" with the task of helping to improve Travellers' living conditions and safeguard their culture has been a positive step. Through its action, this Foundation has in particular enabled Travellers' needs to be accurately identified in a number of fields, in particular in terms of stopping places and transit sites.

77. Travellers experience particular difficulties as regards participation in matters concerning them, owing to the fact that they have no historical attachment to a particular territory and, as a result, are confronted with a high number of cantonal and municipal authorities when they travel and carry out their economic activities. The Advisory Committee is aware that the aforementioned Foundation also plays a role as a forum within which representatives of the Travellers, the municipalities, the cantons and the Confederation have to work together to resolve the problems arising. It appears, however, that the Foundation is not able to play that coordinating role sufficiently effectively as between the authorities, in particular *vis-à-vis* the municipal authorities. The Advisory Committee therefore urges the federal authorities to consider the possibility of reinforcing the competences of the Foundation with regard to coordination, as well as the composition of its constituent organs. It also urges the cantons to re-examine their mechanisms for consulting the Travellers, and, where necessary, to reinforce them, since communication proves to be difficult in certain cantons (see the comments on Article 4).

Article 16

78. The Advisory Committee notes with interest the work carried out under the auspices of the Inter-Jura Assembly, whose mandate consists in particular in fostering stronger collaboration between Canton Jura (a French-speaking canton) and the Bernese Jura, which is made up of the French-speaking districts of Canton Bern. The Advisory Committee specifically encourages the initiatives intended to increase cooperation, across cantonal frontiers, in the spheres of culture and education, where necessary through the creation of new institutional mechanisms.

Article 17

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

Article 18

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

Article 19

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

IV. MAIN FINDINGS AND COMMENTS OF THE ADVISORY COMMITTEE

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

In respect of Article 3

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

84. The Advisory Committee *finds* that persons belonging to the German-speaking minority resident in Cantons Fribourg and Valais can be given the possibility to rely on the protection provided by the Framework Convention, as far as the issues concerned fall within cantonal competence. It *finds* that the protection offered by the Framework Convention is also available for other linguistic minorities at cantonal level, for example for the French-speakers of the Canton Bern. The Advisory Committee *considers* that such an approach is perfectly in keeping with the spirit of the Framework Convention.

In respect of Article 4

85. The Advisory Committee *finds* that the existing anti-discriminatory provisions have resulted on several occasions in judicial decisions compensating individuals who have been the victim of discriminatory acts. Notwithstanding that persons belonging to linguistic minorities do not seem to be more affected by discrimination than the rest of the population, the Advisory Committee *considers* that the Swiss authorities might envisage the adoption of fuller legislation covering discrimination. The Advisory Committee also *considers* that the Swiss authorities should contemplate collecting statistical data on discrimination more systematically, in particular as regards judicial decisions.

86. The Advisory Committee *finds* that there is reason for concern about the indirect discrimination which Travellers continue to suffer, in particular in the fields of land-use planning, the regulation of constructions and the regulation of commerce. It *considers* that the Swiss authorities should adopt additional measures in those specific fields, in particular legislative measures.

In respect of Article 5

87. The Advisory Committee *considers* that the position of Romanche – of which there are five idioms – and Italian in Canton Graubünden warrants special treatment in view of the fact that the continuing existence of those languages in the regions concerned is under threat.

88. The Advisory Committee *finds* that there is reason for concern about the situation of the Travellers insofar as the present institutional and legislative framework enables those persons to preserve and develop their culture and the essential elements of their identity only with difficulty. The Advisory Committee *finds* that the main problems facing Travellers today relate essentially to the lack of stopping places and transit sites, administrative obstacles making it difficult to exercise itinerant trades, and children's schooling. The Advisory

Committee *considers* that at the legislative level, the Federal authorities should examine in greater detail the possibility of requiring the cantons to adopt adequate planning measures or even to introduce a specific provision in the Federal Act on Land-Use Planning. It also *considers* that the cantons concerned should review their legislation on land-use planning and building in order to remedy any shortcoming such as the absence of a provision concerning the possibility of creating transit sites both in the relevant legislation and land-use plans.

89. The Advisory Committee *finds* that the recent entry into force on 1 January 2003 of the new Federal Act on Itinerant Trading and its implementing ordinance should significantly simplify the administrative procedures with which Travellers have to comply in order to exercise their trade in more than one canton. The Advisory Committee *considers* that the authorities should evaluate in the years to come the implementation of this Act together with Travellers' representatives in order to ensure that it is effective.

In respect of Article 6

90. The Advisory Committee *finds* that a large measure of tolerance is characteristic of relations between German -, French-, Italian- and Romanche-speakers, but that Travellers are not yet regarded by the population as being an integral part of Switzerland. It *considers* that the persistence of stereotypes and other clichés when municipal referenda are held on the establishment of stopping places should be vigorously fought against by the authorities. It also *considers* that new measures should be designed to make the population aware that the Travellers, through their culture and history, contribute to the cultural wealth of the country.

91. The Advisory Committee *finds* generalised refusals to grant naturalisation to applicants from certain countries have been reported in recent years at the time of ballots held in certain municipalities. It *considers* that such instances can but seriously affect the spirit of tolerance, intercultural dialogue and mutual respect and understanding. It also *considers* that they are problematic from the point of view of the prohibition of discrimination, especially in the absence of a legal remedy.

In respect of Article 9

92. The Advisory Committee *finds* there are reports according to which the only Romanche daily newspaper is in a difficult financial situation. The Advisory Committee therefore *considers* that the authorities should examine, in consultation with the Romanche minority, the various possibilities for securing sufficient funding for this daily newspaper.

