



COUNCIL OF EUROPE CONSEIL DE L'EUROPE

Strasbourg, 24 October 2014

Public
Working document

**SECRETARIAT OF THE FRAMEWORK CONVENTION FOR THE
PROTECTION OF NATIONAL MINORITIES**

**COMPILATION OF OPINIONS OF THE ADVISORY COMMITTEE
RELATING TO ARTICLE 16 OF THE FRAMEWORK CONVENTION**

THIRD CYCLE

Article 16

The Parties shall refrain from measures which alter the proportions of the population in areas inhabited by persons belonging to national minorities and are aimed at restricting the rights and freedoms flowing from the principles enshrined in the present framework Convention.”

Note: this document was produced as a working document only and does not contain footnotes. For publication purposes, please refer to the original opinions.

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As of 24 October 2014, the Advisory Committee on the Framework Convention for the Protection of National Minorities had adopted a total of 35 opinions, of which 8 opinions on Article 16.

NOTE

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

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. On the contrary, 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 be considered acceptable at one stage but that need not necessarily be so in further cycles of monitoring. It may also be the case that issues that appear at one stage of the monitoring to be of relatively minor concern prove over time to have been underestimated.

* 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.

1. Armenia

Opinion adopted on 14 October 2010

Article 16 of the Framework Convention

Territorial reform

Present situation

The Advisory Committee notes the recent discussions on the plans for the reform of local self-government in Armenia with a view to economising and mainstreaming administration by the creation of a smaller number of larger municipalities (see remarks under Article 15). While welcoming the efforts to provide better municipal services to all inhabitants of Armenia, the Advisory Committee notes nonetheless that a number of isolated villages inhabited by large numbers of persons belonging to the Assyrian and Yezidi minorities, which currently are self-governing, may find themselves merged with the surrounding villages inhabited by persons belonging to the Armenian majority. Such a development would, in the opinion of the Advisory Committee, inevitably lead to the weakening of the possibilities for persons belonging to the Assyrian and Yezidi minorities to influence local affairs.

Recommendation

The Advisory Committee urges the authorities to ensure that the rights of persons belonging to the Assyrian and Yezidi minorities are duly taken into account when planning and implementing the local government reform and that there is no negative impact on the right of persons belonging to national minorities to participate effectively in public affairs at local level.

2. Azerbaijan

Opinion adopted on 10 October 2012

Article 16 of the Framework Convention

Displaced persons

Recommendations from the two previous cycles of monitoring

In the previous monitoring cycles, the Advisory Committee noted that the Nagorno Karabakh conflict had substantially altered the proportions of the population in a number of areas inhabited by persons belonging to national minorities, and emphasised its support for efforts to find a peaceful and durable solution to the conflict which could then hopefully initiate a process of voluntary return, including for persons belonging to national minorities.

Present situation

The Advisory Committee regrets that there has been no change with regard to the Nagorno Karabakh area and that it has not been possible to promote any voluntary return of persons displaced by the conflict, including those belonging to national minorities, to the area. It

commends the substantial efforts by the authorities to cope with the massive internal displacement caused by this conflict (see comments on Article 4 above) and reiterates its support for a peaceful and sustainable solution that allows for the voluntary return of the affected population.

Recommendation

The Advisory Committee strongly encourages the authorities to continue to strive for lasting peace in the region so that the voluntary return of all persons displaced by the conflict may commence.

3. Cyprus

Opinion adopted on 19 March 2010

Article 16 of the Framework Convention

Sustainable return

Recommendations from the two previous cycles of monitoring

In the two previous cycles of monitoring, the Advisory Committee noted the substantial changes in the demographic make-up of areas inhabited by persons belonging to national minorities and recommended that the authorities encourage the sustainable return, of persons belonging to national minorities, including at local level.

Present situation

The progress made in the repossession of property as well as in the allocation of housing for former tenancy rights holders (see above under Article 4) has had a positive effect on the overall return process, including its sustainability. The ‘co-validation’ mechanism, making it possible to validate, for pension purposes, the years of employment spent in areas not controlled by the authorities of Croatia during the armed conflict, was recently re-opened and improves thus access to social benefits for returnees.

According to a UNHCR survey on the sustainability of return, only 54% of Serbian returnees have remained in Croatia, the others have returned to their country of asylum. Lack of access to housing remains a significant impediment to sustainable return. In this regard, the Advisory Committee notes with deep concern that the approximately 7,500 negative decisions regarding reconstruction assistance are still pending in second instance and that all of them originate from applicants of Serbian origin. It further notes that, according to the above mentioned survey, 30% of the returnees are unemployed which far surpasses the overall statistics of roughly 10% of unemployment in Croatia. The transition from receiving minimal return assistance into benefiting from the social welfare system remains difficult for returnees.

Recommendation

While noting the steps taken by the authorities to improve the conditions of return and the sustainability of return of persons belonging to national minorities, the Advisory Committee strongly urges them to redouble these efforts to ensure that returnees are enabled to establish a dignified life in adequate living and working conditions in Croatia.

4. Finland

Opinion adopted on 14 October 2010

Article 16 of the Framework Convention

Changes in administrative borders

Recommendations from the two previous cycles of monitoring

In the previous monitoring cycles, the Advisory Committee called on the authorities to ensure that the linguistic composition of the population of administrative units as well as the possibilities of persons belonging to minorities to take part in the decision-making processes and access relevant services are taken into account in the planning and implementation of reforms affecting administrative borders.

Present situation

The Advisory Committee notes the recent endeavours in the framework of the Regional Administrative Reform (ALKU) to economise and mainstream administration which has led to the creation of larger municipalities and, thereby, to a decrease in the number of bilingual municipalities. While welcoming the intervention of the Constitutional Committee as well as the Chancellor of Justice who requested that a linguistic assessment be made before the bilingual municipality of Karleby (Kokkola) be assigned to the unilingual Oulu State Administrative District in order to protect the linguistic rights of its citizens, it regrets that this reform was apparently planned and set into motion without prior consultation and without sufficiently taking the language rights of persons belonging to national minorities into account (see also comments on Article 10 above).

In addition, the Advisory Committee warns that the ongoing efforts to reduce the number of administrative units by creating fewer and larger ones, may also have a negative impact on the already limited provision of public services in the Sami languages within the Sami Homeland.

Recommendations

The Advisory Committee urges the Finnish authorities to ensure that the linguistic rights of its citizens are duly taken into account when planning and implementing administrative as well as local government reforms, which is also a constitutional obligation under Section 122 of the Finnish Constitution. Given the overall decrease in access to public services in Swedish, particular attention must be paid to avoid any measures that could further weaken the availability of services in the Swedish language.

Equally, the Advisory Committee urges the Finnish authorities to ensure that the linguistic rights of the Sami are fully taken into account when devising changes to the administration system in northern Finland.

5. Kosovo*

Opinion adopted on 6 March 2013

Article 16 of the Framework Convention

Protection against population changes

Recommendations from the two previous cycles of monitoring

In the previous monitoring cycles, the Advisory Committee considered it essential that all efforts were made to facilitate safe and sustainable returns in line with the individual's choice of residence throughout Kosovo*. In addition, it had to be ensured that no measures, including those related to on-going return and decentralisation processes, were used to change the proportion of the population in certain areas inhabited by persons belonging to minority communities before the conflict.

Present situation

The Advisory Committee notes that sustainable return has not occurred in a number of areas where persons belonging to minority communities resided prior to the conflict and that, apart from external, including security-related, factors that made return impossible, other considerations linked to career opportunities and family relations have dissuaded displaced persons from returning. While the informed choice of an individual that has been displaced for 13 years is paramount and should be accommodated including as regards the desire to integrate locally (see above comments on Article 4), the commitment of the authorities to maintain a multi-ethnic demographic structure throughout Kosovo* demands continued efforts to promote return to the place of residence prior to the conflict, and to make return sustainable through targeted measures. The Advisory Committee is deeply concerned by the impression of some interlocutors that economic development and privatisation efforts favour members of the majority population, even and possibly especially in areas that were formerly inhabited by minority communities, thereby contributing to population changes that are contrary to Article 16 of the Framework Convention.

The Advisory Committee further notes continued changes to the demographic structure in north Mitrovica/Mitrovicë, where concerted efforts are being invested by the authorities to establish administrative authority since the creation of 'Mitrovica North Administrative Office' in May 2012. While welcoming efforts to provide services to residents in the north and improve their ability to exercise their rights in accordance with the Constitution, the Advisory Committee is concerned about reports of increased efforts to provide housing for displaced persons of Albanian origin, amid objections from the population. It considers that all efforts must be made to closely involve representatives of all communities, including numerically smaller ones, in decision-making that affects the demographic make-up of the municipality and underlines that the needs and concerns of all citizens must be given priority over political considerations.