93. The Advisory Committee *finds* that there seems to be only one local radio station regularly broadcasting in Roma language and one press title for the Jenish people. The Advisory Committee *considers* that the authorities should examine, in consultation with Travellers' representatives, whether the present situation corresponds to their needs and, if necessary, to consider other support measures in the field of the media.

In respect of Article 10

94. The Advisory Committee *finds* that there are reports suggesting that written applications made in Italian to certain federal offices are sometimes replied to in German. The Advisory Committee *considers* that the Federal authorities should further raise the awareness

of Federal administration staff to the need to reply systematically in Italian to requests submitted in that language.

95. The Advisory Committee *finds* that in practice, certain difficulties arise in the context of relationships between persons belonging to linguistic minorities and administrative authorities at infra-cantonal level. The Advisory Committee *considers* that in such a situation, the authorities concerned should be encouraged to take account of the Framework Convention when they have to rule on the linguistic affiliation of such municipalities and, in particular, to consider whether there is sufficient demand within the meaning of Article 10(2) to authorise the use of the minority language in official relations.

In respect of Article 11

96. The Advisory Committee *finds* that certain limitations of an exceptional nature to the right to display in a minority language signs, inscriptions and other information of a private nature visible to the public exist in a few municipalities in Graubünden with a view to preserving the Romanche language, whose survival is under threat in some regions. The Advisory Committee *considers* that Romanche could be protected just as well by an obligation to put up bilingual private signs, and encourages the competent authorities to look into this possibility.

In respect of Article 12

97. The Advisory Committee *considers* that the competent authorities should make efforts to have teaching programmes reflect more the history and concerns of the Jewish community in Switzerland, and take account of phenomena connected with anti-Semitism.

98. The Advisory Committee *finds* that the Federal authorities have initiated discussions with representatives of the community of Travellers with a view to securing better knowledge of their linguistic and cultural needs. It *considers* that the authorities should step up their efforts in this area.

In respect of Article 13

99. The Advisory Committee *finds* that the legislation of certain cantons sets out limits as to the language of instruction in private schools. The Advisory Committee *considers* that such limitations are problematic from the point of view of Article 13 of the Framework Convention insofar as they seem to prevent the establishment of private schools providing instruction in a minority language outside its area of traditional establishment. It *considers* that the competent authorities should ensure that the legal provisions of the cantons concerned do not constitute a barrier to satisfying any needs in this respect, in particular for Italian-speakers living in large cities such as Bern.

In respect of Article 14

100. The Advisory Committee *finds* that the possibility for persons belonging to a linguistic minority to receive full primary education in their language is limited in practice by the principle of territoriality. It *considers* that the authorities concerned should be encouraged, when they have to rule on the enrolment of pupils in schools with instruction in the minority language offered by a neighbouring municipality, to take account of the Framework

Convention and, in particular, to consider whether there is sufficient demand within the meaning of the aforementioned provision.

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

102. The Advisory Committee *finds* that in recent years pilot experiments in bilingual teaching have been developed at the municipal level in a number of cantons and that generally these experiments have not been impeded by application of the principle of territoriality. It *considers* that the establishment of such bilingual sections should be encouraged and urges the cantons to follow suit, in particular in large cities of the country, where there is no risk to the maintenance of linguistic balance and where numerous persons belonging to linguistic minorities live with no possibility of receiving instruction in their language, in particular at primary level.

In respect of Article 15

103. The Advisory Committee *finds* that the unemployment rates in French-speaking Switzerland and Ticino are higher on average than those in the German-speaking cantons and that companies are increasingly tending to re-deploy their decision-making centres to large cities, most often in German-speaking Switzerland. While recognising that there are limits to the action that a State can take in this matter, the Advisory Committee *considers* that the authorities should pay more attention to this phenomenon and endeavour to develop further measures capable of limiting its effects.

104. The Advisory Committee *finds* that participation mechanisms for Travellers are still inadequate and that dialogue and co-operation with the Federal authorities were developed only fairly recently. It *considers* that the Federal authorities should consider the possibility of reinforcing the competences of the Foundation "Assurer l'avenir des gens du voyage suisses" with regard to coordination, as well as the composition of its constituent organs. It also *considers* that the cantons should review their mechanisms for consulting the Travellers, and, where necessary, reinforce them, since communication proves to be difficult in certain cantons.

V. CONCLUDING REMARKS

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

106. As concerns the implementation of the Framework Convention, the Advisory Committee considers that Switzerland has made particularly commendable efforts in a number of fields in respect of its linguistic minorities. The institutional framework enables the French-, Italian- and Romanche-speakers, as well as German-speakers of Cantons Fribourg and Valais, to preserve and develop the essential elements of their identity, in particular their language and their culture. Moreover, a number of institutional arrangements, such as the composition of the Federal authorities and instruments of direct democracy, ensure an extensive political participation of linguistic minorities at all levels.

107. The legal guarantees as concerns the use of minority languages in relations between persons belonging to minorities and the administrative authorities are very extensive and it is to be welcomed that numerous efforts have been undertaken to reinforce the position of Romanche in recent years. Increased attention could however be given to the principles enshrined in the Framework Convention when it comes to authorising, at the infra-cantonal level, the use of a minority language in the aforementioned relations.

108. In the field of education, the authorities should ensure that the needs of persons belonging to linguistic minorities as regards instruction in a minority language outside its area of traditional establishment are addressed, in particular as far as Italian- and Romanche-speakers are concerned. In Canton Graubünden, the greatest possible caution should be exercised in examining any change in the language of instruction at the municipal level.

109. There is scope for improvement in order to make it possible for Travellers to develop the essential elements of their identity. With a view to remedying the main difficulties these persons are faced with, in particular the lack of stopping places and transit sites, further measures, notably legislative ones, should be taken by the authorities. Furthermore, participation mechanisms for Travellers should be strengthened.