Recommendations

The Advisory Committee calls on the authorities to intensify their efforts to facilitate and encourage the sustainable return and integration of displaced persons to their original place of residence.

The Advisory Committee further calls on the authorities to take all necessary measures to ensure that on-going decentralisation processes do not result or amplify changes to the population. All relevant decisions, including as regards privatisation efforts, must be taken in close consultation with all communities.

6. Poland

Opinion adopted on 28 November 2013

Article 16 of the Framework Convention

Changes in electoral district borders

Present situation

The Advisory Committee has received information on national and ethnic minorities concerns as regards local elections to *Voivodship* Assemblies planned for 2014. In particular, the creation of larger districts composed of two or more counties (*poviats*) may have a negative effect on the electoral rights of persons belonging to national and ethnic minorities and may constitute a breach of the Electoral Code¹ prohibiting practices which “affect the social ties of voters belonging to national and ethnic minorities living on the territory of the combined counties”.

Recommendation

The Advisory Committee urges the authorities to ensure that the rights of persons belonging to national and ethnic minorities are duly taken into account when establishing electoral districts ahead of local and regional elections.

7. Romania

Opinion adopted on 21 March 2012

Article 16 of the Framework Convention

Territorial reform

Present situation

The Advisory Committee notes the ongoing discussions on the plans for the reform of the territorial administration of Romania with a view to mainstreaming administration by the creation of a smaller number of larger regional units. The efforts to establish a more efficient administrative structure capable of delivering better services to all inhabitants of Romania are to be welcomed. The Advisory Committee notes nonetheless that the proportion of persons identifying themselves with national minorities is likely to diminish

¹ See Article 462§4 of the Electoral Code.

in some of the proposed larger units, which may affect the exercise of a number of rights which are conditional on reaching a certain threshold of persons identifying themselves with a national minority and residing within the territorial unit in question. Such a development, in the opinion of the Advisory Committee, might lead to the weakening of the possibilities for persons belonging to the minorities to influence and participate in local affairs.

Recommendation

The Advisory Committee urges the authorities to ensure that the rights of persons belonging to national minorities are duly taken into account when planning and implementing the reform of territorial administration in Romania and that there is no negative impact on the right of persons belonging to national minorities to participate effectively in public affairs at local level. Such efforts should ensure the maintenance and promotion of intercultural dialogue, tolerance and everyday contact between minorities and majorities throughout the country, in accordance with the principles enshrined in Article 6 of the Framework Convention.

8. Russian Federation

Opinion adopted on 24 November 2011

Article 16 of the Framework Convention

Return of forcibly displaced persons

Recommendations from the two previous cycles of monitoring

In the previous monitoring cycles, the Advisory Committee encouraged the authorities to facilitate the voluntary return of Ingush displaced persons to Prigorodniy District. It also urged them to ensure that the return of persons displaced by the series of conflicts in Chechnya is voluntary and safe.

Present situation

There are no reliable figures on the number of persons originally or currently displaced by the armed conflicts in Chechnya and Prigorodniy District in North Ossetia-Alania. According to various estimates, at least 55,000 people were still displaced in the North Caucasus (45,000 from Chechnya and 10,000 from North Ossetia-Alania) in 2010, and an unknown number were displaced elsewhere in the Russian Federation. The Advisory Committee welcomes the substantial efforts by the authorities to promote the return of displaced persons, including through programmes aimed at providing housing or housing compensation, as well as strengthening economic recovery in the region. Most of the efforts appear to be focussed on the city of Grozny, however. It remains unclear how many persons have returned to their homes and even less so, whether their return was sustainable. According to several reports, return movements in 2010 were negligible, which may be linked to the reported deterioration of the security situation in the North Caucasus since 2009. The Advisory Committee also learned that the considerable financial resources spent on the reconstruction of Chechnya has led to resentment among society and officials in other regions, which has fuelled further hostility against persons of Chechen origin throughout the Federation.

According to various international monitoring organisations, about half of the returnees to Prigorodniy District and 60% of the returnees to Chechnya have been able to return to their former homes or apartments. For the others, return has been particularly difficult, as their homes have been destroyed or occupied by others, as many returnees do not have the necessary documents to prove ownership. Many remain in temporary accommodation which, particularly in Ingushetia, frequently offers substandard living conditions and no security of tenure. The Advisory Committee is particularly concerned that return to ethnically-mixed villages in Prigorodniy District continues to be restricted as relations between Ossetians and Ingushetians reportedly remain tense. It reminds the authorities that all efforts must be made to allow for the return of displaced persons to their former places of residence, as their settlement in new areas such as Mayskoe and Novi villages could result in an alteration of the proportions of the population in the Prigorodniy District which would not be in line with Article 16 of the Framework Convention. The Advisory Committee welcomes in this regard an agreement of 2009 between the Republics of Ingushetia and North Ossetia-Alania, which provides for return to all areas. Unfortunately however, the Advisory Committee understands that it remains unimplemented.

Regarding the return to Chechnya, the Advisory Committee is alarmed by reports about pressure being placed on forcibly displaced persons in other regions to return, among others by non-issuance or non-prolongation of the forced migrant status or through the denial of registration (see comments on Article 4 above), which is not in conformity with the principle of freedom of movement as contained in Article 27 of the Russian Constitution. In 2009, remaining displaced persons in Ingushetia were reportedly de-registered from the assistance list of the government in an effort to make them return. While the federal government allocated substantial funding for displaced families in Ingushetia in 2010, only those with a forced migrant status could apply for it, and they remain a minority. In addition, the Advisory Committee is concerned by reports indicating that there are only limited settlement options for displaced persons wishing to return to Grozny and other cities, which are the areas targeted most by government recovery programmes and where most assistance is available.

Recommendations

The Advisory Committee urges the federal and regional authorities to increase their efforts to ensure that those wishing to return to their former places of residence in Prigorodniy District are enabled to do so in safety and dignity.

The Advisory Committee further urges the authorities to ensure that all returns to Chechnya take place on a voluntary basis and under the necessary conditions of safety. Efforts must be increased to facilitate access to assistance for returnees in all areas and to promote the sustainability of return.

Creation of new territorial formations

Recommendations from the two previous cycles of monitoring

In the previous monitoring cycles, the Advisory Committee urged the authorities to conduct comprehensive consultations with the populations concerned prior to any mergers or other creations of new territorial formations in order to ensure that these do not have a negative

impact on the enjoyment of the rights contained in the Framework Convention by persons belonging to national minorities living in the affected areas.

Present situation

The Advisory Committee notes that following the creation of Perm *Krai* in December 2005, based on the merger of Perm *Oblast* and Komi-Permyak Autonomous District, a number of other larger territories were created following mergers in 2007 and up to March 2008. It further understands that a number of future mergers are planned, such as the merger of Tyumen *Oblast*, Yamalo-Nenets Autonomous District and Khanti-Mansi Autonomous District into Tyumen *Krai* and the one of Irkutsk *Oblast*, Buryat Republic and Zabaykalsky *Krai* to Baykalsky *Krai*. The Advisory Committee is concerned by reports that the discussions regarding the possible mergers are taking place exclusively in Moscow and that no comprehensive consultations with the affected populations have been organised. According to minority representatives, the results of mergers have often been detrimental to the already limited opportunities for minority communities to participate effectively in public affairs (see above comments on Article 15 above), as well as to the levels of support afforded to minority associations by local authorities.

While appreciating the intention of the authorities to create more efficient administrative units, the Advisory Committee is concerned that the views of minority representatives are not sufficiently taken into account with regard to these mergers, nor reportedly those of the concerned local authorities. As the creation of new territorial formations has an evident and direct impact on the degree of influence in public affairs granted to persons belonging to national minorities in the territories concerned (for instance for Buryats in the former Buryat Autonomous *Okrugs* that have been merged into Irkutsk *Oblast* and Zabaykalsky *Krai*), as well as on the proportions of the population in areas inhabited by persons belonging to national minorities, the Advisory Committee finds that any such decision must be taken only after comprehensive and transparent consultations with the affected populations, who must be fully informed of the consequences of these mergers on the level of enjoyment of the rights contained in the Framework Convention.

Recommendation

The Advisory Committee reiterates its urgent recommendation to the federal authorities to ensure that any mergers taking place do so only in close consultation with regional and local authorities and affected population groups, to ensure that such measures do not have a negative impact on the rights of persons belonging to national minorities.